

Nos. 12-1600, -1606

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

APPLE INC.,
Plaintiff-Appellant,
v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., and
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,
Defendants-Cross-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA IN CASE NO. 11-CV-1846, JUDGE
LUCY H. KOH

BRIEF FOR THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS, AMERICAN SOCIETY OF NEWS EDITORS, BLOOMBERG L.P.,
DOW JONES & COMPANY INC., GANNETT CO. INC., THE NEW YORK
TIMES COMPANY, SOCIETY OF PROFESSIONAL JOURNALISTS, AND
THE WASHINGTON POST AS *AMICI CURIAE* IN SUPPORT OF
AFFIRMANCE

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October 15, 2012

CERTIFICATE OF INTEREST

Counsel for *amicus curiae* The Reporters Committee for Freedom of the Press certifies the following:

1. The full name of every party or amicus represented in the case by me is:

The Reporters Committee for Freedom of the Press; American Society of News Editors; Bloomberg L.P.; Dow Jones & Company, Inc.; Gannett Co., Inc.; The New York Times Company; Society of Professional Journalists; The Washington Post.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

N/A.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the *amici curiae* represented by me are:

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

American Society of News Editors is a private, non-stock corporation that has no parent.

Bloomberg L.P. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

News Corporation, a publicly held company, is the indirect parent corporation of Dow Jones, and Ruby Newco LLC, a subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. No publicly held company owns 10% or more of Dow Jones' stock.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10% or more of its stock.

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Society of Professional Journalists is a non-stock corporation with no parent company.

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4. The names of all law firms and the partners and associates that have appeared for the amicus in the lower tribunal or are expected to appear for the party in this court:

N/A.

Dated: October 15, 2012

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TABLE OF CONTENTS

CERTIFICATE OF INTEREST i

TABLE OF AUTHORITIESv

STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*.....1

SOURCE OF AUTHORITY TO FILE4

SUMMARY OF ARGUMENT4

ARGUMENT5

 I. There are important interests behind the common-law presumption of access to judicial documents, including discovery materials filed with motions.....5

 A. This court should look beyond the Ninth Circuit standards in developing a policy on the substantive right of access.6

 B. This court and many other circuits have recognized the important interests at stake in access issues.....8

 II. The controversies over patents in the electronics field create a heightened public interest in access.15

 III. The broad expansion of corporate protection of financial information under the guise of true "trade secrets" heightens the public interest in access.....16

CONCLUSION19

CERTIFICATE OF COMPLIANCE.....21

TABLE OF AUTHORITIES

Cases

<i>Baxter Int’l, Inc. v. Abbott Labs.</i> , 297 F.3d 544 (7th Cir. 2002)	14
<i>BBA Nonwovens Simpsonville, Inc. v. Superior Nonwovens, LLC</i> , 303 F.3d 1332 (Fed. Cir. 2002).....	9
<i>Brown & Williamson Tobacco Corp. v. F.T.C.</i> , 710 F.2d 1165 (6th Cir. 1983).....	9
<i>Chicago Tribune Co. v. Bridgestone/Firestone, Inc.</i> , 263 F.3d 1304 (11th Cir. 2001)	10
<i>Foltz v. State Farm Mut. Auto. Ins. Co.</i> , 331 F.3d 1122 (9th Cir. 2003).....	6
<i>Gambale v. Deutsche Bank AG</i> , 377 F.3d 133 (2nd Cir. 2004)	12
<i>Hagestad v. Tragesser</i> , 49 F.3d 1430 (9th Cir. 1995)	6
<i>In re Cont’l Ill. Sec. Litig.</i> , 732 F.2d 1302 (7th Cir. 1984).....	9
<i>In re Midland Nat. Life Ins. Co. Annuity Sales Practice Litig.</i> , 686 F.3d 1115 (9th Cir. 2012)	6, 14
<i>In re Policy Mgmt. Sys. Corp.</i> , 67 F.3d 296, 23 Media L. Rep. (BNA) 2486 (4th Cir. 1995)	11
<i>In re Providian Credit Card Cases</i> , 96 Cal.App.4th 292 (1st Dist. 2002)	18
<i>In re Regents of Univ. of Cal.</i> , 101 F.3d 1386 (Fed. Cir. 1996)	7
<i>In re Violation of Rule 28(D)</i> , 635 F.3d 1352 (Fed. Cir. 2011).....	9
<i>Kamakana v. City and County of Honolulu</i> , 447 F.3d 1172 (9th Cir. 2006) .	4, 5, 14
<i>Leucadia, Inc. v. Applied Extrusion Techs., Inc.</i> , 998 F.2d 157 (3rd Cir. 1993).....	10
<i>Lummus Indus., Inc. v. D.M. & E. Corp.</i> , 862 F.2d 267 (Fed. Cir. 1988).....	7
<i>Midwest Indus., Inc. v. Karavan Trailers, Inc.</i> , 175 F.3d 1356 (Fed. Cir. 1999).....	8
<i>Nat’l Presto Indus. v. W. Bend Co.</i> , 76 F.3d 1185 (Fed. Cir. 1996).....	7

<i>Nixon v. Warner Commc'ns, Inc.</i> , 435 U.S. 589 (1978)	4, 5, 8
<i>Panduit Corp. v. All States Plastic Mfg. Co., Inc.</i> , 744 F.2d 1564 (Fed. Cir. 1984).	7
<i>San Gabriel Tribune v. Superior Court</i> , 143 Cal.App.3d 762 (2nd Dist. 1983)	14
<i>San Jose Mercury News, Inc. v. U.S. Dist. Court</i> , 187 F.3d 1096 (9th Cir. 1999)....	6
<i>United States v. Amodeo</i> , 44 F.3d 141 (2nd Cir. 1995).....	11, 13
<i>United States v. Holy Land Found. for Relief and Dev.</i> , 624 F.3d 685 (5th Cir. 2010)	13
<i>United States v. Wecht</i> , 537 F.3d 222 (3rd Cir. 2008).....	13
<i>Valley Broad. Co. v. U.S. Dist. Court for Dist. of Nev.</i> , 798 F.2d 1289 (9th Cir. 1986)	5, 13

Other Authorities

David S. Almeling, et al., <i>A Statistical Analysis of Trade Secret Litigation in Federal Courts</i> , 45 Gonz. L. Rev. 291 (2010)	16, 17
Eric E. Johnson, <i>Trade Secret Subject Matter</i> , 33 Hamline L. Rev. 545 (2010) ..	17, 18

News Coverage

Ashby Jones & Jessica E. Vascellaro, <i>Smartphone Patents: The Never-Ending War</i> , Wall Street Journal, April 13, 2012	15
Charles Duhigg & Steve Lohr, <i>The Patent, Used as a Sword</i> , N.Y. Times, Oct. 8, 2012, at A1	15, 16

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amicus curiae The Reporters Committee for Freedom of the Press (“The Reporters Committee”) is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

With some 500 members, American Society of News Editors (“ASNE”) is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

Bloomberg L.P., based in New York City, operates Bloomberg News, which is comprised of more than 1,500 professionals in 145 bureaus around the world. Bloomberg News publishes more than 6,000 news stories each day, and The Bloomberg Professional Service maintains an archive of more than 15 million stories and multimedia reports and a photo library comprised of more than 290,000

images. Bloomberg News also operates as a wire service, syndicating news and data to over 450 newspapers worldwide with a combined circulation of 80 million people in more than 160 countries. Bloomberg News operates the following: cable and satellite television news channels broadcasting worldwide; WBBR, a 24-hour business news radio station that syndicates reports to more than 840 radio stations worldwide; *Bloomberg Markets* and *Bloomberg Businessweek* magazines; and Bloomberg.com, which receives 3.5 million individual user visits each month.

Dow Jones & Company, Inc. is the publisher of *The Wall Street Journal*, a daily newspaper with a national circulation of over two million, WSJ.com, a news website with more than one million paid subscribers, *Barron's*, a weekly business and finance magazine and, through its Dow Jones Local Media Group, community newspapers throughout the United States. In addition, Dow Jones provides real-time financial news around the world through Dow Jones Newswires, as well as news and other business and financial information through Dow Jones Factiva and Dow Jones Financial Information Services.

Gannett Co., Inc. is an international news and information company that publishes 82 daily newspapers in the United States, including *USA TODAY*, as well as hundreds of non-daily publications. In broadcasting, the company operates 23 television stations in the U.S. with a market reach of more than 21 million households. Each of Gannett's daily newspapers and TV stations operates Internet

sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations.

The New York Times Company is a leading global multimedia media news and information company, which publishes *The New York Times*, the *International Herald Tribune*, and *The Boston Globe* and operates NYTimes.com, BostonGlobe.com, Boston.com, About.com and related properties.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

The Washington Post publishes a daily and Sunday newspaper with the nation’s fifth-largest print circulation, as well as a website (washingtonpost.com) that attracts more than 17 million unique visitors per month.

Amici have a strong interest in ensuring the right of public access to court proceedings, which includes documents in a case that has attracted significant public attention. *Amici* request that this Court consider the strong historical presumption in favor of open access to judicial proceedings and the access rights of

the public and the press under the First Amendment. These rights, coupled with preserving the integrity of the patent process, counsel in favor of openness, and accordingly, this Court should affirm the unsealing orders issued by the district court.

SOURCE OF AUTHORITY TO FILE

Amici have attached this brief to a motion for leave of the Court to file as *amici*.

SUMMARY OF ARGUMENT

The Reporters Committee for Freedom of the Press, joined by listed *amici*, urges this Court to affirm the district court's unsealing order. There is a general right of public access to judicial records and documents, and a strong presumption in the federal courts in favor of such access. *See, e.g., Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978); *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). This case, involving popular smartphone products, has attracted major public attention and could have far-reaching implications in future patent and trade-secret litigation. This Court should consider and apply the substantively strong principles that counsel in favor of openness in court proceedings of this type.

ARGUMENT

I. There are important interests behind the common-law presumption of access to judicial documents, including discovery materials filed with motions.

As recognized by the Supreme Court and the Ninth Circuit, there exists a “general right to inspect and copy public records and documents, including judicial records and documents.” *Kamakana*, 447 F.3d at 1178 (citing *Nixon*, 435 U.S. at 597 & n. 7). This right is derived from the interest of citizens in keeping “a watchful eye on the workings of public agencies.” *Nixon*, 435 U.S. at 598. Public vigilance is supported by the efforts of newspapers to “publish information concerning the operation of government.” *Id.* In defining this right, the Supreme Court held that “decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.” *Nixon*, 435 U.S. at 599.

The public policy considerations that undergird this right of public access have been affirmed by the Ninth Circuit on many occasions. *See, e.g., Valley Broad. Co. v. U.S. Dist. Court for Dist. of Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986) (“Such factors as promoting the public’s understanding of the judicial process and of significant public events justify creating a ‘strong presumption’ in favor of [public] access.”); *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.

1995) (holding that courts “start with a strong presumption in favor of access” when “determining whether the common law right of access should be overridden”); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (“In this circuit, we start with a strong presumption in favor of access to court records.”).

The right of public access encompasses pretrial documents filed in civil cases. *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1102 (9th Cir. 1999). In *Midland*, the Ninth Circuit explained the high standard required to overcome this presumption of openness:

A party seeking to seal judicial records can overcome the strong presumption of access by providing “sufficiently compelling reasons” that override the public policies favoring disclosure. When ruling on a motion to seal court records, the district court must balance the competing interests of the public and the party seeking to seal judicial records. To seal the records, the district court must articulate a factual basis for each compelling reason to seal. Compelling reasons must continue to exist to keep judicial records sealed.

In re Midland Nat. Life Ins. Co. Annuity Sales Practice Litig., 686 F.3d 1115, 1119 (9th Cir. 2012) (citation omitted).

A. This court should look beyond the Ninth Circuit standards in developing a policy on the substantive right of access.

This appeal involves important, substantive rights that are heavily intertwined with patent and trade-secret law, affecting the choice of law for this

Court to apply. This Court has previously held that to resolve a “procedural matter” that is “not unique to patent issues,” this Court applies the law of the appropriate Court of Appeals. *In re Regents of Univ. of Cal.*, 101 F.3d 1386, 1390 n.2 (Fed. Cir. 1996); *see also Nat’l Presto Indus. v. W. Bend Co.*, 76 F.3d 1185, 1188 n.2 (Fed. Cir. 1996) (“On procedural matters not unique to the areas that are exclusively assigned to the Federal Circuit, the law of the regional circuit shall be applied.”). Were this matter strictly procedural, this Court would apply Ninth Circuit law.

This principle originated in *Panduit Corp.*, where this Court explained its substance/procedure distinction:

Where, as here, a procedural question that is independent of the patent issues is in dispute, practitioners within the jurisdiction of a particular regional circuit court should not be required to practice law and to counsel clients in light of two different sets of law for an identical issue due to the different routes of appeal.

Panduit Corp. v. All States Plastic Mfg. Co., Inc., 744 F.2d 1564, 1576 (Fed. Cir. 1984). This principle has been routinely applied to situations where the dispute on appeal is manifestly procedural. *See, e.g., Lummus Indus., Inc. v. D.M. & E. Corp.*, 862 F.2d 267, 270 (Fed. Cir. 1988) (applying Fourth Circuit law to interpret Rule 51 of the Federal Rules of Civil Procedure); *In re Regents*, 101 F.3d at 1390 (applying Seventh Circuit law regarding attorney-client privilege); *Nat’l Presto Indus.*, 76 F.3d at 1188 (applying Seventh Circuit law regarding Rule 56 of the

Federal Rules of Civil Procedure). When the dispute on appeal concerns the interplay between patent law and other rights, however, this Court need not apply the local circuit's law. *See Midwest Indus., Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356, 1358–59 (Fed. Cir. 1999) (“[W]e should abandon our practice of applying regional circuit law in resolving questions involving the relationship between patent law and other federal and state law rights. Henceforth, we will apply our own law to such questions.”).

Furthermore, substantive law underscores both parties' arguments. Apple makes reference to its “invaluable and heavily guarded trade secrets” and cites the Restatement and sundry court cases to argue the boundaries of trade-secret law. Samsung takes note of its “confidential, trade-secret financial data” and spends a significant portion of its brief arguing accordingly. Despite this recognition of the difficult substantive legal questions at stake, the parties breeze by the notion that their appeal is anything more than procedural when it involves the choice of law faced by this Court. Instead, this Court is not bound entirely by Ninth Circuit precedent in its holding, especially when such important substantive rights are at stake.

B. This court and many other circuits have recognized the important interests at stake in access issues.

This Court has long recognized the importance of the common-law right of public access to judicial document. *See, e.g., BBA Nonwovens Simpsonville, Inc. v.*

Superior Nonwovens, LLC, 303 F.3d 1332, 1335 n.1 (Fed. Cir. 2002) (“[T]he beneficial effects of public scrutiny upon the administration of justice support a presumption in favor of public access to judicial records.” (quotation marks omitted)); *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1356 (Fed. Cir. 2011) (“There is a strong presumption in favor of a common law right of public access to court proceedings.”). This Court has not made a dispositive/nondispositive distinction akin to that suggested by Apple and Samsung, and most recently, has looked to other federal circuits’ law to define the substantive contours of when to restrict the disclosure of information. *See In re Violation of Rule 28(D)*, 635 F.3d at 1357–58 (citing a dozen cases from multiple circuits to analyze what constitutes “good cause” to seal documents under Rule 26(c)(1) of the Federal Rules of Civil Procedure). A similar survey here would be instructive in defining the substantive rights of public access to documents in a major intellectual property case.

Some circuits have recognized a right greater than the common law, creating a First Amendment right of access to pretrial documents. *See In re Cont’l Ill. Sec. Litig*, 732 F.2d 1302, 1308, 1313 (7th Cir. 1984) (balancing “important First Amendment interests that cut in favor of disclosure” against a litigants’ interest in confidentiality); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983) (holding that “the First Amendment and the common law do limit judicial discretion” to seal court documents).

Other circuits have stopped short of recognizing a First Amendment right, instead holding that the strength of the public's right of access to particular documents depends on whether the documents are related to a discovery motion. *See, e.g., Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 165 (3rd Cir. 1993) (“[W]e hold there is a presumptive right to public access to all material filed in connection with nondiscovery pretrial motions, whether these motions are case dispositive or not, but no such right as to discovery motions and their supporting documents.”); *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1312 (11th Cir. 2001) (“[M]aterial filed with discovery motions is not subject to the common-law right of access, whereas discovery material filed in connection with pretrial motions that require judicial resolution of the merits is subject to the common-law right, and we so hold.”).

The Ninth Circuit has mentioned an “exception to the presumption of access” to judicial records. *Foltz*, 331 F.3d at 1135. This exception depends to some degree on the dispositive or nondispositive nature of the filings related to the judicial records in question. *Id.* at 1135, 1138; *Midland*, 686 F.3d at 1119 (“[A] particularized showing of “good cause” . . . is sufficient to preserve the secrecy of sealed discovery documents attached to non-dispositive motions.”).

Others still have made the determination, under common law, based on the relative importance of the documents to the underlying proceeding. *See, e.g.,*

United States v. Amodeo, 44 F.3d 141, 145 (2nd Cir. 1995) (holding that “the item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document” and thus subject to the presumption of access); *In re Policy Mgmt. Sys. Corp.*, 67 F.3d 296, 23 Media L. Rep. (BNA) 2486, 2489–90 (4th Cir. 1995) (adopting the Second Circuit rule).

These common-law precedents all involve a fundamental balancing test: the right of public access against the parties’ interest in confidentiality, with a strong presumption of access.

Both parties argue that the public’s interest in the documents in this appeal is significantly diminished because of the nature of those documents. Samsung maintains that “the only entities with a real interest in poring over” the information at stake are its suppliers and competitors — not the public — and that interest is somehow not a legitimate one. Apple also attempts to downplay the public interest in these particular documents, arguing that “the parties themselves do not believe such detailed information is necessary to prove their case,” so the public therefore “can hardly claim any interest in it.”

The parties attempt to chip away further at the presumption of access by downplaying the public interest involved. Apple believes that because the public has access to thousands of documents already, the general public interest, in

learning about issues and the decision-making processes at work in this trial, is still served. While Apple claims to have “gone to great lengths” to satisfy the public’s interest in this multi-billion-dollar lawsuit, this argument should be rejected.

Allowing a litigant to keep certain documents secret merely because that litigant has released others is a dangerous precedent and an undesirable criterion to evaluate when considering a motion to seal. It is telling that when Apple claims that “if the parties themselves do not believe such detailed information is necessary to prove their case, the public can hardly claim any interest in it,” it cites no case law or secondary sources in support. Litigants cannot be the ultimate arbiters of the line between openness and secrecy. That is a role only judges can play.

Samsung attempts to minimize the public interest as well, arguing that the presumption of public access is grounded in public’s interest in understanding the *outcome* of a case. *See* Brief of Samsung at 28. This conclusory, outcome-based assertion runs counter to the underpinnings of a publicly accessible, open judicial system. As explained countless times by circuit courts, there are strong general public interests in access to the judicial *process*, not just interests rooted in understanding the *outcomes* of cases. *See, e.g., Gambale v. Deutsche Bank AG*, 377 F.3d 133, 140 (2nd Cir. 2004) (“[T]he bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud. Furthermore, the very openness of the process should provide the public

with a more complete understanding of the judicial system and a better perception of its fairness.” (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)); *United States v. Wecht*, 537 F.3d 222, 257 (3rd Cir. 2008) (noting the importance of “exposing the judicial process to public scrutiny”); *United States v. Holy Land Found. for Relief and Dev.*, 624 F.3d 685, 690 (5th Cir. 2010) (“The right to public access ‘serves to promote trustworthiness of the *judicial process*, to curb judicial abuses, and to provide the public with a more *complete understanding of the judicial system*, including a better perception of its fairness.’” (emphasis added)); *Valley Broad. Co.*, 798 F.2d at 1294 (“promoting the public’s understanding of the *judicial process*” justifies the presumption of public access (emphasis added)). The public has an important, well-established interest in understanding the judicial process, which cannot be reduced by Apple and Samsung’s assertions.

Implicit in both parties’ arguments is the idea that because this is a dispute between two rivals, there is limited public value in what is being litigated. The parties have natural incentives to keep matters as private as possible and are attempting to tinker with these incentives so that they nominally align with the public interest. The Court should view these impulses skeptically, considering the significant public interest that this case has attracted. The parties are battling over billions of dollars and the future of the smartphone industry. More than 1,500

pleadings have been submitted since the case commenced. The products at stake are the best-selling phones and tablets on the market. And from a media perspective, different publications have audiences with different interests — ranging from the business of smartphones to the technology wars in our courts to the impact on consumers.

The parties have willfully directed heaps of documents into a public proceeding, and there are strong policy considerations toward openness. *See, e.g., Kamakana*, 447 F.3d at 1178; *Midland*, 686 F.3d at 1119 (noting the “strong presumption in favor of access to court records” and “the public policies favoring disclosure”); *see also Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 547–48 (7th Cir. 2002) (observing that a business bringing its grievances into a public forum, with judge and jury, has limited “claim to keep a lid on its own documents” and that “businesses that fear harm from disclosure required by the rules for the conduct of litigation often agree to arbitrate”); *San Gabriel Tribune v. Superior Court*, 143 Cal.App.3d 762, 778 (2nd Dist. 1983) (when a party “voluntarily inject[s] data into the decision-making process of government,” there is a strong public interest in keeping that data “open to public scrutiny”). Considering the powerful public interest, the documents should remain unsealed.

II. The controversies over patents in the electronics field create a heightened public interest in access.

The parties, as proponents of sealing, have argued that public interest is better served by protecting their intellectual property, “rather than promoting disclosure for its own sake,” Brief of Apple at 40, and by “maintaining a fair and competitive market” through robust trade-secret protection, Brief of Samsung at 25. Both parties profess a fear of competitive harm from disclosure of these documents. Most intellectual property cases arise out of the competitive incentives between companies, and Apple and Samsung have been mired in a multi-billion dollar lawsuit that relies heavily on the contents of a vast stockpile of patents.

By waging this weighty struggle, the parties have emerged at the forefront of an increasingly tangled, messy web of patent litigation that has come to dominate the tech industry and have sweeping effects on its legal, developmental, and organizational practices. *See, e.g.,* Ashby Jones & Jessica E. Vascellaro, *Smartphone Patents: The Never-Ending War*, Wall Street Journal, April 13, 2012, at B1. This litigation has drawn significant attention to the patent system itself and its role in the high-tech economy. “In the smartphone industry alone . . . as much as \$20 billion was spent on patent litigation and patent purchases in the last two years — an amount equal to eight Mars rover missions.” Charles Duhigg & Steve Lohr, *The Patent, Used as a Sword*, N.Y. Times, Oct. 8, 2012, at A1. Last year, for example, Apple’s spending on “patent lawsuits and unusually big-dollar patent

purchases exceeded spending on research and development of new products.” *Id.* This broad proliferation of patent disputes casts “a pall” on the patent system, in danger of becoming “so flawed that it often stymies innovation.” *Id.*

The public has a profound interest in how the patent system is functioning. If indeed “the marketplace for new ideas has been corrupted by software patents used as destructive weapons,” as “federal judges, economists, policy makers, and technology executives” have said, *id.*, then the public’s concern with court proceedings and patent trials is especially valid here, where two titans of the industry have clashed over future control of mobile technology.

III. The broad expansion of corporate protection of financial information under the guise of true "trade secrets" heightens the public interest in access.

The parties have taken their lawsuit into an open, public courtroom, leaving no stone unturned in the prosecution of their claims, and now are attempting to stretch trade-secret protections to become coterminous with their own corporate boundaries. Trade secret litigation has been “exploding” over the years, its expansion demonstrating “statistically quantifiable exponential growth.” David S. Almeling, et al., *A Statistical Analysis of Trade Secret Litigation in Federal Courts*, 45 *Gonz. L. Rev.* 291, 301 (2010) (analyzing the proliferation of “written decisions in which a U.S. district court expressly decided a substantive issue based

on trade secret law”); *see also* Eric E. Johnson, *Trade Secret Subject Matter*, 33 Hamline L. Rev. 545, 547–60 (2010) (contrasting black-letter definitions of trade secret doctrine with “confusion in the courts” as the type of information being classified as trade secrets has expanded inconsistently). Analysts have noted the appeal trade-secret arguments have for companies as a form of protection for “rapidly evolving technologies that can outpace the evolution of other IP laws.” Almeling, et al., at 304. As one commentator has observed: “Eager to keep a wide spectrum of information under wraps, firms have every incentive to urge courts to construe trade secret subject matter ever more broadly.” Johnson at 573.

These warnings are all the more believable in this case, where litigants in a high-stakes, billion-dollar lawsuit put aside their far-reaching disputes and united to oppose the unsealing of documents:

The thrust to expand trade secret subject matter necessarily has the potential to be even more powerful when trade secret issues arise among cooperating parties. This can happen commonly within the context of even the most hotly contested lawsuit, because although only a comparative few business-versus-business lawsuits directly involve trade secrets, a great number of them involve the discovery of information that is confidential and sensitive. . . . Thus, litigants warring with each other on most fronts may become fast friends where the issue of trade secret subject matter is concerned. . . . What’s more, should the protective order end up being litigated at some point, the parties’ initial desire for “trade secrets” to have a broad scope may help persuade the judge to follow suit.

Id. at 575. These incentives make “firms, trying to keep their information under wraps, push courts to aggressively expand trade secret subject matter,” leading to a “disordered, bewildering, unpredictable, and increasingly unfair and unsound” body of trade secret law. *Id.* at 546–47.

Apple and Samsung have indeed become “fast friends,” with no party at the appellate level to challenge their reliance on trade-secret law.¹ If the parties had their way, a blanket prohibition on unsealing trade secrets, grounded in a broad definition of the term, would carry the day. Demonstrable trade secrets can in appropriate circumstances provide a compelling reason for a court to seal documents, and this principle has echoed through intellectual property cases.

This Court should reject unchecked use of trade-secret protection to deny public access to judicial documents in high-profile, big-money litigation.

¹ California courts in particular have taken a skeptical view of readily accepting litigants’ definitions of “trade secrets” when there is no party to oppose such definitions. *See, e.g., In re Providian Credit Card Cases*, 96 Cal.App.4th 292, 307 (1st Dist. 2002) (rejecting declarations asserting trade secrets even though there were no counter-declarations, holding that “the trial court was not obliged to base his decision on those statements just because there were no counter declarations”).

CONCLUSION

Amici urge the Court to uphold the district court's order unsealing the parties' documents.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Brief of Amici Curiae complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B). The word processor used to prepare the document, excluding Table of Contents, Table of Authorities, and the Certificate of Interest, calculates that it contains 4,228 words.

Dated: October 15, 2012
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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2012, I electronically filed in searchable Portable Document Format the foregoing brief amicus curiae with the U.S. Court of Appeals for the Federal Circuit by using the CM/ECF system, thereby affecting service on the following counsel of record, all of whom are registered for electronic filing:

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