Nos. 2014-1802

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

APPLE INC.,
Plaintiff-Appellant,

v.

SAMSUNG ELECTRONICS CO., LTD., A KOREAN CORPORATION, SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION, and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of California, Case No. 12-cv-00630, Hon. Lucy H. Koh

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BRIEF *AMICUS CURIAE* OF THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLEES SAMSUNG ET AL.

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December 24, 2014

CERTIFICATE OF INTEREST

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Federal Circuit Rule 47.4, Matthew Schruers, counsel for *amicus curiae* the Computer & Communications Industry Association certifies the following:

1. The full name of the party represented by me is the Computer & Communications Industry Association.

2. The name of the real party in interest represented by me is the Computer & Communications Industry Association.

3. The Computer & Communications Industry Association is not a subsidiary of any corporation and has issued no stock.

4. The names of all law firms and attorneys that appeared for the party now represented by me in this proceeding are Matthew Schruers, see below.

December 24, 2014

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INTEREST OF *AMICUS CURIAE*[1]

The Computer & Communications Industry Association ("CCIA") represents over twenty companies of all sizes providing high technology products and services, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services – companies that collectively generate more than $465 billion in annual revenues.[2]

[1] No counsel for any party authored this brief in whole or part; no such party or counsel made a monetary contribution intended to fund its preparation or submission; and no person other than *amicus* made such a contribution. All parties have consented to the filing of this brief.

[2] A list of CCIA members is available at http://www.ccianet.org/members. Appellee Samsung and Google, Inc. are CCIA members, but took no part in the preparation of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The purpose of a patent lawsuit is to make an injured patent owner whole, not to determine prizes to be won. As the Supreme Court and this Court have repeatedly held, the purpose of an injunction is to provide relief that money cannot. Accordingly, there must be a causal nexus between any harm sought to be remedied by the injunction and the conduct for which the defendant is liable.

Apple and its *amici* would have this Court treat an injunction as a reward for proving patent infringement by assuming reputational harm. They argue that in a world of complex devices, patents covering small features will never have a strong enough link to harm to result in an injunction, and this result is unfair and will stifle innovation.

The Supreme Court, however, was well aware of the possible consequences for complex devices when it reaffirmed the traditional test for injunctions in patent infringement cases. Moreover, it is hardly unfair to require a party claiming injury to prove that its injury was caused by the tortious conduct at issue. Rather, it is a basic tenet of tort law.

This Court has correctly interpreted the causal nexus requirement as an inherent part of the irreparable harm analysis. It should continue to do so.

ARGUMENT

Apple and its *amici* claim a special kind of injunction: the "feature-based injunction." *See* Apple Br. at 27; Ericsson Br. at 3. According to Apple, such an injunction does not require a patentee to show a causal nexus between infringement by the enjoined feature and irreparable harm. Apple Br. at 32–34. Put another way, Apple and its *amici* claim that the district court failed to properly consider the scope of Apple's proposed injunction, because, according to Apple, an injunction can be narrow enough to avoid the need to show the causal nexus between infringement and irreparable harm.

Apple and its *amici* are simply wrong. The district court did consider the scope of Apple's proposed injunction, as part of the balance of the hardships and the public interest. The district court correctly included the causal nexus inquiry as part of the irreparable harm analysis, and not as a separate factor.

Importantly, the special treatment that Apple seeks would open the door to patent assertion entities to once again use the threat of permanent injunction for leverage. *Amicus* CCIA strongly urges this Court to leave the law as it is and affirm the district court's denial of a permanent injunction.

I. The Scope of the Proposed Injunction Is Already Part of the Injunction Inquiry

As confirmed by Apple's lack of authority in its brief, there is no such thing as a "feature-based injunction" that is somehow legally distinct from any other kind of injunction. This Court should not create one. As discussed *supra*, opening the door to any sort of automatic injunction would give patent holding companies enormous leverage to extort money, and would largely undo the Supreme Court's *eBay* decision.

Further, Apple's request that the Court consider "the scope of the proposed injunction" is both redundant (because the scope of the injunction was already considered by the district court) and opaque (because Apple is not actually seeking additional consideration of the scope of the injunction). Rather, Apple is seeking to avoid having to prove a key element of the injunction analysis, namely showing that any irreparable harm that might result without an injunction would actually be caused by Samsung's infringement of the patents at issue.

Section 283 of the Patent Act (35 U.S.C. § 283) grants a district court the discretion to issue an injunction, "in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable." The Supreme Court made clear in *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006), that "the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and [] such

discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards." *Id.* at 394.

> According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

Id. at 391.

In general, "broad categorical rules" with respect to granting or denying injunctive relief are inconsistent with the principles of equity because they remove a court's discretion. *Id.* at 391–92. The district court did not use any such categorical rules in this case, and it did expressly consider the scope of Apple's proposed injunction.

In particular, the district court considered the scope of the proposed injunction with respect to balance of hardships and the public interest:

> Samsung's admissions at trial about the ease of removing or designing around the infringing features, combined with the relatively narrow scope of, and sunset provision in, Apple's requested injunction, show that Samsung will not face any hardship from the injunction.

Apple App. at A36.

> Here, as explained above, Apple's proposed injunction is narrower and targets only "software and code" for the "Infringing Features" accused at trial. Thus, there is substantially less risk that the injunction will deprive the

> public of access to "a large number of non-infringing features," particularly given Samsung's representations about the ease and speed of designing around the patents at issue.

Id. at A41. The court considered the scope of the proposed injunction in its analysis of these factors, and in fact found that they weighed in Apple's favor. But the district court ultimately concluded that the totality of the circumstances weighed against a permanent injunction.

Despite the district court's express consideration of the scope of its proposed injunction, Apple complains that the court should have given the scope still more weight. Apple appears to be seeking a nearly automatic showing of irreparable harm through its allegedly narrower wording. Put another way, Apple wants its pound of flesh in the form of a permanent injunction, irrespective of whether that would remedy its injury, as precedent requires.

But this Court should not depart from precedent to give Apple its prize:

> The historic injunctive process was designed to deter, not to punish. The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied.

Hecht Co. v. Bowles, 321 U.S. 321, 329–30 (1944).

As this Court explained in *Apple III*, the causal nexus requirement is part of the irreparable harm analysis. "[T]he causal nexus requirement is simply a way of distinguishing between irreparable harm caused by patent infringement and irreparable harm caused by otherwise lawful competition. . ." *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1361 (Fed. Cir. 2013) (*Apple III*).

Apple and its *amici* are asking this Court to create a "broad categorical rule" reducing Apple's burden, namely that irreparable harm should be presumed if the requested injunction is narrow in scope. Apple Br. at 34. To be sure, Apple and its *amici* attempt to characterize the causal nexus requirement as a "categorical and indiscriminate requirement for driver-of-demand proof." Ericsson Br. at 4. In other words, by requiring proof of a causal nexus instead of assuming it, the district court applied a "categorical rule" analogous to always granting an injunction in patent infringement cases.

This characterization twists the Supreme Court's reasoning. The Supreme Court in *eBay* held several per se rules by both the district court and the appeals court to be inconsistent with equitable discretion. The Supreme Court rejected the district court's holdings that "a 'plaintiff's willingness to license its patents' and 'its lack of commercial activity in practicing the patents' would be sufficient to establish that the patent holder would not suffer irreparable harm if an injunction did not issue.'" *eBay*, 547 U.S. at 393. Similarly, the Supreme Court rejected the

appeals court's rule that an injunction should automatically be granted once patent infringement is shown. *Id.* at 394.

It is the use of per se rules that violates principles of equity. It is not a violation of equitable principles to always require the plaintiff to show a causal nexus between the defendant's infringement and the irreparable harm the plaintiff claims will happen without an injunction.

Apple, in contrast, *does* seek such a categorical rule: "There is necessarily a causal nexus to the infringing feature when an injunction only seeks to enjoin the infringing feature itself." Apple Br. at 34. That is, Apple argues that if an injunction is worded so as to be directed only to an infringing feature, irrespective of whether the feature is separable from its incorporating product, the causal nexus to any irreparable harm should be presumed.

This Court should not change the standard for issuing injunctions in patent cases.

II. The Special Treatment Apple Requests Would Open the Door to Patent Assertion Entities to Demand Injunctions

Apple and its *amici* argue that special treatment is warranted because it would be unfair to require a patentee to prove that infringement by a small feature of a multifunction device would cause irreparable harm. Apple *amicus* Nokia even

goes so far as to say that applying the causal nexus requirement uniformly would damage the patent system altogether:

> Moreover, because the district court's ruling could effectively eliminate the potential of exclusivity for a wide, but undefined, range of issued patents, the resulting uncertainty created by this rule may devalue such patents and reduce the incentive for leading innovators to invest in further research and development efforts – a result that runs counter to the express goals of the patent scheme set forth in the U.S. Constitution. Because patentees rely on predictability in the ability to protect their patented rights to continue their investments and explore new projects, the availability of the exclusionary rights when an appropriate showing is made must be preserved.

Nokia Br. at 4–5.

Nokia's concerns are misdirected, because the Supreme Court is clearly aware of the potential impact of the *eBay* decision on complex devices, as Justice Kennedy's concurrence reveals:

> In cases now arising trial courts should bear in mind that in many instances the nature of the patent being enforced and the economic function of the patent holder present considerations quite unlike earlier cases. An industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees. For these firms, an injunction, and the potentially serious sanctions arising from its violation, can be employed as a bargaining tool to charge exorbitant fees to companies that seek to buy licenses to practice the patent. When the patented invention is but a small component of the product the companies seek to produce and the threat of an injunction is employed simply for undue leverage in negotiations, legal damages may well be sufficient to compensate for the infringement and an injunction may not serve the public interest. In addition injunctive relief may have different consequences for the burgeoning number of patents over business methods, which were not of much economic and legal significance in earlier times.

eBay, Inc., 547 U.S. at 396–97 (Kennedy, J. concurring) (internal citations omitted).

CONCLUSION

There is a real danger in weakening the requirements for a permanent injunction by presuming a connection between the defendant's un-enjoined conduct and any harm to the defendant. Like all defendants, Apple must establish that the relief it seeks would remedy the harm it fears.

For the foregoing reasons, *amicus* CCIA requests that this Court affirm the trial court's holding with respect to denying Apple's request for a permanent injunction, at least insofar as there is no exception to the requirement to show a causal nexus between a defendant's infringement and irreparable harm.

Respectfully submitted,

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December 24, 2014

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 2,080 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Federal Circuit Rule 32(b).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the types style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify, that on this 23rd day of December 2014, a true and correct copy of the foregoing Brief of *Amicus Curiae* the Computer & Communications Industry Association was timely filed electronically with the Clerk of the Court using CM/ECF, which will send notification to all counsel registered to receive electronic notices.

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