

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

**LUXPRO CORPORATION, a Taiwanese)
corporation,)**

Plaintiff,)

Civil Action No. 4:08-CV-04092-HFB

v.)

**APPLE, INC. f/k/a Apple Computer,)
Inc.,)**

Defendant.)

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
APPLE INC.’S MOTION TO DISMISS**

Pursuant to Rule 201 of the Federal Rules of Evidence, Apple Inc. hereby requests that the Court take judicial notice of a July 7, 2009 decision of the Taiwan Supreme Court regarding Apple’s and Luxpro’s respective appeals from Taiwanese lower court decisions referenced in Luxpro’s complaint. A true and correct copy of the Taiwan Supreme Court decision, and an English translation of the decision, is attached hereto as Exhibit 1.

Federal Rule of Evidence 201 allows a court to take judicial notice of adjudicative facts “not subject to reasonable dispute in that [they are] . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” “When considering a motion for judgment on the pleadings (or a motion to dismiss under Fed. R. Civ. P. 12(b)(6)), the court generally must ignore materials outside the pleadings, but it may consider ‘some materials that are part of the public record or do not contradict the complaint,’ as well as materials that are ‘necessarily embraced by the pleadings.’” *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999) (citations omitted). A court may also consider documents

whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading. *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 698 (8th Cir. 2003); *Stahl v. United States Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003) (district court properly took judicial notice of public record referenced in complaint); *R.P. v. Springdale Sch. Dist.*, 2007 U.S. Dist. LEXIS 12073, *6 (W.D. Ark. Feb. 21, 2007) (on motion to dismiss, considering settlement agreements referred to and relied on in the complaint). Orders and judgments of foreign courts are also proper subjects of judicial notice. *Mike's Train House, Inc. v. Lionel, L.L.C.*, 472 F.3d 398, 412 (6th Cir. 2006) (taking judicial notice of forty-five exhibits that included English translations of documents generated during Korean judicial proceedings); *Channer v. Brooks*, 2001 U.S. Dist. LEXIS 25065, *2 (D. Conn. July 19, 2001) (“A federal court may take judicial notice of a decision rendered by the judicial system of a state or foreign country.”).

The Taiwan Supreme Court decision is a proper subject of judicial notice. The complaint refers to the litigation in Taiwan that led to this final determination in the Taiwan Supreme Court, and Luxpro bases a number of its allegations on that litigation. As argued at the hearing before the Court on September 1, 2009, the Taiwan Supreme Court affirmed the injunctive relief Apple sought and won with respect to Luxpro's “Super Tangent” product. Also, as argued at the hearing, the decision demonstrates that Luxpro continued the litigation by filing appeals after the issuance of injunctive relief, and the litigation was not finally resolved until July 2009.

Respectfully submitted,

/s/Kevin A. Crass

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CERTIFICATE OF SERVICE

I, Kevin A. Crass, hereby certify that on September 2, 2009, the foregoing was electronically filed with the Clerk which shall send notification of such filing to the following:

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