

1 KARL OLSON (SBN 104760)
2 kolson@rocklawcal.com
3 XINYING VALERIAN (SBN 254890)
4 xvalerian@rocklawcal.com
5 RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP
6 555 Montgomery Street, Suite 820
7 San Francisco, California 94111
8 Telephone: (415) 433-4949
9 Facsimile: (415) 433-7311

10 *Attorneys for Third-Party REUTERS AMERICA LLC*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE

13 APPLE INC., a California corporation,
14 Plaintiff,
15 v.
16 SAMSUNG ELECTRONICS CO., LTD., a
17 Korean Business entity; SAMSUNG
18 ELECTRONICS AMERICA, INC., a New
19 York corporation; SAMSUNG
20 TELECOMMUNICATIONS AMERICA,
21 LLC, a Delaware limited liability company,
22 Defendants.

CASE NO. 11-cv-01846-LHK

**DECLARATION OF PATENT
PROFESSORS COLLEEN CHIEN,
BRIAN LOVE, MICHAEL RISCH, JOHN
ALLISON, AND DAVID SCHWARTZ IN
SUPPORT OF REUTERS' OPPOSITION
TO MOTIONS TO SEAL TRIAL AND
PRETRIAL EVIDENCE**

Date: No hearing set
Time: N/A
Place: Courtroom 1, 5th Floor
Judge: **Hon. Lucy H. Koh**

23 We, Professors Colleen Chien, Brian Love, Michael Risch, John Allison, and David
24 Schwartz, declare:

25 1. We have personal knowledge of the facts set forth below, except as to those stated
26 on information and belief, and as to those we believe them to be true.

27 2. We are professors and scholars of Law and Business engaged in the empirical
28 study of the U.S. patent system. Together we have several decades of patent litigation experience
in addition to academic research experience. We rely critically on publicly available information
and data on the patent system to conduct our research and formulate policy recommendations,
which we have made through testimony to Congress, the courts, and the PTO.

1 3. We submit this declaration in our personal capacities based on our research
2 interests in patent litigation, patent practice and domestic patent policy.

3 4. The lack of a transparency about patent licenses is a well-recognized problem. As
4 Professor Mark Lemley and Nathan Myhrvold have written:

5 Imagine a stock market in which buyers and sellers couldn't find out the prices at
6 which anyone else sold a share of stock. If you wanted to buy (or sell) a share of
7 stock, you'd have to guess what it was worth. The result, everyone would agree,
8 would be massively inefficient. Willing buyers and sellers would often miss each
9 other.

10 Patents, however, exist in just such a blind market. Want to know if you're getting
11 a good deal on a patent license, or acquiring rights in a technology? Too bad.
12 Even if that patent or ones like it have been licensed dozens of times before, the
13 terms of those licenses, including the price itself, will almost invariably be
14 confidential. Patent owners who want to put their rights up for sale face the same
15 problem.

16 Lemley, Mark A. and Myhrvold, Nathan, *How to Make a Patent Market* (August 1, 2007).

17 HOFSTRA LAW REVIEW, Vol. 36, p. 257, 2008 (available at SSRN website:

18 <<http://ssrn.com/abstract=1012726>>).

19 5. The lack of information about the value of arms-length patent transactions creates
20 arbitrage opportunities for those who have access to proprietary data, while shutting out the
21 public, scholars, and others. The lack of data compounds the difficulty of finding “comparable”
22 licenses in patent cases as the law now requires, forcing juries to evaluate the often complex
23 methodologies of patent damages experts rather than real-world evidence of the economic value
24 of comparable patents. *See, e.g., Lucent v. Gateway*, 580 F.3d 1301 (2009) (emphasizing the
25 need for comparable licenses to form the basis of damages determinations). The lack of data
26 contributes to the uncertainty that surrounds patent damages determinations.

27 6. It is our belief that making licensing data more widely available can help reduce
28 these market inefficiencies by providing credible and comparable information to parties, scholars,
and courts wrestling with the difficult question of what a patent is worth.

 7. We recognize and respect the value of confidentiality with respect to licensing
data. However, this need must be balanced with the desperate need for greater transparency
about the value of patent licenses. Perhaps the two can be reconciled by redacting key

1 identifying information or information about the parties, patents, or products.

2 We declare under penalty of perjury under the laws of the United States of America that
3 the foregoing is true and correct.

4 Executed on August 2, 2012.

5 */s/ Colleen Chien*

6 Colleen Chien, Assistant Professor of Law, Santa
7 Clara University

8 */s/ Brian Love*

9 Brian Love, Assistant Professor of Law, Santa
10 Clara University

11 */s/ Michael Risch*

12 Michael Risch, Associate Professor of Law,
13 Villanova University

14 */s/ John Allison*

15 John Allison, The Spence Centennial Professor and
16 Professor of Intellectual Property, McCombs
17 School of Business Associate Chair, Business,
18 Government & Society Department, University of
19 Texas at Austin

20 */s/ David Schwartz*

21 David Schwartz, Assistant Professor of Law,
22 Chicago-Kent College of Law

23 N:\Docs\1273-02\OppMotsSeal4-Professor-FINAL.doc
24
25
26
27
28

SIGNATURE ATTESTATION

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this e-filed document.

Dated: August 2, 2012

By: /s/ **Karl Olson**

Karl Olson (SBN 104760)
RAM, OLSON, CEREGHINO & KOPCZYNSKI
555 Montgomery Street, Suite 820
San Francisco, CA 94111
Tel: 415-433-4949; Fax: 415-433-7311
Email: kolson@rocklawcal.com

Attorneys for Reuters America LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28