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.	)	

APPLE'S REPLY IN SUPPORT OF ITS REQUEST FOR JUDICIAL NOTICE

Luxpro's objections to Apple's Request for Judicial Notice are meritless. Apple requested judicial notice of the same documents when it moved to dismiss the First Amended Complaint. (*Compare* Requests for Judicial Notice, Docket Nos. 28 & 47 *with* Request for Judicial Notice, Docket No. 69.) Luxpro did not file objections to those requests, thereby waiving any such objections. *Kasey v. Molybdenum Corp. of Am.*, 336 F.2d 560, 563 (9th Cir. 1964) (failure to object to request for judicial notice constitutes waiver of objection; taking judicial notice of documents because party failed to object to them in the district court); *Anchor Wall Sys. v. Rockwood Retaining Walls, Inc.*, No. 99-1356 (JRT/FLN), 2004 U.S. Dist. LEXIS 18458, *63 (D. Minn. Sept. 7, 2004) (denying objections to translation submitted in support of motion for summary judgment because plaintiff chose not to challenge authenticity of translation

during previous round of summary judgment motions). Luxpro cannot raise objections to these documents now.

In any event, Luxpro's three arguments in opposition to Apple's request are meritless. First, Luxpro contends that the German and Taiwanese court orders should not be considered because they are "external to [the] pleadings." (Luxpro's Response and Objection to Apple's Request for Judicial Notice ("Opp."), Docket No. 74, at 2.) In making this argument, Luxpro ignores the long line of authority holding that documents that are "necessarily embraced by the pleadings" or whose contents are alleged in a complaint can be considered on a motion to dismiss. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999); *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 698 (8th Cir. 2003); *see also 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.*, No. 06-5014, 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 complaint). As established in Apple's Request, Luxpro bases numerous allegations in the Second Amended Complaint ("SAC") on the German and Taiwanese court orders, thereby incorporating them by reference into the SAC. (*See* Request for Judicial Notice in Support of Apple's Motion to Dismiss SAC, Docket No. 69, at 2-3.) Thus, the Court may consider them in ruling on Apple's motion to dismiss.

The Court may also consider the documents because they are orders of foreign courts. *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*, No. 3:99CV1707 (AWT) (DFM), 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.") Luxpro does not address this authority.

Luxpro's second argument is that Apple is "cherry picking" from the record in the German and Taiwanese litigation, and that it should have submitted the entire record of the proceedings. (Opp. at 4.) Luxpro cites no authority for this proposition, because there is none. A party seeking judicial notice of a court order has no obligation to submit the entire record of the relevant proceeding. If there are documents in the German and Taiwanese court records Luxpro believes would assist the Court, it should have sought judicial notice of those documents itself.

Finally, Luxpro takes issue with Apple's translations of the court orders. (Opp. at 3-4.) Luxpro does not dispute that Apple's translations are correct; it merely contends that they are not properly authenticated. Although Apple disagrees with that assertion, it is submitting certified translations with this reply. The certifications are sworn statements indentifying the translator, the translator's qualifications, and how the documents were translated, which is easily sufficient to satisfy the requirements of Federal Rules of Evidence 604 and 901.[1]

The Court should judicially notice the German and Taiwanese court orders.

Respectfully submitted,

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[1] Luxpro also makes a passing reference to "best evidence." (Opp. at 4.) Assuming this is a reference to the Best Evidence Rule, Luxpro's objection is meritless. Duplicates of a document are admissible to the same extent as an original unless there is a genuine question as to the authenticity of the original or it would be unfair to admit the duplicate in lieu of the original. Fed. R. Evid. 1003. Neither of these circumstances exists here.

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ECF ATTESTATION

I, Stuart C. Plunkett, am the ECF User whose ID and Password are being used to file this:

APPLE'S REPLY IN SUPPORT OF ITS REQUEST FOR JUDICIAL NOTICE

I hereby attest that Kevin A. Crass has concurred in this filing.

Dated: April 29, 2010 MORRISON & FOERSTER LLP

By: */s/ Stuart C. Plunkett*
Stuart C. Plunkett

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system, this 29th day of April, 2010.

/s/ Stuart C. Plunkett
Stuart C. Plunkett