

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

SAMSUNG ELECTRONICS CO., LTD. and  
SAMSUNG ELECTRONICS AMERICA,  
INC.,

Plaintiffs,

-vs.-

NVIDIA CORPORATION, VELOCITY  
MICRO, INC. D/B/A VELOCITY MICRO,  
AND VELOCITY HOLDINGS, LLC,

Defendants.

Civil Action No. 3:14-cv-757-REP

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION  
TO FILE DOCUMENTS UNDER SEAL**

Defendants, by counsel, state as follows in support of their Motion to File Under Seal their unredacted Memorandum in Support of Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a), Sever, and Stay and the unredacted Declaration of Randall Copeland attached to that Memorandum (hereinafter the "Confidential Documents" pursuant to Local Civil Rule 5.

**BACKGROUND**

In this action, Plaintiffs asserts claims for patent infringement and false advertising under Va. Code §§ 18.2-216 and 59.1-68.3. In connection with their Motion to Transfer Venue Pursuant to § 1404(a), Defendants are filing the Declaration of Randall Copeland (the "Copeland Declaration"), which contains certain confidential business information regarding defendants Velocity Micro, Inc. and Velocity Holdings, LLC, including the annual revenue and number of employees of Velocity Holdings, LLC. The confidential information in the Copeland

Declaration is referenced in Defendants' Memorandum in Support of their Motion to Transfer Venue, Sever, and Stay. Defendants are filing the Confidential Documents with the Clerk in a sealed envelope pending the Court's decision on Defendants' Motion. Defendants are also filing redacted public versions of the Confidential Documents on the Court's ECF system.

### **ARGUMENT**

The Fourth Circuit has established certain steps a district court must take before a case, or documents within a case, may be filed under seal. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000). In *Ashcraft*, the Fourth Circuit set forth the prerequisites for an order sealing documents. Such an order will not be valid unless the district court: (A) provides notice to the public and gives the public an opportunity to object to the sealing, (B) considers less drastic alternatives, and (C) provides specific findings in support of the decision to seal and the rejection of alternatives. *Id.* These prerequisites are satisfied here.

#### **A. Public Notice**

Defendants have filed contemporaneously herewith a Notice of this Motion to be docketed by the Clerk, which will provide the public with an opportunity to bring objections, if any, to sealing the documents that are the subject of this Motion. The Court does not need to provide individual notice to the public of each document that is to be sealed. *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). It is sufficient to docket the notice "reasonably in advance of deciding the issue." *Id.*

#### **B. Less Drastic Alternatives**

As indicated above, on January 12, 2015, Defendants filed redacted public versions of the Confidential Documents and filed unredacted versions of the Confidential Documents with the Clerk in a sealed envelope pending the Court's decision on this Motion. The public versions of

the Confidential Documents redact only the confidential information contained in the Copeland Declaration.

To avoid the public disclosure of that confidential information, Defendants believe sealing the Confidential Documents is necessary because no procedure other than filing under seal will be sufficient to preserve the confidentiality of such information. *See, e.g., Walker Systems, Inc. v. Hubbell, Inc.*, 188 F.R.D. 428, 429 (S.D. W. Va. 1999) (stating “[w]here ... the information sought to be protected concerns documents that the parties in good faith believe contain trade secrets or other confidential information, and the orders are routinely agreed upon by the parties, such orders should be granted, especially in cases between direct competitors”) (*citing Bayer AG & Miles, Inc. v. Barr Labs., Inc.*, 162 F.R.D. 456, 465 (S.D.N.Y. 1995); Fed. R. Civ. P. 26(c)).

### **C. Specific Findings**

The Confidential Documents, which have been appropriately marked and filed under seal pending the resolution of this Motion, include certain confidential information regarding defendants Velocity Micro, Inc. and Velocity Holdings, LLC, including the annual revenue and number of employees of Velocity Holdings, LLC. This confidential information has not been made public. As recognized by Federal Rule of Civil Procedure 26(c) and case law, it is appropriate for federal courts to protect the confidentiality of information such as that referenced in the Confidential Documents.

Given the confidential nature of the information redacted from the public versions of the Confidential Documents, and the necessity of filing unredacted versions of those documents with the Court, there is no alternative other than filing under seal that will protect such information

from disclosure to the public. Defendants therefore seek the sealing of the Confidential Documents pursuant to Local Civil Rule 5.

### CONCLUSION

For the foregoing reasons, Defendants request that the Court grant its Motion and enter the attached proposed Order providing for the sealing of the Confidential Documents.

NVIDIA CORPORATION  
VELOCITY MICRO, INC.  
D/B/A VELOCITY MICRO  
VELOCITY HOLDINGS, LLC

By: \_\_\_\_\_ /s/  
Of Counsel

Dabney J. Carr, IV, VSB No. 28679  
dabney.carr@troutmansanders.com  
Robert A. Angle, VSB No. 37691  
robert.angle@troutmansanders.com  
TROUTMAN SANDERS LLP  
1001 Haxall Point  
Richmond, VA 23219  
T: (804) 697-1200  
F: (804) 697-1339

Clement J. Naples (admitted *pro hac vice*)  
clement.naples@lw.com  
LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022-4834  
Tel: (212) 906-1200; Fax: (212) 751-4864

Counsel for NVIDIA Corporation  
Velocity Micro, Inc. d/b/a Velocity Micro  
and Velocity Holdings, LLC

