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16

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19  
20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

23 SAMSUNG ELECTRONICS CO., LTD., a  
Korean business entity; SAMSUNG  
24 ELECTRONICS AMERICA, INC., a New  
York corporation; SAMSUNG  
25 TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,

26 Defendant.  
27

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S OPPOSITION TO MOTION  
TO SHORTEN TIME FOR BRIEFING ON  
APPLE'S MOTION PURSUANT TO  
RULE 62(C) FOR ENTRY OF  
PRELIMINARY INJUNCTION  
WITHOUT FURTHER HEARING**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Samsung opposes Apple's motion to shorten time on its Motion Pursuant to Rule 62(c) for  
3 Entry of Preliminary Injunction without Further Hearing. First, Apple's motion is premature, as  
4 the Federal Circuit retains jurisdiction, and Samsung intends to file a petition for rehearing in the  
5 Federal Circuit. Second, Fed. R. Civ. P. 62(c), which codifies the right of the district court to  
6 preserve the status quo through an injunction, does not apply to Apple's motion on the merits.  
7 Third, given the Federal Circuit's direction to review the preliminary injunction factors including  
8 at least the balance of hardship and public interest factors, and given the severity and importance  
9 of a preliminary injunction motion, Samsung should have the right to prepare and submit briefing  
10 and oral argument to the Court.

11 **I. The Federal Circuit Retains Jurisdiction until Issuance of a Mandate**

12 Apple's Motion for Preliminary Injunction (and by extension Apple's Motion to Shorten  
13 Time) is premature because the Federal Circuit retains jurisdiction. Once a notice of appeal is  
14 filed, "it confers jurisdiction on the court of appeals and divests the district court of its control  
15 over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount*  
16 *Co.*, 459 U.S. 56, 59 (1982). The Federal Circuit retains jurisdiction of the case because "an  
17 appellate court's decision is not final until its mandate issues." *Beardslee v. Brown*, 393 F.3d 899,  
18 901 (9th Cir. 2004). "Until the mandate issues, a circuit court retains jurisdiction of the case and  
19 may modify or rescind its opinion." *Id.* In the instant case, because the Federal Circuit has not yet  
20 issued a mandate, it retains jurisdiction to adjudicate Samsung's appellate rights, including the  
21 right to seek panel rehearing or rehearing *en banc*. Therefore, the Court lacks jurisdiction and  
22 should deny Apple's motion to shorten time.

23 Moreover, any briefing on the issue of a preliminary injunction remains premature because  
24 the Federal Circuit's opinion remains subject to rehearing and revision until the mandate issues.  
25 Samsung intends to file a petition for rehearing in the Federal Circuit. Any briefing done by the  
26 parties at this juncture will likely waste judicial resources and may fail to address modifications or  
27 clarifications issued by the Federal Circuit or else may require that briefing be supplemented, all  
28 of which may result in unnecessary burden on this Court.

1 **II. Rule 62(c) Does Not Empower the District Court to Adjudicate Anew the Merits of**  
2 **Apple's Motion**

3 Contrary to Apple's position, Fed. R. Civ. P. 62(c) does not grant the district court the  
4 power to issue an injunction while the Federal Circuit retains jurisdiction. Rather, as the Ninth  
5 Circuit has held, Rule 62(c) is "merely expressive of a power inherent in the court to *preserve the*  
6 *status quo* where, in its sound discretion, the court deems the circumstances so justify."  
7 *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734 (9th  
8 Cir. 1982) (emphasis added). "It *does not restore jurisdiction to the district court to adjudicate*  
9 *anew the merits of the case* after either party has invoked its right of appeal and jurisdiction has  
10 passed to an appellate court." *Id.* (emphasis added). Thus, any action taken pursuant to Rule  
11 62(c) may not materially alter the status of the case on appeal. *NRDC v. Southwest Marine Inc.*,  
12 242 F.3d 1163, 1166 (9th Cir. 2002).

13 In this case, Apple incorrectly seeks to have the Court "adjudicate anew" the preliminary  
14 injunction motion. The matter before the Court – the propriety of the denial of a preliminary  
15 injunction – is the exact same matter that is still pending on appeal before the Federal Circuit. To  
16 have the Court adjudicate this issue is to improperly interfere with the Federal Circuit's appellate  
17 jurisdiction over the preliminary injunction decision. In contrast to Apple's motion, a proper  
18 motion under Rule 62(c) would seek only to "preserve the status quo." This Court denied a  
19 preliminary injunction and the Federal Circuit declined to order entry of one; thus the "status quo"  
20 does not include an injunction against Samsung.

21 Apple does not cite a single case in which any court has applied rule 62(c) to issue a  
22 temporary preliminary injunction while the mandate was still in the appellate court. The sole  
23 decision Apple cites is a 1951 case involving a permanent, not preliminary injunction, that is  
24 factually inapposite and actually supports Samsung. In *U.S. v. El-O-Pathic Pharmacy*, the Ninth  
25 Circuit refused to issue mandate and chose to retain jurisdiction while the time for rehearing has  
26 not yet expired. 192 F.2d 62, 78 (9th Cir. 1951). The court noted: "We should hesitate to issue a  
27 mandate knowing that at the time it is issued we might have to recall it in order to entertain any  
28 petition for rehearing." *Id.* at 79. In its dicta, the Court examined Rule 62(c), and recognized that

1 in certain limited circumstance the Rule can be used by “the trial court, after an appeal, to make  
2 orders appropriate to *preserve the status quo* while the case is pending in appellate court.” *Id.*  
3 (emphasis added). No such facts are present here. The status quo is no injunction, as the Federal  
4 Circuit did not direct entry of an injunction but instead vacated and remanded for further  
5 consideration by this Court. Thus, the Court lacks jurisdiction under Rule 62(c) and Apple’s  
6 motion is procedurally barred.

7 **III. Samsung Should Have a Fair Opportunity to Oppose and the Right to a Hearing On**  
8 **Apple’s Motion for Preliminary Injunction**

9 As noted, the mandate remains in the Federal Circuit, and Samsung intends to exercise its  
10 right to petition for rehearing. Until the appeal of this Court’s order denying a preliminary  
11 injunction is concluded, and the mandate returned to this Court, setting a briefing schedule in this  
12 Court on Apple’s motion is premature and wasteful. But when the appellate proceedings are final,  
13 the Court should afford Samsung a full and fair opportunity for briefing and argument on any  
14 remaining remand. A preliminary injunction is an extraordinary remedy, and shortened time  
15 would be extremely prejudicial to Samsung given the importance of the dispute and potential harm  
16 caused by any preliminary injunction. Moreover, any ruling by the Court would necessarily have  
17 to take into account all relevant evidence at the time of decision, not the evidence as it existed  
18 nearly six months ago when the Court issued its prior decision. The Court therefore should, once  
19 the scope of any remand is clarified by the Federal Circuit, allow both parties the opportunity for  
20 full and fair briefing, supplementation of the record, and oral argument. Apple’s attempt to thwart  
21 these obvious prerequisites for issuance of any preliminary injunction should be rejected.

22 **IV. CONCLUSION**

23 For the foregoing reasons, Apple’s motion to shorten time should be denied.  
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Respectfully submitted,

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