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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-PSG

**REUTERS AMERICA LLC's
OPPOSITION TO NON-PARTY IBM'S
MOTION TO PREVENT PUBLICATION**

Date: July 30, 2012
Time: 10:30
Place: Courtroom 5, 4th Floor
[Magistrate Judge Grewal]

23 **I. INTRODUCTION**

24 The most fundamental principle in First Amendment jurisprudence is that the government
25 and the courts cannot issue prior restraints upon publication. The Supreme Court has called prior
26 restraints “the most serious and the least tolerable infringement on First Amendment rights.”
27 *Nebraska Press Assn. v. Stuart* (1976) 427 U. S. 539, 559. Even when military secrets have been
28 at issue, the Supreme Court has refused to issue such prior restraints, observing, “Any system of
prior restraints of expression comes to this Court bearing a heavy presumption against its
constitutional validity.” *New York Times Co. v. United States* (1971) 403 U. S. 713, 714. In the
latter case, involving publication of the “Pentagon Papers,” Justice Brennan famously observed,
“only governmental allegation and proof that publication must inevitably, directly, and
immediately cause the occurrence of an event kindred to imperiling the safety of a transport

1 already at sea can support even the issuance of an interim restraining order.” (403 U. S. at 726,
2 Brennan, J., concurring.)

3 IBM’s attempt to prevent Reuters from publishing information it lawfully obtained –
4 information which IBM’s lawyers sent to Reuters’ counsel – runs afoul of these fundamental
5 principles. The terms of a licensing agreement between IBM and Samsung do not come close to
6 “imperiling the safety of a transport already at sea.” IBM’s motion should be denied.

7 **II. FACTS**

8 IBM’s counsel sent the licensing agreement to counsel in this case. Among the papers
9 IBM sent was a copy of the unredacted version of the license agreement. While IBM contends
10 that Reuters, as an intervenor to this litigation, is bound by a protective order, Reuters intervened
11 in this litigation on July 17 for the sole purpose of opposing motions to seal, and Reuters’ counsel
12 never signed any protective order. Indeed, it would be passing strange if a party which
13 intervened for the sole purpose of opposing sealing could be bound to a protective order whose
14 sole purpose was to make it easier to seal documents.

15 **III. SUPREME COURT CONSISTENTLY HAS DISALLOWED PRIOR 16 RESTRAINTS**

17 The Supreme Court has consistently disallowed prior restraints. In addition to the cases
18 cited above, several other cases have disallowed prior restraints after parties lawfully obtained
19 court documents. *See, e.g., Cox Broadcasting v. Cohn* (1975) 420 U. S. 469, 497 [no liability for
20 publishing name of rape victim not obtained in improper fashion]; *Florida Star v. B. J. F.*, 491 U.
21 S. 524 [no liability for publishing lawfully obtained, truthful information about a matter of public
22 significance]; *Bartnicki v. Vopper*, 532 U. S. 514, 527-28 (2001) [same, even when person who
23 obtains information has obtained it from someone who himself obtained the information
24 unlawfully].

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