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15

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
18

19 APPLE INC., a California corporation,

20 Plaintiff,

21 vs.

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

25 Defendants.
26

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S OPPOSITION TO APPLE'S
MOTION REGARDING SCHEDULE FOR
BRIEFING OF NON-JURY CLAIMS**

Samsung's Opposition to Apple's Motion Regarding Schedule for Briefing Non-Jury Claims

1 The Court's August 28, 2012 Order was clear: "The Court will entertain only one post-
2 judgment motion for relief per side, not including Apple's motion for permanent injunction and
3 willfulness enhancement." Dkt. No. 1945 at 2 n.1. Apple nevertheless requests another 20-
4 page post-trial brief (and 50 pages of briefing in total) for certain purported "non-jury" claims that
5 Apple would like to argue at the December 6, 2012 hearing.

7 Apple's request should be rejected. Granting Apple an additional 20 pages to brief
8 equitable issues for argument on December 6—on top of the numerous important matters already
9 set for briefing and argument that day—would unnecessarily burden the Court and waste time and
10 resources. Any post-trial issues Apple believes need to be resolved by the Court, including "non-
11 jury claims," should be briefed within the page limits already ordered by the Court. *See* Dkt. No.
12 1945.

13 Additional briefing is particularly inappropriate because the equitable issues Apple
14 identifies in its motion here are moot or may well be mooted by the Court's rulings on the parties'
15 *Rule 50* motions. The jury found no liability on Samsung's claims against Apple. Thus, unless
16 the Court grants judgment as a matter of law on the relevant Samsung claims (a motion Samsung
17 has not yet even filed), Apple's equitable defenses of waiver, estoppel and unclean hands are
18 entirely moot. Moreover, these affirmative defenses and Apple's unfair competition
19 counterclaim are based entirely on the FRAND theories that the jury rejected when it found in
20 favor of Samsung on Apple's antitrust and breach of contract claims. *See* Dkt. No. 1189 (Joint
21 Pre-Trial Statement) at 1, 13; *see also* Apple's Amended Counterclaims in Reply, Dkt. 381, at 82-
22 83. The jury's rejection of Apple's FRAND claims forecloses Apple's assertion of similar
23 claims that would require the Court to make a contrary finding. *See L.A. Police Protective*
24 *League v. Gates*, 995 F.2d 1469, 1473 (9th Cir. 1993) ("[I]n a case where legal claims are tried by
25 a jury and equitable claims are tried by a judge, and the claims are 'based on the same facts,' in
26 deciding the equitable claims 'the Seventh Amendment requires the trial judge to follow the jury's
27 implicit or explicit factual determinations.'") (quoting *Miller v. Fairchild Indus.*, 885 F.2d 498,
28 507 (9th Cir. 1989)).

1 There is no reason to exempt “non-jury claims” from the Court’s August 28, 2012 Order,
2 and let alone devote 50 pages of separate briefing to issues that are potentially moot and irrelevant.
3 At the very least, Apple’s one-sided request for separate briefing on equitable issues is improper.
4 Samsung has its own equitable issues it may raise, and pursuant to its understanding of the Court’s
5 Order, had intended to include them as warranted in its consolidated post-trial motion to be filed
6 on September 21. However, if the Court is inclined to grant Apple’s request for additional,
7 separate briefing on non-jury claims, then it should be mutual and extend to the Samsung
8 equitable issues that remain to be resolved. These include, among others, the indefiniteness of
9 the “substantially centered” limitation in the ‘163 patent as well as indefiniteness of the asserted
10 design patents.

11 The Court should deny Apple’s motion. But to the extent the Court grants Apple’s
12 request for separate briefing on non-jury claims, Samsung respectfully requests a mutual schedule
13 so that Samsung’s non-jury issues may be separately briefed as well.

14
15 DATED: September 7, 2012

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