

# Apple, Samsung Daubert Docs Should Have Been Sealed, Federal Circuit Rules

Posted by Robert Ambrogi, Contributing Author on 2013/09/17Add comments

The media dubbed it, “The Patent Trial of the Century.” In 2011, Apple sued Samsung, claiming its smartphones and tablets infringed patents for the iPhone and iPad. Samsung countersued, alleging that Apple’s products violated its patents. On Aug. 24, 2012, the jury returned a verdict awarding Apple more than \$1 billion in damages.

With extraordinary media interest in the case, the trial judge vowed at the outset to give the media broad access. “The whole trial is going to be open to the public,” U.S. District Judge Lucy H. Koh, who sits in San Jose, Calif., told the parties. In keeping with this promise, Judge Koh ordered the parties to provide the press with electronic copies of every exhibit used at trial. In addition, she unsealed most exhibits attached to pre-trial and post-trial motions.

But in denying the parties’ requests to seal certain exhibits – most of which pertained to motions to exclude or strike expert witness testimony – the trial judge went too far, the U.S. Court of Appeals for the Federal Circuit ruled in a decision issued Aug. 23. The documents contained detailed financial information that Apple and Samsung legitimately sought to keep private, the court said, and the potential public interest in the documents was not sufficient to require their disclosure.

“Considering the parties’ strong interest in keeping their detailed financial information sealed and the public’s relatively minimal interest in this particular information, we conclude that the district court abused its discretion in ordering the information unsealed,” the Federal Circuit held, in an opinion written by Circuit Judge Sharon Prost and joined by Circuit Judges William C. Bryson and Kathleen M. O’Malley.

## Media Sought Access to Documents

The appeal was unusual in that both parties argued the same position, jointly challenging the judge’s unsealing orders and limiting their challenge to only a tiny subset of the documents unsealed – 26 exhibits attached to pretrial and post-trial motions filed by the parties. Their appeal was opposed by a bevy of print and broadcast media organizations.

Of the 26 documents at issue in the appeal, the majority – 11 of Apple’s and six of Samsung’s – related to *Daubert* motions to exclude expert testimony or motions to strike expert opinions. Several were exhibits in support of or in opposition to Samsung’s *Daubert* motions to exclude the opinions of certain of Apple’s experts. Another was a report from Samsung’s damages expert, which Samsung filed in support of its own motion to strike Apple’s expert opinions.

Further, the parties did not seek to seal the documents in their entirety. Rather, they asked to redact portions of the documents that contained detailed, product-specific financial information pertaining to costs, sales, profits and profit margins.

### **Judge Applied Wrong Legal Standard**

The trial judge, in denying Apple's and Samsung's requests to seal these documents, ruled that they had failed to articulate "compelling reasons" to seal their financial information. She rejected the parties' arguments that providing their competitors with access to profit and cost information would allow them to undercut the parties on pricing. At the same time, the judge ruled that the public had a "substantial interest in full disclosure" of the documents because they were "essential to each party's damages calculations."

But in reaching this conclusion, the Federal Circuit ruled on appeal, the judge applied the wrong legal standard. Although the general rule is that a party must demonstrate a compelling interest to overcome the presumption of public access to court records, the 9th Circuit (where the trial was held) recognizes an exception for documents attached to non-dispositive motions. For documents of this type, only a showing of "good cause" is required to keep them out of the public eye.

### **Parties Demonstrated Strong Privacy Interest**

Although the judge was wrong to apply the stricter legal standard, even under that standard she erred in refusing to seal the documents, the Federal Circuit held. Both Apple and Samsung demonstrated a strong interest in keeping their detailed, product-specific financial information secret because they could suffer competitive harm if the information was to be made public, the court reasoned.

"In particular, it seems clear that if Apple's and Samsung's suppliers have access to their profit, cost, and margin data, it could give the suppliers an advantage in contract negotiations, which they could use to extract price increases for components," the opinion explained. "This would put Apple and Samsung at a competitive disadvantage compared to their current position. Significantly, although the district court recognized this part of the parties' argument, it failed to discuss the argument in its analysis."

Turning to the question of whether the public had an overriding interest in the parties' financial information, the court concluded that it did not. The court noted that the parties were asking to redact only limited portions of what they considered to be their most confidential financial information. Further, none of these documents were introduced into evidence at trial, because the parties had agreed to rely on less-detailed financial information to prove their damages.

“The financial information at issue was not considered by the jury and is not essential to the public’s understanding of the jury’s damages award,” the court explained. “Nor is there any indication that this information was essential to the district court’s rulings on any of the parties’ pre-trial motions.”

For these reasons, the court said, the information at issue in this appeal was not necessary to the public’s understanding of the case and was therefore of minimal public interest.

“Considering the parties’ strong interest in keeping their detailed financial information sealed and the public’s relatively minimal interest in this particular information, we conclude that the district court abused its discretion in ordering the information unsealed,” the court concluded.

The case is *Apple Inc. v. Samsung Electronics Co.*, Docket Numbers 2012-1600, 2012-1606, 2013-1146 (Fed. Cir. Aug. 23, 2013).

Given the high public interest in this case, do you agree with the Federal Circuit – that the trial court erred in its decision to deny the parties’ requests to seal the documents?

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