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15 AMERICA, INC. and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18  
19 APPLE INC., a California corporation,

Plaintiff,

20 vs.

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

Defendant.

CASE NO. 11-cv-01846-LHK (PSG)

**SAMSUNG'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO DISSOLVE  
THE JUNE 26, 2012 PRELIMINARY  
INJUNCTION**

Date:

Time:

Place: Courtroom 8, 4th Floor

Judge: Hon. Lucy H. Koh

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**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively “Samsung”) shall and hereby do move the Court to dissolve its June 26, 2012 Order Granting Preliminary Injunction or, alternatively, in the event the Court determines that it does not have jurisdiction, for an indicative ruling pursuant to Fed. R. Civ. P. 62.1 that the Court would dissolve the preliminary injunction were jurisdiction restored to the Court. This motion is based on this notice of motion and supporting memorandum, and such other written or oral argument as may be presented at or before the time this motion is taken under submission by the Court.

**RELIEF REQUESTED**

Samsung seeks an order dissolving the Court’s June 26, 2012 Order Granting Preliminary Injunction and/or an indicative ruling that the Court would dissolve the preliminary injunction were jurisdiction restored to the Court. Samsung also requests that the Court retain Apple’s bond pending a determination of the damages suffered by Samsung as a result of the injunction. Samsung concurrently files a Motion to Shorten Briefing Schedule.

DATED: August 26, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Victoria F. Maroulis  
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LTD., SAMSUNG ELECTRONICS AMERICA,  
INC., and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC

1 **INTRODUCTION**

2 Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and  
3 Samsung Telecommunications America, LLC (collectively, “Samsung”) respectfully submit this  
4 memorandum in support of their motion that the Court (1) dissolve the preliminary injunction  
5 entered on June 26, 2012, that enjoined sales of Samsung’s Galaxy Tab 10.1 (Dkt. No. 1135), and  
6 (2) retain the bond posted by Plaintiff Apple, Inc. (“Apple”) pending a determination of damages  
7 suffered by Samsung as a result of the injunction. In the event that the Court determines it does  
8 not presently have jurisdiction to dissolve the preliminary injunction, Samsung respectfully  
9 requests that the Court provide an indicative ruling pursuant to Fed. R. Civ. P. 62.1.

10 **FACTUAL BACKGROUND**

11 On June 26, 2012, the Court preliminarily enjoined Samsung from “making, using,  
12 offering to sell, or selling within the United States, or importing into the United States, Samsung’s  
13 Galaxy Tab 10.1 tablet computer, and any product that is no more than colorably different from  
14 this specified product and embodies any design contained in U.S. Design Patent No. D504,889.”  
15 (Dkt. No. 1135, at 7.) Samsung timely filed a notice of appeal that same day. A trial in this  
16 matter was held from July 30-August 24, 2012, resulting in a finding by the jury that the Galaxy  
17 Tab 10.1 did not infringe Apple’s D’889 patent. (Dkt. No. 1931, at 7.) The Court has entered  
18 final judgment reflecting the jury’s verdict. (Dkt. No. 1933.) Accordingly, Samsung requests that  
19 the Court dissolve the preliminary injunction and retain the \$2.6 million bond posted by Apple  
20 pending a determination of damages suffered by Samsung as a result of the injunction.

21 **ARGUMENT**

22 **I. THE PRELIMINARY INJUNCTION SHOULD BE DISSOLVED IN LIGHT OF**  
23 **THE JURY VERDICT ON NON-INFRINGEMENT OF THE D’889 PATENT**

24 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
25 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
26 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
27 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In light of the jury’s unanimous finding of  
28 non-infringement as to the D’889 patent and the entry of final judgment reflecting that finding,

1 Apple no longer has a likelihood of success on the merits. *Cf. Amazon.com, Inc. v.*  
 2 *Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350-51 (Fed. Cir. 2001) (holding that preliminary  
 3 injunction should not issue if the defendant raises a substantial question concerning infringement).  
 4 There is thus no proper basis for maintaining the injunction. *See, e.g., Fiber Systems Int'l., Inc. v.*  
 5 *Applied Optical Systems, Inc.*, 2010 WL 3064286, \*1 (E.D. Tex. Aug. 3, 2010) (dissolving  
 6 preliminary injunction after finding of non-infringement). *Cf. Salazar v. Buono*, 130 S. Ct. 1803,  
 7 1816 (2010) (reversing district court's refusal to modify an injunction and holding that "[b]ecause  
 8 injunctive relief 'is drafted in light of what the court believes will be the future course of events,  
 9 ... a court must never ignore significant changes in the law or circumstances underlying an  
 10 injunction lest the decree be turned into an 'instrument of wrong.'").<sup>1</sup>

## 11 **II. THE BOND SHOULD BE RETAINED PENDING A HEARING ON DAMAGES**

12 Rule 65 of the Federal Rules of Civil Procedure provides that the movant for a preliminary  
 13 injunction must "give[] security in the amount that the court considers proper to pay the costs and  
 14 damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R.  
 15 Civ. P. 65(c). The Court required Apple to post a \$2.6 million bond as a condition of obtaining  
 16 the preliminary injunction. (Dkt. No. 1135, at 7.) Issues relating to injunction bonds are governed  
 17 by the law of the regional circuit. *Hupp v. Siroflex of America, Inc.*, 122 F.3d 1456, 1467 (Fed.  
 18 Cir. 1997).

19 The Ninth Circuit has held that a party has been "wrongfully enjoined within the meaning  
 20 of Rule 65(c) when it turns out the party enjoined had the right all along to do what it was  
 21 enjoined from doing." *Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1036 (9th  
 22 Cir. 1994) (citing *Blumenthal v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 910 F.2d 1049, 1054

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23 <sup>1</sup> The June 26, 2012 preliminary injunction was based on U.S. Design Patent No. D504,889 and  
 24 not any of the utility patents at issue in this lawsuit. Although Apple previously moved for a  
 25 preliminary injunction on U.S. Utility Patent No. 7,469,381, this Court found that an injunction  
 26 based this patent would not be appropriate because Apple would suffer no irreparable harm. *See*  
 27 Dkt. No. 449, Order Denying Motion for Preliminary Injunction at 63-64. This finding was later  
 affirmed by the Federal Circuit. *Apple, Inc. v. Samsung Electronics Co., Ltd.*, 678 F.3d 1314, 1327-  
 28 28 (Fed. Cir. May 14, 2012) (Bryson, J., joined by Prost, J.; O'Malley J., concurring in part and  
 dissenting in part).

1 (2d Cir. 1990) (“A party has been ‘wrongfully enjoined’ under Fed. R. Civ. P. 65(c) if it is  
2 ultimately found that the enjoined party had at all times the right to do the enjoined act.”). There  
3 “is a rebuttable presumption that a wrongfully enjoined party is entitled to have the bond executed  
4 and recover provable damages up to the amount of the bond.” *Nintendo*, 16 F.3d at 1036; *see also*  
5 *Blumenthal*, 910 F.2d at 1056 (“Plaintiffs are entitled to damages as may be shown to have been  
6 proximately caused by the injunction....”). Good faith of the party who obtained the injunction  
7 does not rebut the presumption that damages should be awarded on the bond. *See Nintendo*, 16  
8 F.3d at 1037 (“Good faith in the maintenance of litigation is the standard expected of all litigants.  
9 That a party lives up to this standard simply means the party did what it ought to have done. On  
10 the other hand, if a party obtains a preliminary injunction in bad faith, that party flunks the good  
11 faith test and the presumption in favor of enforcement of the bond congeals virtually into a rock.”).  
12 No separate action is required to execute on a bond. *See, e.g., Milan Exp., Inv. v. Averitt Exp.,*  
13 *Inc.*, 208 F.3d 975, 979-80 (11th Cir. 2000).

14 Here, the jury found that Samsung’s Galaxy Tab 10.1 does not infringe the D’889 patent.  
15 Since the purported infringement of the D’889 patent was the only basis for the preliminary  
16 injunction, the jury’s finding means that Samsung had a right to sell the Galaxy Tab 10.1 during  
17 the period in which the injunction has been in effect. Samsung is therefore entitled to recover  
18 damages caused by the improper injunction, and the Court should retain the bond so that it may do  
19 so.

### 20 CONCLUSION

21 For the foregoing reasons, Samsung respectfully requests that the Court dissolve the June  
22 26, 2012 preliminary injunction and retain Apple’s bond pending a hearing on damages resulting  
23 from the wrongful injunction.

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1 DATED: August 26, 2012

Respectfully submitted,

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AMERICA, INC. and SAMSUNG

TELECOMMUNICATIONS AMERICA, LLC

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