

EXHIBIT A

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9 Counterclaim-Defendant APPLE INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 APPLE INC., a California corporation,
14 Plaintiff,

15 v.

16 SAMSUNG ELECTRONICS CO., LTD., A
17 Korean business entity; SAMSUNG
ELECTRONICS AMERICA, INC., a New
18 York corporation; SAMSUNG
TELECOMMUNICATIONS AMERICA,
19 LLC, a Delaware limited liability company,

20 Defendants.

Case No. 11-cv-01846-LHK (PSG)

PUBLIC VERSION

**APPLE INC.'S MOTION TO COMPEL
FURTHER DISCOVERY AND FOR
SANCTIONS FOR VIOLATIONS OF
PROTECTIVE ORDER**

Date: October 1, 2013
Time: 10:00 a.m.
Place: Courtroom 5, 4th Floor
Judge: Hon. Paul S. Grewal

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NOTICE OF MOTION AND MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on October 1, 2013 at 10 a.m., or as soon as the matter may be heard by the Honorable Paul S. Grewal in Courtroom 5, United States District Court for the Northern District of California, 280 South 1st Street, San Jose, California 85113, Apple Inc. (“Apple”) shall and hereby does move pursuant to Federal Rule of Civil Procedure 37(b)(2) for sanctions for Samsung’s [REDACTED] violations of the Agreed Upon Protective Order Regarding Disclosure and Use of Discovery Materials entered by the Court on January 30, 2012 (“Protective Order”), for further discovery to determine the full scope of the violations that Samsung has committed, and for remedial action arising from these violations once their full scope is known.

This motion is based on this notice of motion and supporting memorandum of points and authorities; the accompanying declaration of Joseph Mueller; and such other written and oral argument as may be presented at or before the time this motion is taken under submission by the Court.

RELIEF REQUESTED

Pursuant to Federal Rule of Civil Procedure 37(b)(2), Apple seeks (1) an order sanctioning Samsung for violating the Protective Order [REDACTED]
[REDACTED]
[REDACTED] (2) an order requiring Samsung to provide the discovery described herein; and (3) appropriate remedial action, once the full scope of Samsung’s Protective Order violations are known.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether Samsung should be sanctioned [REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED]

2. Whether Samsung should be ordered to provide further discovery to permit Apple to learn of the full scope of the Protective Order violations; and

3. Whether Samsung should be required to take further remedial action and sanctioned, the precise remedies to be determined once the full scope of the Protective Order violations is known.

Dated: August 23, 2013

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

[REDACTED]

Some serious form of sanction is therefore warranted, with the precise sanctions dependent on the full facts, once those facts are known. [REDACTED]

[REDACTED]

[REDACTED] Apple also requests that the Court grant leave for Apple to take the discovery described herein so that Apple and the Court may determine the full scope of violations that Samsung has committed, and then the appropriate sanctions, including remedial actions tailored to those violations.

1 [REDACTED]

1 **II. BACKGROUND**

2 **A. The Dispute Regarding FRAND Licensing Terms**

3 In its Counterclaims filed on July 30, 2011, Samsung alleged that Apple infringed
4 seven patents that Samsung declared to the European Telecommunications Standards
5 Institute (“ETSI”) to be essential to interoperability with UMTS wireless networks
6 (collectively, “Samsung FRAND Patents”). (Samsung’s Answer, Affirmative Defenses,
7 and Counterclaims to Apple’s Amended Complaint (Docket No. 80), at pp. 45-52.)
8 Subsequently, Samsung dismissed four of these patents, without prejudice (*see* Docket No.
9 1880), and the Court granted Apple summary judgment of non-infringement on a fifth
10 (Docket No. 1156). Samsung proceeded to trial on two of these declared-essential patents,
11 U.S. Patent Nos. 7,675,941 (“’941 patent”) and 7,447,516 (“’516 patent”). Both were
12 found not infringed by the jury. (Docket No. 1930.) In post-trial motions, the Court
13 upheld the jury’s finding of non-infringement, and also granted Apple’s JMOL motion of
14 invalidity on the ’941 patent. (Docket Nos. 2219, 2220.)

15 Samsung concedes that it is obligated to license the Samsung FRAND Patents to
16 Apple on fair, reasonable, and non-discriminatory (“FRAND”) terms. Apple and Samsung
17 sharply disagree, however, on FRAND terms for the Samsung FRAND Patents. Thus, a
18 central disputed issue in this and the ongoing 12-cv-00630 case has been whether Samsung
19 has failed to comply with its obligation to license the Samsung FRAND Patents on
20 FRAND terms. In this case, Apple asserted claims for breach of contract, antitrust
21 violations, and unfair competition arising out of Samsung’s failure to abide by its FRAND
22 obligations. (Apple’s Counterclaims in Reply (Docket No. 124), ¶¶ 163-68; 176-93.) At
23 trial, the jury, having determined the patents not infringed, found against Apple on its
24 claims for breach of contract and antitrust violations. (Docket No. 1931.)

25 **B.** 

1 The parties engaged in extensive fact discovery from August 3, 2011, to March 8,
2 2012, including discovery relevant to the parties' dispute regarding licensing of the
3 Samsung FRAND Patents. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

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10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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16 After reviewing [REDACTED] Apple wrote
17 to Samsung, [REDACTED]

18 [REDACTED]
19 [REDACTED]
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[REDACTED]

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2 [REDACTED]

3 **III. LEGAL STANDARD**

4 Courts have the inherent authority to sanction a party for discovery misconduct
5 even absent a prior court order. *See, e.g., Unigard Security Ins. Co. v. Lakewood Eng'g &*
6 *Mfg. Corp.*, 982 F.2d. 363, 368 (9th Cir. 1992). Where a party violates a discovery order,
7 however, Federal Rule of Civil Procedure 37 authorizes a court to impose a broad variety
8 of sanctions, including directing that “designated facts be taken as established for purposes
9 of the action,” dismissing an action in whole or in part, “treating as contempt of court the
10 failure to obey any order,” and awarding fees or expenses. *See Fed. R. Civ. P. 37(b)(2)*
11 *(authorizing sanctions for failing to obey an order, “including an order under Rule 26(f)”);*
12 *see also U.S. v. Nat’l Med. Enters., Inc.*, 792 F.2d 906, 910 (9th Cir. 1986) (“Rule 37(b)
13 . . . authorizes the district court to impose a wide range of sanctions if a party fails to
14 comply with a discovery order”); *Life Techs. Corp. v. Biosearch Techs., Inc.*, C-12-00852,
15 2012 WL 1600393 (N.D. Cal. May 7, 2012) (“Rule 37 of the Federal Rules of Civil
16 Procedure grants courts the authority to impose sanctions where a party has violated a
17 discovery order, including a protective order issued pursuant to Rule 26(f)”) (citations
18 omitted).

19 **IV. ARGUMENT**

20 **A. Sanctions Are Warranted**

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
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[REDACTED]

[REDACTED] *See, e.g., Life Techs. Corp. v. Biosearch Techs., Inc.*, C-12-00852, 2012 WL 1600393, *11 (N.D. Cal. May 7, 2012) (finding disclosure of proprietary confidential information subject to a protective order was sanctionable).

[REDACTED]

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12 [REDACTED] *See, e.g., Brocade Communs. Sys. v. A10 Networks, Inc.*, 2011 U.S. Dist.
 13 LEXIS 99932 at *18-19 (N.D. Cal. Sept. 6, 2011) (imposing sanctions where party
 14 disclosed confidential information in violation of protective order).

15 **B. The Court Should Grant Apple Leave To Take Discovery To**
 16 **Determine The Scope Of The Protective Order Violation**

17 [REDACTED]

18 [REDACTED]

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21 Following the completion of this discovery, when the full impact of [REDACTED]

22 [REDACTED], Apple intends to apply for further sanctions.

23 **V. CONCLUSION**

24 For the foregoing reasons, Apple respectfully requests that the Court order

25 appropriate sanctions after allowing Apple leave to conduct discovery regarding [REDACTED]

26 [REDACTED] in this case.

1 Dated: August 23, 2013

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on August 23, 2013 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5-1.

/s/ Mark D. Selwyn
Mark D. Selwyn

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