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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 APPLE INC., a California corporation,

15 Plaintiff,

16 v.

17 SAMSUNG ELECTRONICS CO., LTD., a
18 Korean corporation; SAMSUNG
19 ELECTRONICS AMERICA, INC., a New
20 York corporation; and SAMSUNG
TELECOMMUNICATIONS AMERICA,
21 LLC, a Delaware limited liability company,

22 Defendants.

Case No. 11-cv-01846-LHK

**APPLE'S REPLY TO SAMSUNG'S
RESPONSE TO APRIL 2, 2013
ORDER (ECF NO. 2299)
REGARDING APPEALABILITY OF
MARCH 1 ORDER RE: DAMAGES**

1 As Apple explained in its Administrative Motion Seeking an April 3 Case Management
2 Conference, an immediate appeal of the Court's March 1 Order Re: Damages is not viable. (Dkt.
3 2283 at 2.) Samsung agrees that the Court's March 1 Order granting a new trial on damages with
4 respect to 14 Samsung products is not appealable at this time because that decision is neither final
5 nor amenable to an interlocutory appeal. (Dkt. 2305 at 1-2.) But rather than seeking a final
6 resolution to the proceedings before this Court, Samsung repeats its request for entry of a Rule
7 54(b) judgment as to the 14 products for which the jury's damages award has been confirmed and
8 as to Samsung's counterclaims, coupled with a stay of the remaining portions of the case. (*Id.* at
9 2-3.) Samsung's request should be denied for the reasons Apple has stated previously (Dkts.
10 2283, 2288): the proposed judgment does not comply with Rule 54(b) itself, would only serve to
11 delay the final resolution of this case, and would not provide this Court with the appellate
12 guidance it seeks on the damages issues identified in the March 1 Order.

13 **A. The Parties Agree That the Court's March 1 Order Re: Damages Is Not**
14 **Immediately Appealable.**

15 Both Apple and Samsung agree that the March 1 Order granting a new trial on damages
16 for 14 Samsung products is not immediately appealable. (*See* Dkt. 2305 at 1-2.) Because the
17 March 1 Order directs further proceedings in this Court, there is no "final judgment" sufficient to
18 ground an appeal under 28 U.S.C. § 1295(a)(1). *See Spread Spectrum Screening, L.L.C. v.*
19 *Eastman Kodak Co.*, 657 F.3d 1349, 1354 (Fed. Cir. 2011) ("Under the 'final judgment rule,'
20 parties may only appeal a 'final decision of a district court.'" (quoting 28 U.S.C. § 1295(a)(1))).

21 Apple and Samsung also agree that there is no applicable exception to the "final judgment
22 rule" that would render the March 1 Order appealable at this time. (*See* Dkt. 2305 at 1-2.) The
23 March 1 Order is not a collateral order that could be appealed under the collateral order doctrine.
24 *See Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 431 (1985). Nor is it subject to an
25 interlocutory appeal under 28 U.S.C. § 1292(a)(1), since it does not involve an injunction. *See* 28
26 U.S.C. § 1292(a)(1) (permitting appeal of interlocutory orders "granting, continuing, modifying,
27 refusing or dissolving injunctions, or refusing to dissolve or modify injunctions"). The March 1
28 Order also is not amenable to an interlocutory appeal under 28 U.S.C. § 1292(b), which would

1 require certification from both this Court and the Federal Circuit, since it does not involve “a
2 controlling question of law to which there is substantial ground for difference of opinion” where
3 an immediate appeal would “materially advance the ultimate termination of the litigation.” *See*
4 *id.* § 1292(b).¹ Finally, the March 1 Order is not appealable under 28 U.S.C. § 1292(c)(2), as it is
5 not a “judgment” that is “final except for an accounting.” *See id.* § 1292(c)(2).

6 Accordingly, Apple believes that the March 1 Order may only be appealed after this Court
7 holds a new trial on damages, calculates supplemental damages and pre-judgment interest, and
8 enters a final judgment disposing of all claims in this case.

9 **B. Samsung’s Repeated Request for a Rule 54(b) Judgment and a Stay Should**
10 **Be Denied.**

11 Rather than seeking to resolve the non-final damages issues that remain pending before
12 this Court, Samsung repeats its request for entry of a Rule 54(b) judgment and a stay. (Dkt. 2305
13 at 2-3.) As Apple has previously explained (Dkt. 2283, 2288), Samsung’s proposed course of
14 action should be rejected for several reasons.

15 *First*, Samsung’s proposed judgment does not satisfy the requirements of Rule 54(b),
16 which permits entry of judgment only with respect to *claims for relief* that have been “finally
17 resolved.” *W.L. Gore & Assocs. v. Int’l Med. Prosthetics Research Assocs., Inc.*, 975 F.2d 858,
18 861 (Fed. Cir. 1992). Rule 54(b) does not permit entry of judgment with respect to those portions
19 of this case that merely “implicat[e]” the 14 Samsung products for which the jury’s damages
20 award has been confirmed (Dkt. 2305 at 2), since Apple’s patent infringement claims are still
21 subject to the new trial on damages and calculation of supplemental damages and pre-judgment

22
23 ¹ Apple does not agree with Samsung’s statement that “the Court’s decision to grant a
24 new damages trial ... reflects application of established law to the unique factual circumstances
25 of this case.” (Dkt. 2305 at 2.) Rather, the March 1 Order involves questions of both fact and
26 law that may eventually be raised on appeal, albeit none that meet the Federal Circuit’s stringent
27 requirements for certification of an interlocutory appeal under § 1292(b). *See Green Edge*
28 *Enters., LLC v. Rubber Mulch Etc., LLC*, 450 Fed. Appx. 978, 979 (Fed. Cir. 2011) (denying
§ 1292(b) certification and stating that “[i]t has ... long been the policy of the courts to
discourage piece-meal appeals because most often such appeals result in additional burdens on
both the court and the litigants,” and thus permissions for interlocutory appeals should be ‘granted
sparingly and with discrimination’” (citations omitted)).

1 interest. Apple's claims for relief have therefore not been finally resolved. (*See* Dkt. 2288 at 1-
2 9.)

3 *Second*, Samsung's proposal would lead to delay and inefficiencies. Indeed, the Federal
4 Circuit is likely to dismiss any appeal from Samsung's proposed Rule 54(b) judgment for lack of
5 jurisdiction—a detour that would impose an unnecessary burden on the Federal Circuit and would
6 contribute nothing but delay to this case. (*See* Dkt. 2288 at 13-14.) Moreover, Samsung's
7 proposed Rule 54(b) judgment would not eliminate the need for a new trial on damages or a
8 separate appeal with respect to the infringement, dilution, and damages issues specific to the 14
9 Samsung products involved in the new trial. (*Id.* at 11.) Samsung's proposed Rule 54(b)
10 judgment would also lead to significant judicial inefficiencies by requiring the Federal Circuit to
11 consider many of the same liability and damages issues in more than one appeal. (*Id.* at 12.)
12 When combined with Samsung's proposed stay of the new trial, entry of a Rule 54(b) judgment
13 now could delay the final resolution of this case indefinitely.

14 *Finally*, Samsung's proposal would not serve the Court's goal of receiving guidance from
15 the Federal Circuit on the damages issues raised in the March 1 Order or the supplemental
16 damages issues that remain to be litigated in this case. (*Id.* at 10-11.) According to Samsung's
17 proposal, those portions of the case would *not* be included in the Rule 54(b) judgment but would
18 be stayed pending the parties' appeal of other portions of the case. The supplemental damages
19 and new trial issues would not be reviewable by the Federal Circuit until yet another appeal—
20 which would not occur until *after* this Court holds a new trial on damages for the 14 remaining
21 products, determines the amount of supplemental damages and pre-judgment interest, and enters
22 final judgment.

23 * * * * *

24 Given that the March 1 Order is not immediately appealable, Apple believes that the most
25 efficient way to conclude the proceedings before this Court is to hold the new trial on damages as
26 soon as practicable and to calculate supplemental damages and pre-judgment interest, so that a
27 final judgment disposing of all claims in this case may be entered.

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Dated: April 16, 2013

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APPLE INC.