

2013-1129

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

APPLE INC.,

Plaintiff-Appellant,

v.

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

Defendants-Appellees,

*Appeal from the United States District Court for the Northern District
of California in Case no. 11-CV-1846, Judge Lucy H. Koh*

**MOTION FOR LEAVE TO FILE AS *AMICI CURIAE* OF NOKIA
CORPORATION AND NOKIA INC.**

PATRICK J. FLINN
KEITH E. BROYLES
ALSTON AND BIRD LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7000
*Attorneys for Amici Curiae
Nokia Corporation and Nokia Inc.*

March 5, 2013

CERTIFICATE OF INTEREST

Counsel for *amici curiae* Nokia Corporation and Nokia Inc. certifies the following:

1. The full name of every party or amicus represented by me is:

Nokia Corporation and Nokia Incorporated.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

N/A.

3. All parent corporations and any publicly held companies that own ten percent or more of the stock of the party or amicus curiae represented by me are:

Nokia Corporation has no parent corporation and no publicly held company owns 10 percent or more of its stock.

Nokia Inc.'s parent corporation is Nokia Holding Inc. Nokia Holding Inc. owns 100 percent of the stock in Nokia Inc. Nokia Holding Inc.'s parent corporation is Nokia Corporation. Nokia Corporation owns 100 percent of the stock in Nokia Holding Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Patrick J. Flinn
Keith E. Broyles
Alston and Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7000

Dated: March 5, 2013

/s/ Keith E. Broyles
KEITH E. BROYLES

Nokia Corporation and Nokia Inc. respectfully move this Court for leave to file the attached brief *amici curiae* in support of reversal of the district court's order denying Apple's motion for a permanent injunction. Counsel for the parties were contacted and counsel for Apple consents to the motion but counsel for Samsung did not consent.

STATEMENT OF INTEREST

Nokia Corporation ("Nokia") is one of the largest manufacturers of wireless telecommunications equipment in the world.

Nokia employs approximately 38,000 people worldwide. Nokia has cumulatively invested over \$50 billion in research and development relating to mobile communications. As a result of this substantial commitment to technological progress, Nokia currently owns more than 10,000 patent families.

Nokia has recently been involved in numerous U.S. patent lawsuits, as both a plaintiff and defendant. Nokia is thus both a significant patent owner that might seek an injunction to protect its patent rights, and a manufacturer in an industry in which patent owners routinely issue threats of injunctions for patent infringement.

Nokia's interest in this case is to advocate for patent laws that (i) protect patent rights as a means for promoting the constitutional goal of

developing technology for public benefit; and (ii) foster and encourage innovation by allowing patent holders to obtain permanent injunctions against infringing competitors in appropriate circumstances. Nokia therefore supports the Appellant's request for reversal of the District Court's denial of a permanent injunction based on application of the wrong legal standard. Nokia takes no position on any of the other substantive issues on appeal in this matter.

DESIRABILITY OF AMICUS BRIEF

The district court's ruling that in order to obtain a permanent injunction against an infringing competitor, a patent holder must also establish a "causal nexus" between the patented feature and the source of demand for the infringing product could cause wide-ranging damage to the United States patent protection landscape. By creating such a rule, the district court has diverged from the precedent of this court and could severely restrict, if not outright eliminate in some circumstances, the ability of a patent holder to obtain injunctive relief.

Amici urge this court to reverse the district court's order denying permanent injunctive relief, because the new "causal nexus" requirement set forth therein sets a dangerous precedent. This Court has previously determined that while the Supreme Court's decision in *eBay v.*

MercExchange, L.L.C., 547 U.S. 388, 393 (2006) eliminated any presumption that the holder of an infringed patent is automatically entitled to a permanent injunction, that decision was in no way intended to eliminate the availability of injunctive relief altogether. *See Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1149 (Fed. Cir. 2011). The “causal nexus” requirement as applied by the district court here, making the evidentiary standard for obtaining a permanent injunction so burdensome and strict that it may rarely, if ever, be met, will essentially lead to a compulsory-licensing system wherein patent holders are forced to license patented technology to competing firms, which could in turn harm incentives to innovate.

CONCLUSION

Amici respectfully request that this Court grant this motion for leave to file the attached brief.

DATED: March 5, 2013

Respectfully submitted,

By: /s/ Keith E. Broyles
Patrick J. Flinn
Keith E. Broyles
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7000

Attorneys for *amici curiae* Nokia
Corporation and Nokia Inc.

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**
Apple Inc. v. Samsung Electronics Co., Ltd., 2013-1129

CERTIFICATE OF SERVICE

I, John C. Kruesi, Jr., being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by ALSTON & BIRD LLP, Counsel for Amici Curiae to print this document. I am an employee of Counsel Press.

On March 5, 2013, I electronically filed in searchable Portable Document Format the foregoing **Motion for Leave to File as *Amici Curiae*** with the U.S. Court of Appeals for the Federal Circuit by using the CM/ECF system, thereby affecting service on the following counsel of record, all of whom are registered for electronic filing:

William F. Lee
Mark C. Fleming
Lauren B. Fletcher
Robert Tannenbaum
Wilmer Cutler Pickering Hale and Dorr, LLP
60 State Street
Boston, MA 02109
Email: william.lee@wilmerhale.com
Email: mark.fleming@wilmerhale.com
Email: lauren.fletcher@wilmerhale.com
Email: robert.tannenbaum@wilmerhale.com

Jonathan Cedarbaum
Rachel Weiner
Wilmer Cutler Pickering Hale and Dorr, LLP
1875 Pennsylvania Ave.
Washington, D.C. 20006
Email: jonathan.cedarbaum@wilmerhale.com
Email: rachel.weiner@wilmerhale.com

Joseph J. Mueller
Wilmer Cutler Pickering Hale and Dorr, LLP
399 Park Avenue
New York, NY 10022
Email: joseph.mueller@wilmerhale.com

Mark D. Selwyn
Wilmer Cutler Pickering Hale and Dorr, LLP
950 Page Mill Road
Palo Alto, CA 94034
Email: mark.selwyn@wilmerhale.com

Richard Hung
Michael A. Jacobs
Grant L. Kim
Rachel Krevans
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
Email: rhung@mofocom
Email: mjacobs@mofocom
Email: gkim@mofocom
Email: rkrevans@mofocom

Erik J. Olson
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, CA 94034-1018
Email: ejolson@mofocom

Kathleen M. Sullivan
William Adams
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York NY 10010
Email: kathleensullivan@quinnemanuel.com
Email: williamadams@quinnemanuel.com

Derek Shaffer
Quinn Emanuel Urquhart & Sullivan, LLP
1299 Pennsylvania Ave., Suite 825
Washington, D.C. 20004
Email: derekshaffer@quinnemanuel.com

Kevin A. Smith
Quinn Emanuel Urquhart & Sullivan, LLP
50 California Street
San Francisco, CA 94111
Email: kevinsmith@quinnemanuel.com

DATED: March 5, 2013

/s/ John C. Kruesi, Jr.

John C. Kruesi, Jr.
Counsel Press