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15 Attorneys for Plaintiff and
16 Counterclaim-Defendant APPLE INC.

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

20 APPLE INC., a California corporation,

21 Plaintiff,

22 v.

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

26 Defendant.
27

Case No. 5:12-cv-00630-LHK (PSG)

**APPLE INC.'S MOTION FOR
JUDGMENT AS A MATTER OF
LAW (RENEWED), AMENDED
JUDGMENT, NEW TRIAL, AND
DAMAGES ENHANCEMENTS**

Date: July 10, 2014
Time: 1:30 p.m.
Place: Courtroom 8, 4th Floor
Judge: Hon. Lucy H. Koh

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 10, 2014, at 1:30 p.m., or as soon thereafter as the matter may be heard by the Honorable Lucy H. Koh in Courtroom 8, United States District Court for the Northern District of California, Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, CA 95113, Plaintiff Apple Inc. (“Apple”) shall and hereby does move for judgment as a matter of law (renewed), an amended judgment, a new trial, and damages enhancements against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, Inc. (“Samsung”), as follows:

- Judgment as a matter of law that Samsung infringed claim 8 of the ’721 patent by making, using, selling, and/or importing within the United States the Galaxy SII, Galaxy SII (Epic 4G Touch), and Galaxy SII (Skyrocket) products, and a new trial on damages for that infringement; or in the alternative, a new trial on infringement and damages.
- Judgment as a matter of law that Samsung infringed claim 20 of the ’414 patent by making, using, selling, and/or importing within the United States the Admire, Galaxy Nexus, Galaxy Note, Galaxy Note II, Galaxy SII, Galaxy SII (Epic 4G Touch), Galaxy SII (Skyrocket), Galaxy SIII, Galaxy Tab 2 10.1, and Stratosphere, and a new trial on damages for that infringement; or in the alternative, a new trial on infringement and damages.
- Judgment as a matter of law that Samsung infringed claim 25 of the ’959 patent by making, using, selling, and/or importing within the United States the Admire, Galaxy Nexus, Galaxy Note, Galaxy Note II, Galaxy SII, Galaxy SII (Epic 4G Touch), Galaxy SII (Skyrocket), Galaxy SIII, Galaxy Tab 2 10.1, and Stratosphere, and a new trial on damages for that infringement; or in the alternative, a new trial on infringement and damages.
- Judgment as a matter of law that Samsung willfully infringed claim 9 of the ’647 patent.

- 1 • Judgment as a matter of law that Samsung failed to establish the affirmative defenses
2 listed in Samsung's pleadings.
- 3 • Enhanced damages by trebling the jury award for infringement of the '721 patent from
4 \$2,990,625 to \$8,971,875; and trebling the jury award for infringement of the '647
5 patent from \$98,690,625 to \$296,071,875.
- 6 • Supplemental damages through judgment.
- 7 • Prejudgment interest of \$6,468,029 through July 10, 2014, with an additional
8 \$11,040.36 in prejudgment interest for each additional day prior to entry of judgment.
- 9 • Judgment as a matter of law that Apple does not infringe claim 27 of the '449 patent
10 and vacatur of the \$158,400 damages award, or in the alternative, a new trial on
11 infringement and damages.
- 12 • Judgment as a matter of law that Apple's iPad products do not infringe claim 15 of the
13 '239 patent.
- 14 • A new trial on infringement for the '414 and '959 patents (in the event that judgment
15 of infringement is not granted); a new trial on willfulness for all patents other than the
16 '721 patent (and also other than the '647 patent if the Court grants JMOL of
17 willfulness for that patent); and a new trial on damages for all five of Apple's asserted
18 patents, based on Samsung's improper and prejudicial statements.

19 This motion is based on this notice of motion and supporting memorandum, the
20 accompanying declarations of Marylee Robinson and Nathan Sabri, the trial record, and such
21 other written or oral argument as was presented and may be presented at or before the time this
22 motion is taken under submission by the Court.

23 **RELIEF REQUESTED**

24 Apple respectfully seeks an order that: (1) Samsung's Galaxy SII, Galaxy SII (Epic 4G
25 Touch), and Galaxy SII (Skyrocket) products directly infringe claim 8 of the '721 patent, or in the
26 alternative a new trial on infringement and damages; (2) all accused Samsung products infringe
27 claim 20 of the '414 patent, or in the alternative a new trial on infringement and damages; (3) all
28 accused Samsung products infringe claim 25 of the '959 patent, or in the alternative a new trial on

1 infringement and damages; (4) Apple is entitled to a new trial on damages for Samsung's
2 infringement of claim 8 of the '721 patent based on Galaxy S II, Galaxy S II (Epic 4G Touch),
3 and Galaxy S II (Skyrocket) products, Samsung's infringement of claim 20 of the '414 patent,
4 and Samsung's infringement of claim 25 of the '959 patent, (5) Samsung failed to establish the
5 affirmative defenses listed in its pleadings and pre-trial statement; (6) Apple does not infringe
6 claim 27 of the '449 patent and vacatur of the \$158,400 damages award, or in the alternative a
7 new trial on infringement and damages; (7) Apple's iPad products do not infringe claim 15 of the
8 '239 patent; and (8) Apple is entitled to a new trial on infringement for the '414 and '959 patents
9 (in the event that judgment of infringement is not granted); a new trial on willfulness for all
10 patents other than the '721 patent; and a new trial on damages for all five of Apple's asserted
11 patents based on Samsung's improper and prejudicial statements.

12 Apple respectfully seeks a further order granting it (1) enhanced damages of
13 \$203,362,500, bringing the total award to \$322,987,500; (2) supplemental damages through
14 judgment; and (3) prejudgment interest of \$6,468,029 through July 10, 2014, with an additional
15 \$11,040.36 in prejudgment interest for each additional day prior to entry of judgment.

16
17 Dated: May 23, 2014

MORRISON & FOERSTER LLP

18
19 By: /s/ Rachel Krevans

RACHEL KREVANS

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21 Attorneys for Plaintiff and
22 Counterclaim-Defendant
23 APPLE INC.
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INTRODUCTION

1
2 Apple seeks judgment as a matter of law that Samsung's Galaxy S II products infringe
3 claim 8 of the '721 patent, and that all of the accused Samsung products infringe claim 20 of the
4 '414 patent and claim 25 of the '959 patent, because the evidence at trial permitted only those
5 conclusions. The relevant facts regarding the operation of the products and their source code was
6 uncontroverted—the only question was whether that operation met the claim language. For claim
7 8 of the '721 patent, Samsung presented no defense with respect to the Galaxy S II products—its
8 sole defense applied only to the Galaxy Nexus (and the jury rejected that defense in finding that
9 the Nexus infringes). For claim 20 of the '414 patent and claim 25 of the '959 patent, Samsung's
10 defense improperly relied on importing new limitations into the claim language. The evidence
11 Samsung offered at trial directed to those new limitations cannot support the non-infringement
12 verdict. Apple also seeks additional relief in connection with Samsung's infringement, including
13 a judgment that Samsung willfully infringed the '647 patent; enhancement of damages in light of
14 the egregiousness of Samsung's willful infringement; and supplemental damages and
15 prejudgment interest, to which Apple is entitled as a matter of law.

16 Apple also seeks judgment as a matter of law that its accused products do not infringe
17 claim 27 of the '449 patent and that its iPad products do not infringe claim 15 of the '239 patent,
18 as the evidence permitted only those conclusions. Finally, Apple seeks a new trial, based on
19 Samsung's improper and prejudicial statements to the jury regarding (1) Apple's practice of the
20 '172, '414, and '959 patents in its own products; (2) the possibility of permanent injunctive relief;
21 and (3) the Federal Circuit's preliminary injunction decision. The Court's refusal to give Apple's
22 proffered instructions to address Samsung's highly prejudicial statements warrants a new trial on
23 infringement for the '414 and '959 patents (in the event that judgment of infringement is not
24 granted), a new trial on willfulness for all patents other than the '721 patent (and also other than
25 the '647 patent if the Court grants JMOL of willfulness for that patent), and a new trial on
26 damages for all five of Apple's asserted patents.

LEGAL STANDARDS

28 Where a jury's verdict is not supported by substantial evidence, it is reversible error to

1 deny judgment as a matter of law (“JMOL”). *SEC v. Todd*, 642 F.3d 1207, 1215 (9th Cir. 2011);
2 *see also Moba v. Diamond Automation, Inc.*, 325 F.3d 1306, 1312 (Fed. Cir. 2003).¹ As the
3 Ninth Circuit has explained, “[j]udgment as a matter of law is proper when the evidence permits
4 only one reasonable conclusion and the conclusion is contrary to that reached by the jury.”
5 *Lakeside-Scott v. Multnomah Cnty.*, 556 F.3d 797, 802 (9th Cir. 2009) (citation omitted). A court
6 evaluates “whether there is a legally sufficient basis for a reasonable jury to find for the
7 nonmoving party ‘under the controlling law,’” which in the context of patent infringement, is “the
8 properly construed claims.” *Harris Corp. v. Ericsson Inc.*, 417 F.3d 1241, 1252 (Fed. Cir. 2005)
9 (citation omitted). Courts can and do award judgment as a matter of law that a patent has been
10 infringed notwithstanding a contrary jury verdict. *See, e.g., Moba*, 325 F.3d at 1315-16
11 (reversing denial of patentee’s JMOL motion on infringement); *LG Elecs. U.S.A., Inc. v.*
12 *Whirlpool Corp.*, 798 F. Supp. 2d 541, 556 (D. Del. 2011). Where JMOL of infringement is
13 granted, a court also should grant a new trial on damages. *Callicrate*, 427 F.3d at 1363.

14 Under Rule 59(a), a trial court may grant a new trial where “the verdict is contrary to the
15 clear weight of the evidence” or “to prevent a miscarriage of justice.” *Molski v. M.J. Cable, Inc.*,
16 481 F.3d 724, 729 (9th Cir. 2007) (internal quotation marks omitted). “[T]he district court has
17 the duty to weigh the evidence as the court saw it, and to set aside the verdict of the jury, even
18 though supported by substantial evidence, where, in the court’s conscientious opinion, the verdict
19 is contrary to the clear weight of the evidence.” *Id.* (internal quotation marks and alterations
20 omitted). Whether to grant a new trial is within the trial court’s discretion. *City Solutions, Inc. v.*
21 *Clear Channel Commc’ns*, 365 F.3d 835, 843 (9th Cir. 2004).

22 Amendment of the judgment pursuant to Rule 59(e) lies within the discretion of the Court
23 in light of new information not available at trial. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111
24 (9th Cir. 2011). Rule 59(e) provides an appropriate avenue to incorporate supplemental damages
25 based on post-verdict infringing sales and prejudgment interest pursuant to 35 U.S.C. § 284. *See*

26
27 ¹ The Federal Circuit “reviews the grant or denial of a motion for JMOL ‘under the law of
28 the regional circuit where the appeal from the district court normally would lie.’” *Callicrate v.*
Wadsworth Mfg., Inc., 427 F.3d 1361, 1366 (Fed. Cir. 2005) (citation omitted).

1 *Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1212-13 (Fed. Cir. 2010) (ordering
2 supplemental damages to compensate patentee for uncompensated sales).

3 ARGUMENT

4 **I. NO REASONABLE JURY COULD CONCLUDE THAT SAMSUNG'S** 5 **GALAXY SII PRODUCTS DID NOT INFRINGE CLAIM 8 OF THE '721** 6 **PATENT.**

7 The evidence at trial permitted only one reasonable conclusion: Samsung's Galaxy SII
8 products infringe claim 8 of the '721 patent. Apple presented uncontroverted evidence
9 establishing every element of its infringement claim on the Galaxy SII products. Samsung
10 offered no infringement defense for those products *at all*, and had no grounds for a defense.
11 Samsung's sole infringement defense addressed a different product—the Galaxy Nexus—on
12 grounds that do not apply to the Galaxy SII products and that were rejected by the jury in any
13 event. As a result, there is no substantial evidence that supports the verdict of non-infringement,
14 and the Court should grant JMOL to Apple. At a minimum, the Court should grant a new trial on
15 infringement and damages because the verdict is contrary to the clear weight of the evidence. *See*
16 *Molski*, 481 F.3d at 729.²

16 **A. Apple's Evidence Established that the Galaxy SII Products Meet Every** 17 **Element of Claim 8.**

18 Apple's technical expert, Dr. Cockburn, testified that all accused smartphones meet the
19 first five elements of claim 8, which are common to all smartphones: "portable electronic
20 device," "touch-sensitive display," "memory," "one or more processors," and "one or more
21 modules stored in the memory and configured for execution by the one or more processors, the
22 one or more modules including instructions." (Trial Tr. at 658:17-659:23 (Dkt. 1623); *see* JX10
23 at 19:22-47.) Dr. Cockburn testified that, as computing devices, all accused products require
24 modules including instructions (*i.e.*, software), processors, and memory. (Trial Tr. at 659:20-21
25

26 ² Apple also is entitled to a new trial on damages for the infringement of claim 8 by the
27 Galaxy SII products, and for the infringement of the '414 and '959 patents discussed in Sections
28 II and III below. *See Callicrate*, 427 F.3d at 1363 ("Because substantial evidence does not
support the jury verdict of no infringement, this court also reverses that verdict and remands for a
trial on damages.").

1 (Dkt. 1623.) He also testified that all accused products have a touch-sensitive display and are
2 portable electronic devices. (*Id.* at 659:22-23.) The presence of these elements in the Galaxy SII
3 products is apparent from the devices themselves (*see, e.g.*, JX32-C, JX32-E, JX33-A, JX33-B,
4 JX34-C), as well as from the Galaxy SII User Manuals in evidence (*see, e.g.*, PX234 at 22
5 (“touch screen” listed as product feature); *see also* PX235 at 19; PX236 at 20). These elements
6 are present in the Galaxy SII devices in the same way as the accused products found to infringe
7 claim 8, and Samsung did not dispute that the Galaxy SII products (or any accused products) meet
8 these elements.

9 Dr. Cockburn testified that the accused Galaxy SII products also meet all remaining
10 elements of claim 8 (elements 6 through 9) via their “slide to answer” functionality—an accused
11 operation used to unlock a locked phone in order to answer an incoming phone call. (Trial Tr. at
12 673:17-674:13 (Dkt. 1623).) As Dr. Cockburn testified, the ’721 patent specification expressly
13 discloses “slide to answer” as a form of unlocking covered by claims. (*Id.* at 662:12-16, 676:5-9.)
14 He explained that, for purposes of infringement, the “slide to answer” form of unlocking is “very
15 similar” to “slide to unlock” (the form of unlocking performed at the home screens of other
16 accused devices found by the jury to infringe claim 8). Both operations satisfy the remaining
17 elements of the claim, because they “detect a contact with the touch-sensitive display” at an
18 “unlock image”; allow the user to “continuously move the unlock image . . . in accordance to the
19 detected contact”; provide “visual cues” for the “direction of movement of the unlock image
20 required to unlock the device”; and “unlock the device” when the unlock image is moved “to a
21 predefined unlock region.” (JX10 at 19:48-20:9.)

22 The principal difference between the “slide to unlock” and “slide to answer” forms of
23 unlocking is that the latter is only performed to receive an incoming telephone call or respond to a
24 missed text message. Unlike the other products that the jury found to infringe claim 8, the
25 accused Galaxy SII products infringe only via “slide to answer,” and thus do not display any
26 infringing behavior in the absence of receiving an incoming phone call or missed
27 message. Unless a juror called one of the representative Galaxy SII phones admitted into
28 evidence, the jury would not have elicited the infringing “slide to answer” feature and instead

1 would have seen the non-infringing “Glass Unlock” home screen, which does not practice claim 8
2 of the ’721 patent. This may explain the jury’s failure to reach the only conclusion supported by
3 the evidence. But that is no basis to uphold the finding of non-infringement. As the Federal
4 Circuit has held, “an accused device that ‘sometimes, but not always, embodies a claim[]
5 nonetheless infringes.’” *See Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1333 (Fed. Cir.
6 2013) (citation omitted) (affirming JMOL of infringement).

7 In connection with his testimony, Dr. Cockburn showed the jury a demonstrative video of
8 a representative Galaxy SII product performing “slide to answer.” (*See* Trial Tr. at 673:19-
9 674:13 (Dkt. 1623); PDX40.) As that video demonstrates, when the Galaxy SII receives an
10 incoming call, the screen shows a green telephone icon with a small arrow next to it, similar to
11 the green icon present in the “slide to unlock” accused phones the jury found to infringe.
12 (PDX40.) To unlock the phone to answer the call, the user slides the green phone icon in the
13 direction of the arrow from a predefined area on the left side of the screen to a predefined area on
14 the right side of the screen. (*Id.*) Thus, as PDX40 showed and Dr. Cockburn testified, the “slide
15 to answer” feature in the Galaxy SII products meets elements 6 through 9 of claim 8. (*See* Trial
16 Tr. at 673:19-674:13 (Dkt. 1623); PDX40.) The products detect contact with the green telephone
17 icon, which the user continually moves in the direction of the visual cue of the arrow, and the
18 phone is unlocked to allow a call to be answered when the icon reaches the right side of the
19 screen. (*Id.*) Dr. Cockburn further testified that all accused Galaxy SII software and carrier
20 versions displayed “more or less identical” infringing behavior as the exemplary device depicted
21 in his demonstrative video. (Trial Tr. at 674:9-13 (Dkt. 1623); *see also id.* at 653:17-654:5;
22 PX300.)

23 **B. No Substantial Evidence Supports the Non-Infringement Verdict.**

24 Samsung offered no non-infringement defense for the Galaxy SII products. Samsung’s
25 counsel did not question Dr. Cockburn about his infringement analysis for the Galaxy SII
26 products. Samsung’s expert, Dr. Greenberg, offered no defense to infringement for the Galaxy
27 SII products. (Trial Tr. at 1980:1-1982:1 (Dkt. 1717) (Greenberg); *see also id.* at 2859:22-2860:4
28 (4/22/14) (Cockburn).) And Dr. Greenberg did not testify regarding any differences between

1 “slide to unlock” and “slide to answer” for purposes of infringement. During closing, Apple
2 emphasized Samsung’s failure to present a non-infringement defense as to the ’721 patent for any
3 product other than the Galaxy Nexus. (*Id.* at 3206:6-9 (4/29/14).) Rather than contesting Apple’s
4 assertion, Samsung’s closing confirmed it because Samsung’s counsel limited his non-
5 infringement discussion to the Galaxy Nexus, which had no relevance to the Galaxy SII
6 products.³ (*Id.* at 3309:7-3310:8.) Because the jury was presented with no basis to find the
7 Galaxy SII products did not infringe, Apple is entitled to a judgment of infringement.⁴

8 **II. NO REASONABLE JURY COULD CONCLUDE THAT SAMSUNG DID NOT**
9 **INFRINGE CLAIM 20 OF THE ’414 PATENT.**

10 Infringement of claim 20 of the ’414 patent turned on whether the accused products
11 include at least three synchronization software components that were “configured to
12 synchronize,” in accordance with the plain and ordinary meaning of that term. Unable to dispute
13 the evidence regarding how the devices operate and the code functions, Samsung based its non-
14 infringement defense on an unjustifiably narrowed construction of the claim language—
15 suggesting the claim requires a sync adapter be configured to perform all synchronization, or to
16 perform synchronization in a specific way, such as through a direct connection with the first
17 database. Samsung’s evidence regarding whether the accused products meet the additional
18 limitations it improperly imported into the claim cannot support the non-infringement verdict,
19 because that evidence is irrelevant to whether those products meet the plain and ordinary meaning
20 of the claim language the Court instructed the jury to apply. *See Moba*, 325 F.3d at 1314. The

21
22 ³ Dr. Greenburg testified that the Galaxy Nexus lacked an “unlock image” because the
23 unlock image in that product changed shape when touched by the user. (Trial Tr. at 1980:1-
1982:1 (Dkt. 1717).) The jury rejected that defense when it found that the Galaxy Nexus
infringed claim 8 of the ’721 patent. (Dkt. 1884 at 5.)

24 ⁴ Consistent with the jury’s verdict where it found infringement, Apple is entitled to
25 judgment against SEC, STA, and SEA for the infringement that is the subject of Apple’s JMOL
26 motion. Dr. Vellturo offered uncontroverted testimony that each entity is liable for infringement
27 because each sells accused devices within the United States. (*See* Trial Tr. at 1208:23-1209:18
28 (Dkt. 1714); *id.* at 1285:11-1286:6 (Dkt. 1715); *see also* PX142 (summary of Samsung’s U.S.
sales data).) Accordingly, Apple is entitled to judgment against SEC and STA for their
infringement of the ’721 patent, and against SEC, STA, and SEA for their infringement of the
’414 and ’959 patents.

1 Court should grant JMOL of infringement or, in the alternative, grant a new trial on infringement
2 and damages, because the non-infringement verdict is contrary to the clear weight of the
3 evidence.

4 **A. Apple's Evidence Established that the Accused Products Meet Every Element**
5 **Of Claim 20.**

6 The trial evidence established that the accused products practice every element of claim
7 20. For all but one, there was not even a dispute, because Samsung contested only element e.

8 **a) A computer readable storage medium containing executable program**
9 **instructions which when executed cause a data processing system to perform a method**
10 **comprising.** Apple's expert, Dr. Snoeren, testified that he reviewed the code, and confirmed that
11 this element was met. (Trial Tr. at 969:21-970:7 (Dkt. 1624).) Samsung's expert, Dr. Chase,
12 agreed that each of the accused products has a computer readable storage medium with
13 executable program instructions. (*Id.* at 2236:20-2237:2 (4/18/14).) Apple also introduced into
14 evidence specifications for the accused products showing internal memory and a processor
15 capable of executing program instructions. (PX241; Trial Tr. at 655:25-656:12 (Dkt. 1623)
16 (Cockburn).)

17 **b) executing at least one user-level non-synchronization processing thread, wherein**
18 **the at least one user-level non-synchronization processing thread is provided by a user**
19 **application which provides a user interface to allow a user to access and edit structured**
20 **data in a first store associated with a first database.** The evidence showed that the accused
21 products include instructions for executing at least one non-synchronization processing thread as
22 described in claim element b. Dr. Snoeren testified based on his review of the source code that
23 the accused products include executable instructions for executing at least one user-level non-
24 synchronization processing thread (Trial Tr. at 972:6-9 (Dkt. 1624)); that the user applications
25 provide these processing threads (*id.* at 972:13-17); and that the applications' user interfaces
26 allow users to access and edit structured data in a first store associated with a first database (*id.*
27 at 972:6-974:24). Samsung's expert Dr. Chase agreed. (*Id.* at 2237:3-2239:15 (4/18/14).) Dr.
28 Snoeren further testified that PX103 and PX104, academic publications on which he relied and

1 that were admitted into evidence (*id.* at 994:11-23 (Dkt. 1624)), confirm that Google stores Gmail
2 information in a database. Dr. Snoeren testified that the Exchange servers also store structured
3 data in a database. (*Id.* at 996:9-14 (Dkt. 1624).) Representative accused products in evidence
4 also show that the accused products include user applications (Contacts, Calendar, and email
5 applications (*id.* at 972:13-17 (Snoeren))) with user interfaces that allow users to access and edit
6 data.

7 **c) executing at least one synchronization processing thread concurrently with the**
8 **executing of the at least one user level non-synchronization processing thread.** Dr. Snoeren
9 testified based on his review of the code that the accused products include instructions for
10 executing synchronization processing threads in an overlapping time interval with the user-level
11 non-synchronization processing thread discussed under element b, consistent with the Court’s
12 construction. (*Id.* at 974:25-977:20.) And Dr. Chase agreed that, in the accused devices, the local
13 data discussed under element b can be synchronized with data in remote locations, “in the
14 background without interfering with the user level application.” (*Id.* at 2239:19-2240:9
15 (4/18/14).)

16 **d) wherein the at least one synchronization processing thread is provided by a**
17 **synchronization software component which is configured to synchronize the structured data**
18 **from the first database with the structured data from a second database.** The evidence
19 showed that at least one synchronization software component—each accused sync adapter—is
20 configured to synchronize and provides a synchronization processing thread in the accused
21 devices. Dr. Snoeren confirmed that all six sync adapters are synchronization software
22 components that are configured to synchronize structured data from a first database to structured
23 data from a second database. (Trial Tr. at 980:13-981:10 (Dkt. 1624).) Dr. Snoeren testified
24 regarding his reliance on Google documents admitted during his testimony, which describe each
25 sync adapter as responsible for synchronizing its respective data class. For example, Dr. Snoeren
26 testified about admitted exhibit PX172, which he described as a “Google document that describes
27 the architecture of several of the Google sync adapters.” (*Id.* at 982:4-16.) In language that Dr.
28 Snoeren read to the jury, PX172 describes sync adapters as “handl[ing] *all* of the sync protocol

1 logic.” (PX172 at 1 (emphasis in original); *see* Trial Tr. at 983:1-4 (Dkt. 1624).)⁵ Dr. Snoeren
 2 also testified about admitted exhibit PX102, a printout from “the Android developer’s
 3 documentation and website.” (Trial Tr. at 2832:3-13 (4/22/14).) Dr. Snoeren walked the jury
 4 through the document, explaining that PX102 describes the “base class” that applies to all six
 5 accused sync adapters, and that the document confirms that (1) sync adapters “spawn[] a thread
 6 to invoke a sync operation”, meaning “provide or create”; (2) OnPerformSync will be invoked
 7 on that thread; and (3) the sync adapter specifies the parameters for and calls the function to
 8 “perform a sync for [the] account.” (*Id.* at 2833:10-2835:21 (quoting PX102 at 1-3); PX102.)
 9 Testimony from Google witnesses confirms that PX102’s descriptions of sync adapters apply to
 10 the accused sync adapters because Mr. Westbrook and Mr. Lockheimer testified that the sync
 11 adapters in Gmail, Google Calendar, and Google Contacts are all proprietary Google code that
 12 cannot be modified by manufacturers like Samsung. (Trial Tr. at 1497:21-1499:11 (Dkt. 1715)
 13 (Lockheimer testimony that Gmail, Google Calendar, and Google Contacts sync adapters cannot
 14 be changed by manufacturers); *id.* at 1660:25-1661:17 (Dkt. 1716) (Westbrook testimony that
 15 Gmail sync adapter is Google proprietary code); *see also id.* at 1504:21-1505:16 (Dkt. 1715)
 16 (Lockheimer testimony that fundamental architecture of syncing same from Android 1.0 to
 17 present).)

18 Along with Dr. Snoeren’s testimony and the relevant Google documents, the code for all
 19 six accused sync adapters and other relevant synchronization code was entered into evidence,
 20 providing further proof of infringement. (JX51A (SAMNDCA630-SC00057375-57379, 57422-
 21 23, 57444-46, 57493-95 57553-87, GOOGNDCAL630-S-0002408, 2419-24, 3782-98, 3819-43).)

22 Samsung conceded that two of the six accused sync adapters meet the claim language,
 23 thereby satisfying this limitation.⁶ (Trial Tr. at 2241:6-9 (4/18/14) (Chase disputing only whether

24 ⁵ The Google witness who Samsung called to testify regarding the accused
 25 synchronization operations admitted that PX172 was a document from Google’s systems that
 Google produced in this case. (Trial Tr. at 1663:7-9 (Dkt. 1716) (Westbrook).)

26 ⁶ Samsung’s expert argued on cross examination that the accused sync adapters do not
 27 “create” or “invoke” a thread (Trial Tr. at 2241:23-2245:25 (4/18/14) (Chase)), though Samsung
 28 claimed in a footnote in opposition to Apple’s JMOL motion during trial that this does not mean
 Samsung disputes whether the accused sync adapters “provide” a thread as required by the claim
 (Footnote continues on next page.)

1 “four of the six” sync adapters are “configured to synchronize structured data of the classes”); *see*
2 *also id.* at 980:23-981:6 (Dkt. 1624) (Snoeren noting that Samsung does not dispute that Google
3 Calendar and Google Contacts sync adapters are configured to synchronize as described in claim
4 element d).)

5 **e) wherein the synchronization software component is configured to synchronize**
6 **structured data of a first data class and other synchronization software components are**
7 **configured to synchronize structured data of other corresponding data classes.** The evidence
8 established that the accused products contain at least three synchronization software components
9 that are “configured to synchronize” particular data classes—Dr. Snoeren testified based on his
10 review of the code that two of the sync adapters discussed under element d above correspond to
11 the Calendar data class; two of the sync adapters correspond to the Contacts data class, and two of
12 the sync adapters correspond to the Mail data class. (*Id.* at 980:13-22 (Dkt. 1624).) The code that
13 was admitted into evidence for all six sync adapters confirms this. (JX51A.) As discussed above,
14 Samsung conceded that two of the six accused sync adapters meet the claim language, so the only
15 dispute was whether the accused products include at least a third synchronization software
16 component within the meaning of the claim. Dr. Snoeren testified that, along with the sync
17 adapters Samsung conceded satisfy the relevant limitation, the Gmail and Exchange mail sync
18 adapters also meet the claim limitations (even though only one additional synchronization
19 software component is required to satisfy this limitation).

20 In establishing that this limitation is satisfied, Dr. Snoeren walked the jury through the
21 code for the Gmail sync adapter and showed that it is configured to synchronize a specific Gmail
22 account. He showed that the sync adapter calls the OnPerformLoggedSync function with
23 particular parameters for a user’s Gmail account, “configuring to synchronize just this user’s
24 mail.” (Trial Tr. at 985:9-11, 985:19-25 (Dkt. 1624).) The code to which Dr. Snoeren referred
25 can be seen in confidential PDX98.18, admitted into evidence as part of JX51A

26 (Footnote continued from previous page.)

27 (Dkt. 1817 at 4 n.2). In any event, the evidence presented at trial could lead to only one
28 conclusion, as discussed.

1 (GOOGNDCAL630-S-0002408, 2419-24). As Dr. Snoeren explained, the sync adapter code then
2 calls a function called “PerformBackgroundSync.” (Trial Tr. at 986:1-5 (Dkt. 1624); PDX91.18;
3 JX51A.) That alone is sufficient to prove a third synchronization software component that is
4 configured to synchronize a particular data class (because Samsung conceded that two of the
5 accused sync adapters meet the claim language). Dr. Snoeren nonetheless also provided the jury
6 with analysis and code for the Exchange mail sync adapter, which independently establishes that
7 the accused devices meet element e. He testified regarding the code showing that the Exchange
8 mail sync adapter is configured to synchronize a particular user’s email account. (Trial Tr. at
9 988:2-8 (Dkt. 1624).) He testified that there are two important functions in the sync adapter—
10 OnPerformSync and PerformSync—and showed the portion of the sync adapter code that causes
11 the synchronization to occur as configured. (*Id.* at 987:16-988:18.) And again, the code itself
12 shows that the sync adapter specifies a number of parameters when calling the OnPerformSync
13 function, configuring the synchronization to occur in a particular way. (PDX91.44; JX51A
14 (SAMNDCA630-SC00057553-87).)

15 Apple’s evidence was consistent with the Court’s direction to apply the “plain and
16 ordinary meaning” to the phrase “configured to synchronize.” (Dkt. 1847 at 30.) The claim
17 requires at least three synchronization software components “configured to synchronize the
18 structured data” from a first database with structured data from a second database. At least one
19 synchronization software component must be “configured to synchronize structured data of a first
20 data class,” and others must be “configured to synchronize structured data of other corresponding
21 data classes.” The evidence showed that all six accused sync adapters are configured to
22 synchronize particular data classes and to “handle[] all of the sync protocol logic” (PX172), and
23 that each spawns a thread to invoke a sync operation and specifies the parameters for, and calls
24 functions like OnPerform Sync to perform, the remaining sync steps for a particular account
25 (PX102). Apple thus established infringement under the plain and ordinary meaning of the claim
26 language.

27 **B. No Substantial Evidence Supports the Non-Infringement Verdict.**

28 Samsung contested only element e, declining to cross-examine Dr. Snoeren or put forward

1 any contrary evidence or argument on any other element. (Trial Tr. at 2241:6-9 (4/18/14) (Chase
2 disputing only whether “four of the six” sync adapters are “configured to synchronize structured
3 data of the classes”); *id.* at 980:23-981:14 (Dkt. 1624) & 2830:3-12 (4/22/14) (Snoeren describing
4 dispute).) But Samsung failed to support its contention that the accused products do not meet
5 element e with substantial evidence that could support the jury’s verdict of non-infringement.

6 The Court did not construe the term “configured to synchronize,” which is therefore
7 afforded its plain and ordinary meaning. Samsung’s evidence, however, was not directed to the
8 term’s plain and ordinary meaning. Instead, Samsung’s expert Dr. Chase suggested that
9 “configured to synchronize” required that a sync adapter be configured to perform all
10 synchronization, or to perform synchronization in a specific way, such as through a direct
11 connection with the first database (*See, e.g., id.* at 2170:12-2171:2, 2172:20-23 (4/18/14) (Chase
12 testifying that sync adapter “passes the request to perform a sync” and does not “perform”
13 synchronization itself); *id.* at 2172:13-14 (Chase testifying that sync adapter does not have
14 connection to local database).) But the claim language—“configured to synchronize”—does not
15 require a sync adapter to perform the synchronization itself, or have a direct connection to the
16 database.⁷

17 Samsung’s evidence regarding whether the accused products met the additional
18 limitations it imported into the claim cannot support the non-infringement verdict, because it is
19 not directed to the plain and ordinary meaning the Court instructed the jury to apply. *Moba*, 325
20 F.3d at 1314. Instead, that evidence was irrelevant. *Liquid Dynamics Corp. v. Vaughan Co.*, 449
21 F.3d 1209, 1224 n.2 (Fed. Cir. 2006) (affirming exclusion of expert opinion as irrelevant where
22 based on improper claim construction); *Chicago Mercantile Exch., Inc. v. Tech. Research Grp.,*
23 *LLC*, 782 F. Supp. 2d 667, 673 (N.D. Ill. 2011) (court’s construction governs and “[a]ny
24 testimony that is based on an alternative construction is therefore irrelevant”) *see also Integra*
25 *Lifesciences I, Ltd. v. Merck KGaA*, 496 F.3d 1334, 1342 (Fed. Cir. 2007) (“when an expert

26
27 ⁷ Samsung’s position is illogical, because as Dr. Snoeren explained when asked on cross-
28 examination whether a sync adapter “calls into another class of code”: “That’s how sync adapters
work. They make it all happen.” (Trial Tr. at 1013:7-17 (Dkt. 1624).)

1 witness' statement of the law is incorrect, that view of the law cannot be relied upon to support
2 the verdict").

3 Samsung's attempt to impose additional limitations where the Court directed the jury to
4 apply plain and ordinary meaning is precisely what the Federal Circuit rejected in *Moba*, 325 F.3d
5 at 1313-14. There, the district court had construed a particular claim term, but after a verdict of
6 non-infringement, the court denied a JMOL motion, ruling that the jury could have determined
7 from the testimony at trial that the claim had additional requirements. *Id.* at 1313. The Federal
8 Circuit held that the district court erred by "[i]n essence" having "allowed the jury to add an
9 additional limitation to the district court's construction" of the claim term at issue. *Id.* Because
10 the record "disclose[d] no alternative basis upon which a reasonable jury could find that [the
11 defendant] does not infringe," the Federal Circuit reversed the denial of JMOL, holding that "by
12 allowing the jury to import an additional limitation into the claims, the district court
13 fundamentally altered the verdict." *Id.* at 1314. Similarly, here, Samsung proposed that the jury
14 "import [] additional limitations into the claims," *id.*, by suggesting that the claim required that a
15 sync adapter be configured to perform all synchronization or to perform synchronization in a
16 specific way. As in *Moba*, "the record discloses no alternative basis upon which a reasonable
17 jury could find that [Samsung] does not infringe," *id.* at 1313-14, because Samsung based its non-
18 infringement defense solely on the narrowed claim construction, while Apple presented evidence
19 satisfying all claim elements (as discussed above). Accordingly, as in *Moba*, denying Apple's
20 motion would be reversible error.

21 Samsung's narrowing construction of the claim language at trial is also inconsistent with
22 the specification and the prosecution history, and thus erroneous as a matter of law. *See Moba*,
23 325 F.3d at 1314 ("Claim construction is a question of law and is not the province of the jury.").
24 The '414 patent specification confirms that the claim's plain and ordinary meaning does not
25 require the narrower constructions Samsung advanced at trial. Figure 4 discloses a preferred
26 embodiment with multiple components involved in synchronizing data between a device and a
27 host computer. (JX7 at fig. 4.) The "Sync Agent" picture in the figure is described in the
28 specification as a "software synchronization component." (*Id.* at 25:5-6.) Figure 4 does not show

1 a direct connection between the Sync Agent and the databases—rather, it is connected through
2 data class-specific data source software. And the specification lists numerous synchronization
3 operations that are actually performed by the Data Sources, *not* by the Sync Agent, including
4 “open[ing]” the database on the device and “send[ing] changed/new/deleted records” to and
5 “process[ing] and commit[ing] data” received from the host. (*Id.* at 11:40-55.) The Sync Agent
6 itself is described as “manag[ing]” the connection and “set[ting] up the correct Data Source for a
7 given Data Class.” (*Id.* at 11:60-65.) Those are the same operations performed by the Gmail and
8 Exchange sync adapters. (PX172; PX102; Trial Tr. at 985:1-986:5, 987:19-988:18 (Dkt. 1624)
9 (Snoeren).)

10 Nor does the prosecution history support Samsung’s attempt to narrow the plain and
11 ordinary meaning of the claim, as Samsung’s expert Dr. Chase inaccurately suggested. Dr. Chase
12 testified that Apple changed the claim language from “caused to synchronize” to “configured to
13 synchronize,” but that is simply untrue. (*See, e.g.*, Trial Tr. at 2182:10-11, 2183:3-5 (4/18/14).)
14 The actual change was from “configured to cause retrieval and storage of the structured data” to
15 “configured to synchronize the structured data from the first database with the structured data
16 from a second database.” (JX8 at 751.)

17 As the prosecution history demonstrates, this change was made for reasons wholly
18 unrelated to whether the synchronization software components had to perform all the claimed
19 functions themselves, rather than calling other code to perform part or all of the synchronization.
20 Instead, the change was made in response to the patent examiner’s citation of a prior art
21 publication, Shalev et al., “Predictive Log-Synchronization ACM SIGOPS Operating Systems
22 Review, Volume 40, Issue 45, October 2006, pages 305-315 (“Shalev”). (JX8 at 720.) Shalev
23 disclosed a method of concurrent programming and programming verification in which threads
24 coordinated operations on data via a shared log—*not* synchronization of data in databases, and
25 *not* a prior art reference relevant to this case. (*See* Declaration of Nathan Sabri (“Sabri Decl.”)
26 Ex. A at 306.) In the Shalev method, competing threads would negotiate access to a shared file
27 through use of a log. (*Id.*) A thread that did not acquire a lock on the data file would gain read
28 access to a copy and write changes to a shared log file instead; a thread that acquired a lock on the

1 data file would actually commit the changes recorded in the log file into the data file. (*Id.*) The
2 examiner explained that, as originally worded, the “synchronization processing thread” in the
3 claim read on the thread in Shalev that performed the data changes that had been logged on a
4 copy. (JX8 at 720.) Similarly, as originally worded, the “non-synchronization processing thread”
5 in the claim read on the thread in Shalev that read the unmodified copy. (*Id.*)

6 In response to the examiner’s office action, Apple revised the broad claim language
7 “configured to *cause retrieval and storage* of the structured data” to “configured to *synchronize*
8 the structured data *from the first database with the structured data from a second database.*” (*Id.*
9 at 751) (emphases added). Apple also added the language “associated with a first database” to the
10 immediately preceding element to further clarify that the invention involved synchronization of
11 structured data in databases. (*Id.*) These changes resolved the examiner’s concern. (*Id.* at 760.)

12 Because Samsung’s position was based on a narrowing claim construction that was
13 inconsistent with the claim language, the specification, and the prosecution history, there was no
14 substantial evidence to support a verdict of no infringement of claim 20. Rather, evaluating “the
15 properly construed claims based on the evidence presented,” *Harris Corp.*, 417 F.3d at 1252,
16 permits only one reasonable conclusion—infringement.

17 **III. NO REASONABLE JURY COULD CONCLUDE THAT SAMSUNG DID NOT** 18 **INFRINGE CLAIM 25 OF THE ’959 PATENT.**

19 For claim 25 of the ’959 patent, the question of infringement turned on whether the
20 accused products include a heuristic to locate information in a plurality of locations including the
21 Internet. As with the ’414 patent, the relevant claim limitation—“to locate information in the
22 plurality of locations which include the Internet and local storage media”—was subject to its
23 plain and ordinary meaning, and there was no dispute regarding how the accused devices operate
24 or the code functions. Again unable to dispute the evidence regarding how the devices operate
25 and the code functions, Samsung defended infringement by improperly importing additional
26 limitations into the claim language—suggesting that the claim required that the heuristic locate
27 information in the Internet before the information at issue is downloaded to an accused device.

28 Samsung’s attempt to narrow the claim at trial was improper, and rendered irrelevant the

1 testimony from Samsung's expert directed to that improper construction. Because Samsung
2 presented no other argument, and there is no alternative basis on which a non-infringement
3 verdict is supportable, the jury verdict of non-infringement must be overturned. The Court should
4 grant JMOL of infringement, or grant a new trial on infringement and damages, because the
5 verdict is contrary to the clear weight of the evidence.

6 **A. Apple's Evidence Established that the Accused Products Meet Every Element**
7 **of Claim 25.**

8 The evidence at trial established that the accused products practice every element of claim
9 25. For all but one, there was not even a dispute, because Samsung contested only element c.

10 **a) a computer readable medium for locating information from a plurality of**
11 **locations containing program instructions to.** Dr. Snoeren testified that each accused device
12 has a computer readable medium for locating information from a plurality of locations, with
13 programing instructions, and showed videos demonstrating that the accused products can locate
14 information from a plurality of locations. (Trial Tr. at 945:6-948:23, 949:12-16 (Dkt. 1624).) Dr.
15 Snoeren discussed his review of the devices and specifications for the accused products entered
16 into evidence showing internal memory and a processor. (*Id.* at 948:24-949:18; PX241.)
17 Representative accused devices admitted into evidence also showed the accused products are
18 capable of locating information from a plurality of locations.

19 **b) receive an information identifier.** Dr. Snoeren testified that this element was met
20 based on his review of the code for receiving an information identifier, and he showed videos
21 demonstrating the functionality. (Trial Tr. at 945:6-948:23, 949:23-950:11 (Dkt. 1624).)
22 Representative accused devices in evidence showed the accused products receive an information
23 identifier in the form of a text string typed into the entry box of the accused Google Search
24 Application.

25 **c) provide said information identifier to a plurality of heuristics to locate**
26 **information in the plurality of locations which include the Internet and local storage media.**

27 The evidence showed that the accused products include heuristics—construed by the Court to
28 mean “some ‘rule of thumb’ that does not consist solely of constraint satisfaction parameters”

1 (Dkt. 1150 at 31)—to locate information in locations including both the Internet and local storage
2 media. Based on his review of code, relevant portions of which were admitted into evidence
3 (JX51A), Dr. Snoeren testified that the accused products include instructions that provide the
4 information identifier to a plurality of heuristics that locate information on the Internet and local
5 storage media, and showed videos demonstrating the functionality. (Trial Tr. at 945:6-948:23,
6 950:12-956:23 (Dkt. 1624).) Dr. Snoeren showed the jury a demonstrative, based on his review
7 of the code, that illustrated how the code is designed. (*Id.* at 942:1-945:5; PDX91.23-24.) He
8 showed the heuristic modules that locate information in accused products running the
9 Gingerbread version of Android (Web and Contacts modules) as well as the Ice Cream Sandwich
10 and Jelly Bean versions (Google, Browser, Contacts, and Play Music modules). (*Id.*) He also
11 showed the jury the BlendResults function in Ice Cream Sandwich and Jelly Bean, and pointed
12 out English comments in the code that show that it combines results from (1) a Google search
13 suggestion server on the Internet with (2) local memory of places on the Internet the user
14 previously searched for using a heuristic. (Trial Tr. at 954:1-956:7 (Dkt. 1624).) He further
15 explained that the Web module in the Gingerbread versions also blends results in a heuristic
16 manner. (*Id.* at 956:8-23.)

17 Under the plain and ordinary meaning of the claim language, which governs everything
18 other than “heuristic,” Apple’s evidence clearly showed infringement. The claim requires
19 heuristics “to locate information in the plurality of locations which include the Internet and local
20 storage media.” As discussed above, Apple offered the code and Dr. Snoeren’s related testimony
21 regarding heuristics to locate information in local storage media (e.g., contacts, music modules,
22 accessing information stored on the device) and the Internet (e.g., Google module, accessing
23 information on Google suggestion servers). Apple thus satisfied this element under the plain and
24 ordinary meaning of the claim language.

25 **d) determine at least one candidate item of information based upon the plurality of**
26 **heuristics.** Dr. Snoeren testified that the code running on the devices determines a candidate
27 based upon the plurality of heuristics, and showed videos demonstrating the functionality. (*Id.* at
28 945:6-948:23, 956:24-957:17.) Representative accused products admitted into evidence confirm

1 that the accused products return at least one candidate result when a search is executed.

2 **e) display representation of said candidate item of information.** Dr. Snoeren again
3 confirmed that he verified this result in the code in all ten accused devices and showed videos
4 demonstrating this functionality. (*Id.* at 945:6-948:23, 957:18-958:7.) Representative accused
5 products in evidence confirm that the accused products display a candidate result.

6 **f) wherein the information identifier is applied separately to each heuristic.**

7 Dr. Snoeren again confirmed based on his review of the code, which was admitted into evidence,
8 that the information identifier is applied separately to each heuristic and not dependent on other
9 heuristics. (*Id.* at 958:8-959:8.)

10 Because the evidence permitted only the conclusion that the accused devices meet all
11 elements, including element c—the only element Samsung disputed—Apple is entitled to JMOL
12 of infringement.

13 **B. No Substantial Evidence Supports the Non-Infringement Verdict.**

14 Samsung did not cross-examine Dr. Snoeren or put forward any contrary evidence or
15 argument on any element other than element c. And on element c, Samsung only disputed
16 whether the accused products include a heuristic to locate information in a plurality of locations
17 including the Internet. (Samsung did not dispute that the accused products include a heuristic to
18 locate information in local storage media.) The facts relevant to this issue were not in dispute.

19 The fact and expert witnesses called by Samsung agreed with Dr. Snoeren that the accused
20 Google Search Application communicates with the Google Suggestion Server and receives
21 information from that server. (Trial Tr. at 1560:15-19 (Dkt. 1716) (Bringert); *id.* at 1889:18-23,
22 1896:11-18, 1897:9-14 (Dkt. 1717) (Rinard).) They also agreed that the Google Suggestion
23 Server is on the Internet. (*Id.* at 1561:25-1562:8 (Dkt. 1716) (Bringert); *id.* at 1885:1-9 (Dkt.
24 1717) (Rinard).) And they agreed that the “blending” heuristic at issue combines (1) queries from
25 previous Internet searches stored on the accused device with (2) suggestions from a current
26 Internet search to decide what results to display in a single list to the user. (*Id.* at 1561:3-19 (Dkt.
27 1716) (Bringert); *id.* at 1889:18-25 (Dkt. 1717) (Rinard).) On rebuttal, Apple’s expert Dr.
28 Snoeren even used the diagram drawn by Google engineer Bjorn Bringert to illustrate how the

1 accused Samsung products satisfy this limitation. (*Id.* at 2817:1-2818:5 (4/22/14).)

2 The term “to locate information in the plurality of locations which include the Internet and
3 local storage media” was not construed, and thus was afforded its plain and ordinary meaning.
4 Once again, however, Samsung’s expert, Dr. Rinard, improperly invited the jury to import new
5 limitations into the claim language, effectively testifying under a narrowing claim construction
6 that Samsung never requested and the Court never ordered. To support its contention that the
7 accused Google Search Application does not locate information in the Internet, Dr. Rinard
8 testified that the Google Search Suggestion Server is what “found the information” on the
9 Internet, not the accused Google Search Application. (Trial Tr. at 1889:18-1890:5 (Dkt. 1717)
10 (Rinard); *see also id.* at 1006:24-1008:13 (Dkt. 1624) (Snoeren); *id.* at 3289:3-5, 3289:10-18
11 (4/29/14).) But the plain meaning of the claim language does not require the accused device or
12 application to search the Internet every time the user inputs a query. It instead requires a heuristic
13 to locate information in a plurality of locations that include the Internet. And there was no
14 dispute that the heuristic in question here locates information in the Internet because the Google
15 Search Application includes a module that locates information from the Google Search
16 Suggestion Server, and Samsung’s own witnesses conceded that the Google Search Suggestion
17 Server is on the Internet.

18 Samsung also offered testimony suggesting that the “blending” heuristic operates on
19 information already “located,” and therefore does not meet the requirement of a heuristic “to
20 locate information.” (*Id.* at 1890:11-21 (Dkt. 1717) (Rinard).) But that testimony was
21 inconsistent with the undisputed facts and the plain meaning of the claim, and therefore cannot
22 support a non-infringement verdict. The claim requires that the computer readable medium
23 contain instructions to “provide [an] information identifier to a plurality of heuristics to locate
24 information in the plurality of locations which include the Internet.” The accused Google Search
25 Application provides the search query to the blending heuristic. That heuristic uses rules of
26 thumb to combine information obtained from the Google Search Suggestion Servers on the
27 Internet with locally stored search history, in order to locate the most helpful Internet-based
28 results for the user. (*Id.* at 954:1-956:23 (Dkt. 1624) (Snoeren).) The fact that something else

1 *initially located* information on the Internet does not affect whether the heuristic *also* locates
2 information on the Internet.

3 Samsung's position on validity confirmed as much. In discussing freeWAIS-sf, Dr.
4 Rinard testified that a heuristic that acted on information to sort entries *after* they had already
5 been found from relevant sources satisfied the claim limitation requiring the heuristic to locate
6 information in the Internet. (*Id.* at 1928:9-20 (Dkt. 1717) & *id.* at 2916:25-2917:6 (4/25/14))
7 (discussing "relevance ranking" and affirming that heuristic for sorting entries "once it gets them
8 back from the two sources" was one of "the rules upon which is located information, as the claim
9 requires".)

10 Samsung's attempt to import additional limitations into the plain and ordinary meaning of
11 the claim—i.e., that (1) the Internet heuristic act on information before it is downloaded to the
12 device, (2) the heuristic search the Internet for information, rather than locate information in the
13 Internet, and (3) the heuristic be the first software component or process to locate the information
14 at issue—is improper. This is what the Federal Circuit rejected in *Moba*, and the record discloses
15 "no alternative basis upon which a reasonable jury could find" that Samsung does not infringe
16 claim 25. *Moba*, 325 F.3d at 1313-14. Instead, evaluating "the properly construed claims based
17 on the evidence presented," *Harris Corp.*, 417 F.3d at 1252, permits only one reasonable
18 conclusion—infringement.

19 **IV. NO REASONABLE JURY COULD CONCLUDE THAT SAMSUNG DID NOT**
20 **WILLFULLY INFRINGE THE '647 PATENT.**

21 To establish willfulness, Apple needed to prove that Samsung (1) acted despite an
22 objectively high likelihood that its actions constituted infringement of a valid patent, and (2)
23 knew, or it was so obvious that Samsung should have known, of this likelihood. *In re Seagate*
24 *Tech., LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007) (en banc). Evidence of copying supports a
25 finding of willfulness because it "may show what the accused infringer knew or should have
26 known about the likelihood of its infringement." *DePuy Spine, Inc. v. Medtronic Sofamor Danek,*
27 *Inc.*, 567 F.3d 1314, 1336 (Fed. Cir. 2009). Here, the evidence at trial permitted only one
28 reasonable conclusion: that Samsung willfully infringed the '647 patent. The evidence

1 established that Samsung deliberately copied the patented feature of the '647 patent, and
2 continued to infringe after Apple notified Samsung of its infringement of this patent in August
3 2010, and after Apple filed suit.

4 As the uncontroverted evidence at trial established, in announcing the iPhone, Apple gave
5 notice to the world that it had applied for over 200 patents relating to the new device. (*See, e.g.*,
6 PX118.) It is also undisputed that Samsung received notice specific to the '647 patent in August
7 2010, when Apple accused Samsung of copying the iPhone, and identified the '647 patent as an
8 exemplary patent infringed by Samsung phones using Android applications. (Trial Tr. at 1043:17-
9 18 (Dkt. 1714) (Undisputed Fact No. 13); PX132 at 15; *see also* PX3003 at 33:21-33:24 (Lee).)

10 Notwithstanding Apple's clear notice that the iPhone was covered by patented technology,
11 and express notice regarding the '647 patent, Samsung systematically copied the features of the
12 iPhone, based on directives from Samsung's highest executives. (*See* PX149 at 5 (crisis of
13 design); *see also* PX120; PX121; PX146; PX157; PX219.) Among other things, Samsung's
14 copying targeted the "data detectors"—software that identifies specific types of data in text (e.g.,
15 phone numbers, email addresses, and web pages) and provides users with actions to take based on
16 the type of data detected— used in Apple's iPhone and iPad products. (Trial Tr. at 789:23-803:1
17 (Dkt. 1624) (Deniau)). A Samsung internal development document from March 2010, which
18 compared a prototype Samsung phone with the iPhone, noted that the iPhone provided links to
19 phone numbers, email addresses, and other data through a tap or long press, while the Samsung
20 phone did not. (PX146 at 37.) The document recommended that Samsung's new phone improve
21 usability by adopting linking technology—the technology the jury found infringed the '647
22 patent. (*Id.*) Another Samsung document from August 2010, entitled "2011-2012 UX
23 Roadmap," proposed "detecting schedule" information in emails and applying that information to
24 a calendar application. (PX107 at 52.) The description of this proposed feature was accompanied
25 by a screenshot from an article about Apple's "data detectors," which was written by inventors of
26 the '647 patent and maintained on the website of one of the inventors. (*Compare id.*, with PX106
27 at 3; *see also* Trial Tr. at 883:11-884:11, 887:8-888:17, 889:18-891:4 (Dkt. 1624) (Mowry).)

28 Samsung thus not only copied from the iPhone, but also directly from the '647 patent's inventors.

1 Based on its copying from Apple's products and the inventors of the '647 patent, Samsung
2 knew or should have known that there was a high likelihood that its actions constituted
3 infringement of a valid patent. Yet Samsung continued to infringe the '647 patent even after
4 Apple provided express notice in August 2010, and then filed suit in February 2012. (Trial Tr. at
5 1043:17-20 (Dkt. 1714) (Undisputed Fact No. 13); PX132 at 15; *see also* PX3003 at 33:21-33:24
6 (Lee).)

7 Samsung repeatedly asserted at trial that it could have implemented an acceptable design-
8 around alternative in less than a day. (*See, e.g.*, Trial Tr. at 1797:21-1798:8 (Dkt. 1717) (Jeffay);
9 *id.* at 1587:25-1588:11 (Dkt. 1716) (Google engineer Hackborn testifying that “[c]hanges like
10 these shouldn't take more than a day for an engineer”).) Yet Samsung *never* designed around the
11 '647 patent. (*Id.* at 1249:2-10 (Dkt. 1714) (Velturo).) Instead, Samsung sold over 35 million
12 phones with the features infringing the '647 patent in the United States between August 2011 and
13 April 2014, the undisputed damages period for that patent. (PX142.) When Google modified the
14 generic Android source code to change the functionality relevant to infringement of the '647
15 patent, Samsung rewrote that code so that its phones continued to infringe much as they had
16 previously, thereby confirming Samsung's responsibility for the infringement. (Trial Tr. at
17 863:18-864:23 (Dkt. 1624) (Mowry).) Samsung's persistent infringement, despite repeated notice
18 and the purported availability of alternatives, permits only the conclusion that Samsung acted
19 despite an objectively high likelihood that its actions constituted patent infringement, and that it
20 knew or should have known of this likelihood. At trial, Samsung offered no countervailing
21 evidence regarding its willful infringement of the '647 patent, instead relying only on attorney
22 argument. Given the evidence, no reasonable jury could find that Samsung did not willfully
23 infringe the '647 patent.

24 **V. APPLE IS ENTITLED TO JUDGMENT THAT SAMSUNG FAILED TO PROVE**
25 **ITS AFFIRMATIVE DEFENSES.**

26 Samsung did not offer any evidence at trial on the affirmative defenses listed in its
27 Answer, including waiver, acquiescence, estoppel, laches, failure to mitigate, prosecution history
28 estoppel, prosecution laches, “acts of plaintiff,” and “actions of others.” (Dkt. 107.) Further,

1 none of these affirmative defenses even appeared in the Joint Pretrial Statement, which the parties
2 agreed specified the remaining issues of fact and law to be litigated. (Dkt. 1455-1 at 25 (“The
3 foregoing admissions having been made by the parties, and the parties having specified the
4 foregoing issues of fact and law remaining to be litigated, this order shall supplement the
5 pleadings and govern the course of trial of this action, unless modified to prevent manifest
6 injustice.”).) Samsung did not oppose Apple’s motion for judgment on these defenses during
7 trial. (See Dkt. 1804 at 3 (Apple requesting JMOL on affirmative defenses); Dkt. 1817 (Samsung
8 not including affirmative defenses in JMOL opposition).) Accordingly, Apple is entitled to
9 judgment as a matter of law on those defenses. See *S. Cal. Retail Clerks Union v. Bjorklund*, 728
10 F.2d 1262, 1264 (9th Cir. 1984) (“We have consistently held that issues not preserved in the
11 pretrial order have been eliminated from the action The very purpose of the pretrial order is
12 to narrow the scope of the suit to those issues that are actually disputed and, thus, to eliminate
13 other would-be issues that appear in other portions of the record of the case.”).

14 **VI. APPLE IS ENTITLED TO ENHANCED DAMAGES, SUPPLEMENTAL**
15 **DAMAGES, AND PREJUDGMENT INTEREST.**

16 The jury found that Samsung willfully infringed the ’721 patent. And as set forth above,
17 Apple is entitled to judgment as a matter of law that Samsung also willfully infringed the ’647
18 patent. Given Samsung’s past and current willful infringement, the Court should enhance
19 damages based on Samsung’s willful infringement. The Court should also award supplemental
20 damages and prejudgment interest.

21 **A. Substantial Damages Enhancements Are Warranted.**

22 The Court may “increase the damages up to three times the amount found or assessed”
23 because Samsung’s conduct was willful. See 35 U.S.C. § 284; *In re Seagate Tech.*, 497 F.3d at
24 1368. As discussed above, Samsung (1) acted despite an objectively high likelihood that its
25 actions constituted infringement of a valid patent, and (2) knew, or it was so obvious that
26 Samsung should have known, of this likelihood. *In re Seagate Tech*, 497 F.3d at 1371. The
27 existence of objective willfulness is a question of law. *Bard Peripheral Vascular, Inc. v. W.L.*
28 *Gore & Assocs., Inc.*, 682 F.3d 1003, 1005 (Fed. Cir. 2012). “The paramount determination in

1 deciding to grant enhancement and the amount thereof is the egregiousness of the defendant's
2 conduct based on all the facts and circumstances." *Read Corp. v. Portec, Inc.*, 970 F.2d 816, 826
3 (Fed. Cir. 1992), *abrogated on other grounds by Markman v. Westview Instruments, Inc.*, 52 F.3d
4 967, 975 (Fed. Cir. 1995). Factors that require consideration when assessing enhanced damages
5 include: (1) whether Samsung deliberately copied Apple's patented technology or designs; (2)
6 whether Samsung had a good-faith belief that the patents were invalid or not infringed; (3)
7 Samsung's litigation conduct; (4) Samsung's size and financial condition; (5) the closeness of the
8 case; (6) the duration of Samsung's misconduct; (7) remedial action taken by Samsung; (8)
9 Samsung's motivation for willfully infringing; and (9) whether Samsung attempted to conceal its
10 misconduct. *See Read Corp.*, 970 F.2d at 826-28.

11 Not all factors need to be present for a court to award enhanced damages; rather, a court
12 "must consider factors that render defendant's conduct more culpable, as well as factors that are
13 mitigating or ameliorating." *Id.* at 826. Once the jury finds willful infringement, enhancement is
14 appropriate so that the willful infringement finding will not be rendered meaningless, *see*
15 *Jurgens v. CBK, Ltd.*, 80 F.3d 1566, 1571-72 (Fed. Cir. 1996), and courts should provide a
16 justification if they decide not to enhance the award. *See Tate Access Floors, Inc. v. Maxcess*
17 *Techs., Inc.*, 222 F.3d 958, 972 (Fed. Cir. 2000).

18 **1. The Court Should Award Enhanced Damages for the '721 Patent**

19 The jury awarded \$2,990,625 in damages for Samsung's infringement of the '721 patent,
20 and also found Samsung's infringement willful. (Dkt. 1884 at 7, 9.) The egregiousness of
21 Samsung's infringement warrants trebling the jury award for this patent to the maximum statutory
22 amount of \$8,971,875.

23 On the first *Read* factor, extensive evidence showed that Samsung intentionally copied not
24 only the iPhone, but its "slide to unlock" technology in particular. For example, Samsung's own
25 development documents repeatedly demonstrated that Samsung intentionally copied the "slide to
26 unlock" feature from Apple's iPhone. (Trial Tr. at 649:21-650:3 (Dkt. 1623) (Cockburn); *see*
27 *also id.* at 2900:4-2902:3 (4/25/14) (Cockburn).) Dr. Cockburn testified at length regarding five
28 of those development documents, which made clear that Samsung recognized the benefits of the

1 '721 patented features and sought to incorporate those features and benefits into its own products.
2 (See PX119 at 11; PX120 at 28, 84; PX121 at 27, 100; PX157 at 19-20; PX219 at 14; *see also*
3 Trial Tr. at 639:5-650:3 (Dkt. 1623) (Cockburn); *id.* at 2900:4-2902:3 (4/25/14) (Cockburn).)
4 Courts have found that an accused infringer acted with objective willfulness where, as here, the
5 infringer copied products embodying the patents-in-suit. *See K-TEC, Inc. v. Vita-Mix Corp.*, 696
6 F.3d 1364, 1378 (Fed. Cir. 2012) (objectively high likelihood of infringement shown when
7 defendant deliberately copied and non-infringement theories and invalidity theories rejected on
8 summary judgment or by jury); *Power Integrations, Inc. v. Fairchild Semiconductor Int'l*, 725 F.
9 Supp. 2d 474, 477 (D. Del. 2010) (“meticulous study of products” followed by “blatant copying”
10 demonstrated objectively high risk of infringement), *aff'd*, 711 F.3d 1348 (Fed. Cir. 2013).

11 On the second *Read* factor, Samsung failed to offer a good-faith defense to Apple's '721
12 patent claim at trial. Samsung offered *no* infringement defense for five of the six products
13 accused of infringing the '721 patent. (Trial Tr. at 1980:1-1982:1 (Dkt. 1717) (Greenberg); *see*
14 *also id.* at 2859:22-2860:4 (4/22/14) (Cockburn).) And Samsung's non-infringement defense for
15 the Galaxy Nexus product turned on an erroneous interpretation of the claim term “unlock image”
16 that contradicted the plain language of the claims and the patent specification. (*See id.* at 2861:8-
17 2862:14 (Cockburn).) Further, Samsung asserted only a single invalidity defense based on the
18 combination of two prior art references that the PTO had already considered and rejected. (*See*
19 *id.* at 1996:4-1998:2 (Dkt. 1717) (Greenberg).) The jury's rejection of Samsung's infringement
20 and invalidity defenses confirms their objective lack of merit. With little or no evidence of non-
21 infringement and only insubstantial prior art defenses, the trial record proves that Samsung “acted
22 despite an objectively high likelihood that its actions constituted infringement of a valid patent.”
23 *In re Seagate Tech.*, 497 F.3d at 1371; *see also K-TEC*, 696 F.3d at 1378 (jury's rejection of
24 invalidity theories supported finding of objective willfulness).

25 On the fourth *Read* factor, Samsung has substantial resources to pay an enhanced damages
26 award: In the last quarter of 2013, Samsung held 36.0% of the United States smartphone market
27 with 10.9 million units sold in that quarter alone (PX222A1 at 26), and earned billions of dollars
28 on sales of infringing devices during the period covered by the suit (PX142 at 6). Trebling the

1 jury's damages award on the '721 patent to \$8.9 million would amount to a miniscule fraction of
2 the revenue that Samsung made on all the accused sales.

3 On the fifth *Read* factor, the case was not close as to the '721 patent, as discussed with
4 respect to factor two above. Further, the only issue relating to the '721 patent on which the jury
5 did not find in Apple's favor—infringement by the Galaxy SII products—was made without any
6 basis in the trial record, as discussed in Section I above.

7 On the sixth and seventh *Read* factors, duration of the infringement and remedial action
8 taken by Samsung, the evidence established that Samsung began infringing the '721 patent when
9 it issued in October 2011, and continued to infringe until January 28, 2013—nearly a year after
10 Apple filed suit in February 2012. (Trial Tr. at 654:10-11 (Dkt. 1623) (Cockburn).) Over that
11 period of time, Samsung sold millions of devices that infringed the '721 patent, generating many
12 millions of dollars in revenue. (PX142; PX222A1 at 7.)

13 On the *eighth Read* factor, Samsung's motivation for willfully infringing the '721 patent,
14 the evidence established that Samsung willfully infringed because it did not believe it could
15 compete with the iPhone fairly. As the documentary evidence showed, in February 2010,
16 Samsung was facing a "crisis of design" (PX149 at 5), understood that its "future success [was]
17 dependent on blunting Apple" (PX154 at 5), and believed that "[b]eating Apple [was] no longer
18 merely an objective" but a "survival strategy" (PX216 at 3). Samsung's internal development
19 documents reflected its deliberate strategy of copying hundreds of software features from the
20 iPhone, including Apple's patented "slide to unlock" technology, in order to make Samsung's
21 own products more competitive. (See PX120 at 28, 84; PX121 at 27, 100; PX157 at 19-20;
22 PX219 at 14.) And Samsung's strategy worked: Samsung's market share dramatically increased
23 in the periods after it copied the iPhone—a critical time in the development of the smartphone
24 market. (Trial Tr. at 1240:17-1242:20 (Dkt. 1714) (Vellturo).)

25 This is now the second lawsuit that Apple has brought against Samsung in an attempt to
26 stop its illegal activity. This is also the second lawsuit in which Samsung has been found to be a
27 willful infringer. (1846 Dkt. 1931 at 9; Dkt. 1884 at 7.) Yet Samsung remains as unrepentant as
28 ever: Samsung's lead counsel was recently quoted in a CNET article as saying the jury's verdict

1 in this case was a “win” for Samsung, that Apple “[hasn’t] collected a nickel” after years of
2 litigation, and that Apple “won’t see a dime from the most recent judgment.” (Sabri Decl. Ex. B.)
3 In another article, Samsung’s counsel was quoted as saying, “Apple hasn’t collected a penny—or
4 succeeded in taking any products off the market.” (*Id.* Ex. C.) Samsung’s ongoing and persistent
5 disregard for Apple’s patent rights warrants a substantial damages enhancement in this case.

6 **2. The Court Should Award Enhanced Damages for the ’647 Patent.**

7 For the same reasons, and for the reasons that Apple should be granted JMOL that
8 Samsung willfully infringed the ’647 patent (*see* Section IV, *supra*), the Court should also
9 enhance damages for Samsung’s willful infringement of the ’647 patent, trebling the amounts
10 awarded by the jury:

11 On the first *Read* factor, Samsung systematically copied hundreds of iPhone software
12 features, including the specific ’647 patented features at issue here. (*See, e.g.*, PX106 at 3;
13 PX107 at 52; PX146 at 37.)

14 On the second *Read* factor, Samsung lacked a good-faith invalidity defense to the ’647
15 patent, relying on a single invalidity reference (Sidekick) that detected only a single structure and
16 linked only a single action, rather than multiple structures and actions as required by the claim.
17 (*See* Dkt. 1804 at 1:8-24.) The jury rejected that defense, together with Samsung’s non-
18 infringement defense. These facts—especially when viewed together with evidence of
19 Samsung’s deliberate copying and failure to implement a non-infringing alternative—demonstrate
20 that Samsung “acted despite an objectively high likelihood that its actions constituted
21 infringement of a valid patent.” *In re Seagate Tech.*, 497 F.3d at 1371; *see also K-TEC*, 696 F.3d
22 at 1378.

23 On the fourth *Read* factor, as discussed above, the amounts Apple seeks to treble pale in
24 comparison to Samsung’s vast financial resources.

25 On the fifth *Read* factor, the case was not close with respect to the ’647 patent. The jury
26 rejected Samsung’s invalidity challenge. (Dkt. 1884 at 7.) The jury further found infringement
27 by all nine Samsung phones accused of infringing the ’647 patent. (*Id.* at 2.)

28 On the sixth *Read* factor, the duration of Samsung’s misconduct was lengthy. Apple first

1 notified Samsung of infringing the '647 patent on August 4, 2010. (Trial Tr. at 1043:17-20 (Dkt.
2 1714) (Undisputed Fact No. 13).) Yet, Samsung never stopped infringing, even though Samsung
3 claimed to have identified alleged non-infringing alternatives. Rather than stop infringing,
4 Samsung sold over 35 million phones that infringed the '647 patent over a more than two-year
5 period. (PX142; PX222A1 at 7.) Further, when Google modified the generic Android source
6 code to change the functionality relevant to infringement of the '647 patent, Samsung rewrote that
7 code so that its phones continued to infringe much as they had previously, thereby confirming
8 Samsung's responsibility for the infringement. (Trial Tr. at 863:18-864:23 (Dkt. 1624)
9 (Mowry).)

10 On the seventh *Read* factor, Samsung offered no evidence at trial that it ever designed
11 around the '647 patent. (Trial Tr. at 1249:2-10 (Dkt. 1714) (Vellturo).)

12 On the eighth *Read* factor, as discussed above, Samsung's motivation for willfully
13 infringing the '721 patent was to blunt Apple and divert its customers to Samsung. That
14 motivation applied equally to Samsung's willful infringement of the '647 patent.

15 **B. Supplemental Damages Are Warranted**

16 The jury awarded Apple \$119,625,000 for Samsung's infringing sales of ten product
17 models. (Dkt. 1884 at 8-9.) This award accounts for Samsung's infringing sales through April
18 2014. (*See* PX142; PX222A; Trial Tr. at 1211:15-1212:24 (Dkt. 1714) (Vellturo).) As this Court
19 has previously recognized (1846 Dkt. 2271 at 2), supplemental damages should be awarded to
20 compensate Apple for infringing sales not considered by the jury—here, for Samsung's infringing
21 sales occurring after April 2014. *See Finjan*, 626 F.3d at 1212-13 (ordering supplemental
22 damages to compensate patentee for uncompensated sales).

23 Apple requests that the Court calculate supplemental damages using the same
24 methodology that it applied in the 1846 case. The Court has discretion in determining how to
25 calculate post-verdict damages, *Stryker Corp. v. Davol Inc.*, 234 F.3d 1252, 1260 (Fed. Cir.
26 2000), and any uncertainty regarding that calculation should be resolved against the infringer,
27 *Gyromat Corp. v. Champion Spark Plug Co.*, 735 F.2d 549, 554-55 (Fed. Cir. 1984). The Court
28 previously concluded that the proper per-product rate should be calculated based on the jury's

1 verdict: “Because the jury returned an award for each product separately, the Court can simply
2 divide the jury award for each product by that product’s number of sales to calculate this per-
3 product amount.” (1846 Dkt. 2271 at 5 (citing *Hynix Semiconductor Inc. v. Rambus Inc.*, 609 F.
4 Supp. 2d 951, 964-65 (N.D. Cal. 2009)).) The per-product rate would then be multiplied by the
5 number of infringing units sold by Samsung after April 2014. (*Id.* at 5-6.)

6 The per-product rate is easily obtained from the present record. The verdict form
7 identifies the amount of damages awarded for each product. (Dkt. 1884 at 9.) Pages 6 and 8 of
8 PX142 identify the total number of units sold for the periods from August 2011 to December
9 2013, and January 2014 through April 2014, respectively. The calculation of the per-product rate
10 from these figures is simple arithmetic: (Per Product Total from Verdict Form) / (Total Product
11 Sales from PX142 at 6 and PX142 at 8). The results for the Galaxy S III and Galaxy Note II are
12 \$2.65 per unit and \$2.72 per unit, respectively. (Declaration of Marylee Robinson (“Robinson
13 Decl.”) ¶ 6.)

14 Multiplying these per-product rates by the new product unit sales will result in the
15 supplemental damages that should be added to the judgment. Samsung individually tracks the
16 sales of each of the relevant products by month, and it is Apple’s understanding that only the
17 Galaxy S III and the Galaxy Note II remain on sale. (Robinson Decl. ¶¶ 7-8.) It should not be
18 difficult for Samsung to provide the unproduced sales data for these two products since April
19 2014, which is the only information needed to calculate supplemental damages. Apple therefore
20 asks the Court to order a schedule for unit sales after April 2014 to be produced before the Court
21 enters final judgment.

22 C. Prejudgment Interest Is Warranted.

23 Under 35 U.S.C. § 284, a prevailing patent holder is entitled to prejudgment interest on
24 damages. *Gen. Motors Corp. v. Devex Corp.*, 461 U.S. 648, 656-57 (1983) (“[P]rejudgment
25 interest should be awarded under § 284 absent some justification for withholding such an
26 award.”). Prejudgment interest compensates the patentee for the delay in payment that results
27 when a defendant has infringed the patent and has retained the profits and royalties owed to the
28 patentee until a judgment occurs. Samsung has reaped the financial rewards of its infringement in

1 this case for nearly three years (from August 2011 to the present), and Mr. Quinn has recently
2 boasted about this to the press, proclaiming that despite Apple’s victories in three trials: “Apple
3 hasn’t collected a penny—or succeeded in taking any products off the market.” (Sabri Decl. Ex.
4 C.) Samsung’s comments reinforce the importance of an award of prejudgment interest and the
5 need to apply a meaningful interest rate to address the delay in payment that has occurred here.

6 “The rate of prejudgment interest and whether it should be compounded or
7 un-compounded are matters left largely to the discretion of the district court,” *Bio-Rad*
8 *Laboratories, Inc. v. Nicolet Instrument Corp.*, 807 F.2d 964, 969 (Fed. Cir. 1986), which “may
9 award interest at or above the prime rate.” *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 939 F.2d 1540,
10 1545 (Fed. Cir. 1991). “[W]hen the amount of the damages cannot be ascertained with precision,
11 any doubts regarding the amount must be resolved against the infringer.” *Lummus Indus., Inc. v.*
12 *D.M. & E. Corp.*, 862 F.2d 267, 274-75 (Fed. Cir. 1988) (internal quotation marks omitted).

13 In the 1846 Case, the Court “award[ed] prejudgment interest at the 52-week Treasury Bill
14 Rate, compounded annually.” (1846 Dkt. 2271 at 7-8.) Apple has accordingly prepared a
15 calculation applying that same methodology through July 10, 2014, with a daily amount to add
16 for each day thereafter. (Robinson Decl. Exs. 4 & 5.)

17 Nonetheless, the 52-week T-Bill rate represents a rate that is grossly inadequate to address
18 the true economic harm that Samsung’s delay has imposed. Between 2011 and the present, the
19 T-Bill rate has been less than 0.20 percent. (Robinson Decl. ¶ 10.) In comparison, Apple has
20 borrowed in the public markets at rates of as much as 4.45 percent. (*Id.* ¶ 9.) The prime rate,
21 which reflects private borrowing rates for businesses, is close to the rate at which Apple has
22 actually borrowed in the market, and is a far better indicator of the actual economic value of the
23 delay in payment for Samsung’s infringement than the T-Bill rate. There is no reason that
24 Samsung should reap the advantage of what is effectively a loan from Apple with minimal
25 interest for three years. Accordingly, Apple again urges the Court to calculate prejudgment
26 interest using the prime rate.

27 The Federal Circuit has endorsed awarding prejudgment interest at the prime rate, as have
28 numerous district courts in patent cases. *See, e.g., Lam, Inc. v. Johns–Manville Corp.*, 718 F.2d

1 1056, 1066 (Fed. Cir. 1983) (“The district court may ‘fix’ the interest and select an award above
 2 the statutory rate, or select an award at the prime rate.”) (citation omitted); *Sealant Sys. Int’l,*
 3 *Inc. v. TEK Global S.R.L.*, No. 5:11-cv-00774-PSG, 2014 WL 1008183, at *6 (N.D. Cal. Mar. 7,
 4 2014); *Atmel Corp. v. Silicon Storage Tech., Inc.*, 202 F. Supp. 2d 1096, 1101 (N.D. Cal. 2002),
 5 *aff’d*, 76 F. App’x 298 (Fed. Cir. 2003); *Junker v. HDC Corp.*, No. C-07-0594 JCS, 2008 WL
 6 3385819, at *6 (N.D. Cal. July 28, 2008); *Fresenius Med. Care Holdings, Inc. v. Baxter Int’l,*
 7 *Inc.*, No. C 03-1431 SBA, 2008 U.S. Dist. LEXIS 119930 (N.D. Cal. Mar. 21, 2008), at *3 (N.D.
 8 Cal. Apr. 4, 2008) (“Numerous other courts have also held that the prime rate is appropriate for
 9 calculating prejudgment interest in a patent case.”), *rev’d on other grounds by* 582 F.3d 1288
 10 (Fed. Cir. 2009). Moreover, the Sixth, Seventh, Eleventh, and D.C. Circuits have approved the
 11 use of the prime rate to calculate prejudgment interest on other awards under federal law. *See,*
 12 *e.g., Owner-Operator Indep. Drivers Ass’n Inc. v. Comerica Bank*, No. 12-3491, 2014 WL
 13 1316223, at *13 (6th Cir. Apr. 2, 2014) (using the prime rate to award interest following
 14 violations of the Interstate Commerce Commission Termination Act); *Gorenstein Entrs. Inc. v.*
 15 *Quality Care-USA, Inc.*, 874 F.2d 431, 436-37 (7th Cir. 1989) (using the prime rate to award
 16 interest for violations of the Lanham Act); *Sunderland Marine Mut. Ins. Co. v. Weeks Marine*
 17 *Constr. Co.*, 338 F.3d 1276, 1280 (11th Cir. 2003) (using the prime rate to award interest in an
 18 admiralty case); *Forman v. Korean Air Lines Co.*, 84 F.3d 446, 450-51 (D.C. Cir. 1996) (using
 19 the prime rate to award interest under the Warsaw Convention following an airline disaster).

20 Apple has prepared a separate calculation of \$6,468,029 reflecting prejudgment interest at
 21 the prime rate, compounded annually, through July 10, 2014, with a daily amount of \$11,040.36
 22 to add each day thereafter. (Robinson Decl. Exs. 6 & 7.) Both this calculation and the interest
 23 calculation using the T-Bill rate (\$261,612) were prepared using the same methods employed in
 24 Apple’s submissions in the 1846 case. (*See* 1846 Dkt. 2876-3, ¶¶ 16-20.)

25 **D. Apple Requests that the Court Award Supplemental Damages and**
 26 **Prejudgment Interest at this Time.**

27 In the 1846 Case, the Court concluded that the calculation of supplemental damages and
 28 prejudgment interest should await the conclusion of the merits appeal. For three reasons, Apple

1 believes that a current calculation would be more efficient and sensible here. First, there are no
2 meaningful legal issues regarding how supplemental damages should be calculated. Second, the
3 calculations are themselves simpler, involving only two products (Galaxy S III and Galaxy Note
4 II) and four months. Third, there is no reason to delay the calculation and award of these
5 amounts, and performing the calculations now will eliminate the need for any future work by the
6 Court if the judgment is affirmed on appeal. Thus, Apple requests that the Court order Samsung
7 to produce the relevant sales figures, complete the calculation, and include the amounts in the
8 final judgment entered after the resolution of post-trial motions.

9 **VII. APPLE IS ENTITLED TO JUDGMENT OR A NEW TRIAL ON SAMSUNG'S**
10 **CLAIM FOR INFRINGEMENT OF CLAIM 27 OF THE '449 PATENT.**

11 No reasonable jury could have found that Apple's iPhone 4, iPhone 4S, iPhone 5, iPod
12 touch 4th Generation, and iPod touch 5th Generation products infringe claim 27 of the '449
13 patent. The evidence presented at trial—including the admissions of Samsung's expert—failed to
14 establish that Apple's products satisfy at least four limitations required by claim 27. The Court
15 should accordingly grant judgment of non-infringement and vacate the \$158,400 damages award
16 or, at the very least, grant a new trial on infringement and damages because the verdict is contrary
17 to the clear weight of the evidence.

18 *First*, Samsung failed to prove that Apple's iPhone 4S, iPhone 5, and iPod touch 5th
19 Generation products contain a “reproducing circuit which reproduces . . . a sound signal in
20 synchronous to said moving image signal.” (JX22 at 18:24-26.) For this element, Samsung's
21 expert Mr. Parulski merely pointed to an “audio circuit” shown in block diagrams for these
22 products. (Trial Tr. at 2609:22-2610:23 (4/22/14) (Parulski); SDX3741-SDX3742; *see also*
23 DX351A at 351.1798 (block diagram for iPhone 5), 351.1572 (iPhone 4S), 351.2558 (iPod touch
24 5th Generation).) But Apple presented uncontroverted evidence that the “audio circuit” identified
25 by Mr. Parulski—at least for the iPhone 4S, iPhone 5, and iPod touch 5th Generation—does not
26 perform *any* audio processing, let alone the required synchronization of audio with video.
27 Specifically, Apple's SOC engineer Tim Millet testified:

28 Q. And what audio processing, if any, does this audio subsystem perform in the

1 iPhone 5?

2 A. *None.*

3 (Trial Tr. at 2699:22-24 (4/22/14) (iPhone 5) (emphasis added); *see also id.* at 2700:7-13 (same
4 for iPhone 4S and iPod touch 5th Generation).) Mr. Millet’s testimony was never challenged or
5 rebutted.

6 Apple also established that the audio subsystem identified by Mr. Parulski is not even
7 *capable* of reproducing synchronous audio. As Mr. Millet explained, Apple’s “software team
8 decided to not use [the audio subsystem] because they found that it was less efficient, less
9 flexible, and didn’t really save them any power.” (*Id.* at 2699:25-2700:13.) Samsung did not
10 challenge or rebut that testimony. On the contrary, Samsung’s ’239 patent expert Dr. Schonfeld
11 confirmed that an “integrated circuit by itself is just hardware” that “doesn’t actually do
12 anything” until “you . . . write your own source code and tell it what to do, how to do it, when to
13 do it” (*Id.* at 2558:1-4 (4/21/14).) Because the evidence presented at trial conclusively
14 demonstrates that the component identified by Mr. Parulski as the “reproducing circuit” does *not*
15 process audio and is incapable of reproducing synchronous audio, the evidence does not support
16 the jury’s infringement verdict.⁸

17 *Second*, Samsung failed to establish that any accused product includes “*a compressor*
18 which compresses said digital signal . . . by using a *different* compressing method for moving
19 image signals and for still image signals” or “*a decompressor* which decompresses said
20 compressed data by using a *different* decompressing method according to whether said recorded
21 compressed data is a moving image signal or a still image signal.” (JX22 at 18:13-16, 18:20-23
22 (emphases added).) As both parties’ experts agreed, the plain meaning of this claim language
23 requires “a compressor” that compresses *both* still images and videos. (Trial Tr. at 2605:14-18
24 (4/21/14) (Parulski) (“The limitation requires a compressor that takes the digital signal and uses
25

26 ⁸ If the Court grants judgment of non-infringement only with respect to Apple’s iPhone
27 4S, iPhone 5, and iPod touch 5th Generation products, it should also grant judgment of no
28 damages for those products. Doing so would reduce the damages award for the ’449 patent from
\$158,400 to \$61,188. (*See* Dkt. 1884 at 12.)

1 different compressing methods for photos and videos.”); *id.* at 2768:18-23 (4/22/14) (Storer)
 2 (“[I]t has to be a single compressor that has these two different methods built into it, one for
 3 images, one for videos.”).) Both experts likewise agreed that the claim language also requires “a
 4 decompressor” that decompresses *both* still images and videos. (*Id.* at 2608:20-24 (4/21/14)
 5 (Parulski); *id.* at 2775:1-10 (4/22/14) (Storer).)

6 The undisputed evidence demonstrated, however, that Apple’s products use *separate and*
 7 *distinct* components to compress/decompress still images and videos. Both parties’ experts and
 8 Apple’s engineer testified that a JPEG encoder compresses/decompresses still images, an H.264
 9 encoder compresses videos, and an H.264 decoder decompresses videos. (*Id.* at 2605:14-
 10 2606:23, 2608:10-2609:11 (4/21/14) (Parulski); *id.* at 2693:3-24 (4/22/14) (Millet); *id.* at
 11 2771:11-2775:16 (Storer); *see also* SDX3729, 3730, 3737, 3738.) The uncontroverted evidence
 12 also established that the JPEG and H.264 encoders/decoders in Apple’s products:

- 13 • are designed by different companies (Trial Tr. at 2693:13-2694:7 (4/22/14)
 14 (Millet); *id.* at 2772:2-19 (Storer); *id.* at 2644:4-16 (Parulski));
- 15 • are at physically separate locations on the chip (*id.* at 2696:9-2697:3, 2697:15-
 16 23 (Millet); *id.* at 2772:23-2773:19 (Storer); PX294 at 18; DX351A at
 17 351.3472);
- 18 • do not share *any* common circuitry for compressing/decompressing still images
 19 and videos (Trial Tr. at 2697:4-2698:10 (4/22/14) (Millet); *id.* at 2773:23-24
 20 (Storer)); and
- 21 • are on separate power domains, meaning that each can be turned on or off
 22 independently (*id.* at 2694:11-16, 2695:15-2696:8 (Millet); *id.* at 2773:14-16
 23 (Storer)).

24 From this evidence, a reasonable jury could only have found that Apple’s products do not contain
 25 “a compressor” for compressing (or “a decompressor” for decompressing) both still images and
 26 videos as claim 27 requires.⁹

27 ⁹ The ’449 patent teaches that the claimed invention used a single compressor (or
 28 decompressor) for still images and videos to “sav[e] . . . circuitry” because the JPEG and MPEG
 compression/decompression standards used at that time were similar. (JX22 at 4:16-20; *see also*
 Trial Tr. at 2769:2-2770:6 (4/22/14) (Storer).) But that is no longer true today. As Dr. Storer
 explained, the JPEG and H.264 compression/decompression standards used in Apple’s products
 are very different from one another and thus use separate circuitry. (Trial Tr. at 2695:15-2696:8
 (4/22/14) (Millet); *id.* at 2773:20-2775:16 (Storer).)

1 Mr. Parulski did not dispute any of these facts or offer contrary testimony. Instead, he
2 opined that the JPEG and H.264 encoders/decoders—along with several other components that
3 have “nothing” to do with image or video compression (*id.* at 2694:17-2695:6 (Millet))—are part
4 of a single “compressor”/“decompressor” because they are shown on a functional block diagram
5 that identifies a set of high-performance components that do not have real-time requirements. (*Id.*
6 at 2605:14-2606:23, 2644:4-13 (Parulski); *see also id.* at 2695:7-14 (Millet).) But Mr. Parulski’s
7 identification of separate and distinct encoders as a single “compressor” (and of separate and
8 distinct decoders as a single “decompressor”) is inconsistent with the plain meaning of the claim
9 language. It therefore cannot support the jury’s infringement verdict. *See Smith & Nephew,*
10 *Inc. v. Arthrex, Inc.*, 453 F. App’x 977, 980 (Fed. Cir. 2011) (reversing the denial of JMOL of
11 non-infringement because the plaintiff’s “theory of infringement is inconsistent with the plain
12 language” of the asserted claim); *see also E-Pass Techs., Inc. v. 3Com Corp.*, 473 F.3d 1213,
13 1220 (Fed. Cir. 2007) (affirming summary judgment of non-infringement in part because the
14 district court properly concluded that no reasonable jury could find that the accused devices were
15 “cards” using the plain meaning of the word “card”).

16 *Third*, Samsung failed to prove that any accused product contains a “recording circuit”
17 that “records each one of said plurality of image signals with classification data.” (JX22 at 18:32-
18 33.) During his cursory, two-sentence infringement testimony regarding this claim limitation,
19 Mr. Parulski identified a NAND memory circuit in Apple’s products as the “recording circuit” but
20 *never* explained how it supposedly records images with classification data. (*See* Trial Tr. at
21 2615:22-2616:12 (4/21/14) (Parulski).) Nor could he. The evidence at trial established that
22 Apple’s Camera Roll—like the ALL folder 608 in the ’449 patent—includes *all* photos and
23 videos taken with the device and therefore is not a “classification.” (*Id.* at 2637:9-16 (4/22/14)
24 (Parulski); *id.* at 2762:10-16, 2775:17-2778:24 (Storer); JX22 at 7:3-7, fig. 6.) The evidence
25 accordingly does not support the jury’s infringement verdict for this limitation either.

26 *Finally*, Samsung failed to establish that any accused product contains a “list ... as a
27 search mode.” (JX22 at 18:27-30.) Unlike the ’449 patent, Apple’s Camera Roll does not display
28 a list, but instead displays an array of thumbnails that the user may browse. (Trial Tr. at 2761:24-

1 2766:24 (4/22/14) (Storer.) As Mr. Parulski admitted, that is precisely what the claimed
2 invention of the '449 patent *avoids*. (*Id.* at 2633:18-2635:21 (Parulski); *see also id.* at 2759:10-
3 2760:10, 2767:11-2768:14 (Storer); JX22 at 1:24-44.)

4 **VIII. APPLE IS ENTITLED TO JUDGMENT THAT ITS IPAD PRODUCTS DO NOT**
5 **INFRINGE CLAIM 15 OF THE '239 PATENT.**

6 In its preliminary instructions given on the first day of trial, the Court instructed the jury
7 that Samsung's claims against Apple included allegations that Apple's iPad (as well as iPhone)
8 products infringed claim 15 of the '239 patent. (Trial Tr. at 294:1-8 (Dkt. 1622).) That
9 instruction reflected Samsung's claim for infringement of the '239 patent by Apple's iPhone and
10 iPad products, as well as Apple's counterclaim for a declaratory judgment of non-infringement of
11 the '239 patent by those same products, both of which were set forth in the parties' Amended
12 Joint Pretrial Statement. (Dkt. 1455-01 at 2, 3, 8.) On April 18, 2014—after two years of
13 litigating these claims and during the third week of trial—Samsung informed Apple that it was no
14 longer accusing the iPad 2, iPad 3, iPad 4, and iPad mini of infringement. (Dkt. 1764-5.)
15 Samsung subsequently failed to present any evidence of infringement by Apple's iPad products at
16 trial. (*See* Trial Tr. at 2529:20-23 (4/21/14) (Schonfeld).) In light of that failure, the Court
17 should grant judgment as a matter of law that Apple's iPad products do not infringe claim 15 of
18 the '239 patent.

19 Judgment is proper under these circumstances. For example, in *Strub v. Axon Corp.*, 168
20 F.3d 1321, 1998 WL 537721 (Fed. Cir. Aug. 17, 1998) (unpublished), the Federal Circuit
21 reversed the district court's denial of the plaintiff's motion for JMOL of validity as an abuse of
22 discretion. Although the defendant's invalidity claim was part of the pre-trial order, the
23 defendant failed to present any evidence of invalidity and waited until the close of evidence to
24 withdraw the cause of action. *Id.* at *10-11. The Court concluded that "[w]ithdrawal of a clearly
25 presented claim at such a late stage in the proceeding was clearly prejudicial to [the plaintiff]
26 which was forced to prepare a defense to this claim in advance of trial." *Id.* at *11. Similarly, in
27 *Voda v. Medtronic Inc.*, 899 F. Supp. 2d 1188 (W.D. Okla. 2012), *aff'd*, 541 F. App'x 1003 (Fed.
28 Cir. 2013), *cert. denied*, 2014 U.S. LEXIS 3118 (U.S. May 4, 2014), the district court granted

1 JMOL of validity where the jury had been instructed about the defendant's invalidity claims but
 2 the defendant presented no evidence of invalidity at trial and attempted to withdraw the claim on
 3 the sixth day of trial. *Id.* at 1193. As in these cases, Samsung's belated withdrawal of its
 4 infringement allegations directed to Apple's iPad products during the third week of trial warrants
 5 the entry of judgment that Apple's iPad products do not infringe claim 15 of the '239 patent.¹⁰

6 **IX. SAMSUNG'S IMPROPER AND PREJUDICIAL STATEMENTS REQUIRE A**
 7 **NEW TRIAL.**

8 A new trial is appropriate under Rule 59 where "the verdict is contrary to the clear weight
 9 of the evidence," "the trial was not fair to the party moving," or "to prevent a miscarriage of
 10 justice." *Molski*, 481 F.3d at 729 (internal quotation marks omitted); *see also Rattray v. City of*
 11 *Nat'l City*, 51 F.3d 793, 800 (9th Cir. 1994) (new trial granted to prevent "miscarriage of
 12 justice"). As explained below, Samsung's improper and prejudicial statements to the jury warrant
 13 a new trial on infringement for the '414 and '959 patents (in the event that the Court does not
 14 grant JMOL of infringement), a new trial on willfulness for all patents other than the '721 patent
 15 (and also other than the '647 patent if the Court grants JMOL of willfulness for that patent), and a
 16 new trial on damages for all five of Apple's asserted patents.

17 **A. A New Trial Should be Granted to Correct Samsung's False Assertions that**
 18 **Apple Has Never Practiced the '172, '414, and '959 Patents.**

19 As Apple disclosed during discovery—and was prepared to demonstrate at trial—Apple
 20 uses the '172, '414, and '959 patents in its own products. (*See* Dkt. 1567-3 (expert report
 21 demonstrating that Apple practices claim 27 of the '172 patent); Dkt. 1567-4 (expert report
 22 demonstrating that Apple practices claim 11 of the '414 patent and claim 34 of the '959 patent).)
 23 While the Court precluded Apple from affirmatively contending at trial that it practices these
 24 patents (Dkt. 1398 at 3), the Court nonetheless permitted Samsung to repeatedly tell the jury that
 25

26 ¹⁰ Indeed, by moving for JMOL on Apple's invalidity claims for the '239 and '449
 27 patents on the basis that "Apple failed to dispute validity" at trial (Dkt. 1806-1 at 9), Samsung
 28 apparently agrees that JMOL is appropriate when the party bearing the burden of proof withdraws
 a claim during (or just before) trial and does not present evidence on that claim during trial.

1 Apple has *never* practiced any of these *patents* (as opposed to just the asserted claims)—even
 2 though those statements were demonstrably false. Despite Apple’s requests, the Court then
 3 refused to permit Apple to correct or rebut Samsung’s false assertions and refused to issue any
 4 curative instruction. Allowing the jury to reach a verdict based on false information presented by
 5 Samsung was manifestly unfair to Apple and requires a new trial as to infringement for the ’414
 6 and ’959 patents, willfulness for all patents other than the ’721 patent, and damages for all five
 7 asserted patents. *See Wharf v. Burlington N.R.R. Co.*, 60 F.3d 631, 637-638 (9th Cir. 1995)
 8 (granting new trial where defendant’s counsel “misled the court and the jury” by arguing false
 9 fact to jury, thereby “prevent[ing] [the plaintiff’s] claim from being fully and fairly presented”).

10 During opening statements, Samsung’s counsel repeatedly made the false assertion that
 11 Apple does not practice the ’172, ’414, and ’959 patents and has never used those patents in
 12 Apple’s own products:

- 13 • “The way you know that Apple think that’s a nuisance, because *in the iPhone,*
 14 *they don’t use that [’172] patent, never have. Have never used it. The iPhone*
does it differently.” (Trial Tr. at 386:17-19 (Dkt. 1622) (emphasis added).)
- 15 • “So in other words, the survey participants are told, ‘you either use Apple’s
 16 [’414] patent’ which, again, this is another one, *Apple doesn’t use this, it’s not*
in any iPhone, never has been” (*Id.* at 391:3-5 (emphasis added).)
- 17 • “But, again, this search capability that, you know, they claim to have a [’959]
 18 patent on, *it’s not something that they have ever used. It’s never been done on*
the iPhone.” (*Id.* at 401:22-24 (emphasis added).)

19 (*See also id.* at 357:18, 359:6-12, 386:25-387:2, 413:22-414:1 (Samsung’s opening statement).)

20 After Samsung’s counsel opened the door on this issue, Apple sought permission from the Court
 21 to introduce evidence responding to and correcting the false assertions. (Dkt. 1567 at 5-6.) Apple
 22 also asked the Court to issue a curative instruction to minimize the prejudice resulting from
 23 Samsung’s misstatements. (*Id.* at 6.) The Court denied Apple’s requests. (Dkt. 1578.)

24 Samsung then capitalized on that ruling with impunity throughout the trial. During cross-
 25 examination of Apple’s damages expert, Samsung’s counsel asked questions based on the
 26 assumption that Apple does not use the asserted patents—knowing full well that, pursuant to the
 27 Court’s orders, Dr. Vellturo could not testify otherwise. (*E.g.*, Trial Tr. at 1433:14-22 (Dkt.
 28 1715) (Vellturo).) Samsung’s counsel also suggested to the jury that any damages awarded

1 should be reduced because Apple does not practice the asserted patents. (*E.g., id.* at 3270:20-23
2 (4/29/14) (claiming that Apple “seeks lots of money for things that Apple itself does not even
3 use”); *id.* at 3328:23-3329:3, 3330:11-20.) And in closing, Samsung’s counsel argued—
4 repeatedly and counterfactually—that Samsung could not have copied the asserted patents
5 because they have never been used in Apple’s products. (*Id.* at 3256:24-25 (“You can’t copy it if
6 it’s not there, if Apple doesn’t practice it.”); *id.* at 3257:12-3258:2 (“If it’s not in your product,
7 someone can’t copy it. And why would someone come to your product if you’re not practicing
8 those same patents.”); *id.* at 3265:23-3266:8 (“By the way, it wasn’t practicing most of these
9 patents, at this point all of them.”); *id.* at 3277:12 (“[T]he iPhone doesn’t practice most of these
10 patents.”); *id.* at 3287:18-3288:1 (“Well, we’ve already seen that most of these patents aren’t
11 used in the iPhone.”).)¹¹

12 What began as an order limiting what *Apple* could affirmatively contend at trial on a
13 single issue thus morphed into a license for *Samsung* to make numerous false and misleading
14 statements to the jury knowing that Apple could not rebut them. This course of events not only
15 undermined Apple’s infringement, willfulness, and damages arguments on the merits but also
16 changed the tenor of the entire trial—all to Apple’s prejudice. By allowing Samsung’s
17 assertions to go unrebutted and refusing to issue any curative instruction, the Court enabled
18 Samsung to cement in the jury’s mind that Apple has never practiced the ’172, ’414, and ’959
19 patents and permitted the jury to reach a verdict and calculate damages based on that false
20 information. At this point, the only appropriate remedy is a new trial on those issues affected by
21 the misstatements. *See, e.g., Wharf*, 60 F.3d at 637-38 (granting new trial where the defendant’s
22 counsel “misled the court and the jury” by arguing a false fact to the jury); *United States v.*
23 *Schuler*, 813 F.2d 978, 981-82 (9th Cir. 1987) (granting new trial in light of attorney misconduct
24 where the trial court failed to issue a curative instruction).

25 The Court’s prior order precluding Apple from contending that it practices the ’172, ’414,

26
27 ¹¹ The Court granted Apple a continuing objection to these and similar statements
28 concerning Apple’s practicing of the asserted patents. (Trial Tr. at 617:7-11 (Dkt. 1623)
(Christie).)

1 and '959 patents does not justify Samsung's presentation of false information to the jury. Under
2 the curative instruction rule, once Samsung represented to the jury that Apple had never practiced
3 any claim of the patents, the Court had an obligation to permit Apple to rebut those assertions.
4 *See Henderson v. George Wash. Univ.*, 449 F.3d 127, 140-41 (D.C. Cir. 2006) (finding abuse of
5 discretion where trial court did not permit introduction of previously excluded evidence when
6 opposing party "opportunistically used [the prior exclusion] ruling not only to shield themselves
7 from potentially damaging evidence, but also to use it as a sword to slice through the foundation
8 of much of the appellant's case."); *see also United States v. Sine*, 493 F.3d 1021, 1037 (9th Cir.
9 2007) ("[T]he 'opening the door' principle allows parties to introduce evidence on the same issue
10 to rebut any false impression that might have resulted from the earlier admission." (citation
11 omitted)); *United States v. Rosa*, 11 F.3d 315, 335 (2d Cir. 1993) (otherwise inadmissible
12 evidence can be admitted "when it is needed to rebut a false impression that may have resulted
13 from the opposing party's evidence"); *Dillon, Read & Co. v. United States*, 875 F.2d 293, 300
14 (Fed. Cir. 1989) (trial court "has a duty" to prevent false information from being submitted to fact
15 finder).

16 The unjustness of precluding Apple from rebutting Samsung's repeated false assertions is
17 further illustrated when considering the context in which this issue first arose—the Court's case
18 narrowing procedure. Apple was precluded from introducing critical evidence at trial not because
19 of any determination that the information was not relevant under FRE 402 or that the information
20 would be prejudicial or risk jury confusion under FRE 403. Rather, Apple was precluded because
21 the Court's case narrowing process limited Apple to five asserted claims (which amounted to one
22 for each asserted patent) and Apple had not identified the practiced claims as among those five
23 asserted claims. But adherence to a case narrowing procedure cannot justify depriving Apple of
24 the right to present the truth about its property rights—especially after Samsung presented the
25 jury with a counterfactual version of events regarding Apple's practicing of its own patents. *Cf.*
26 *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1312-13 (Fed. Cir. 2011)
27 (suggesting that a case narrowing procedure could violate the patentee's due process rights where
28 it results in preventing the patentee from introducing evidence concerning unasserted claims that

1 “present[] unique issues as to liability or damages”).

2 Furthermore, when the Court initially precluded Apple from contending that it practiced
3 certain claims of the patents, the Court stated that its concern was related to whether Apple’s
4 products could be considered acceptable non-infringing alternatives to the asserted claims. (Dkt.
5 1398 at 3; Dkt. 1411 at 67:5-9 (“I just want to clarify this one issue, this one defense based on
6 practicing non-asserted claims to a Samsung argument that Apple products are non-infringing
7 alternatives. . . .”); Dkt. 1411 at 55:13-16 (“It is not fair to . . . say we are shielding it from any
8 invalidity challenge, but we’re using it as a sword to prevent you from using it as a non-infringing
9 alternative.”).) But Samsung never made such a claim at trial. Instead, Samsung used the Court’s
10 preclusion order to belittle the value of Apple’s patents and to argue non-infringement and
11 invalidity—issues entirely unrelated to the one initially articulated by the Court. The result was
12 manifestly unfair to Apple and warrants a new trial on infringement for the ’414 and ’959 patents,
13 a new trial on willfulness for all patents other than the ’721 patent, and a new trial on damages for
14 all five Apple patents.

15 **B. A New Trial Should Be Granted to Correct Samsung’s Prejudicial References**
16 **to the Possibility of a Permanent Injunction.**

17 There was no legitimate reason for Samsung to discuss the possibility of permanent
18 injunctive relief during this trial on liability and damages. Nevertheless, Samsung’s counsel
19 made the following remark to the jury during opening statements:

20 Yet Apple is here literally seeking billions of dollars for
21 particular software configurations that are under the hood in the
22 phone that most consumers are not even aware that it’s there, and
23 they want to take that big number not only to the bank, not only to
the bank, *but to get an order saying that none of these phones can
be sold in the United States anymore.*

24 (Trial Tr. at 358:19-24 (Dkt. 1622) (emphasis added).)

25 Although the Court prohibited Samsung from making further reference to Apple’s
26 permanent injunction request (*id.* at 615:16 (Dkt. 1623) (Sohn)), the Court denied Apple’s request
27 for curative and final jury instructions to address the harm caused by Samsung’s improper
28 statement. Apple’s requested instructions were necessary given Samsung’s improper references

1 to the possibility of injunctive relief as a consequence of liability. The law is clear that whether to
 2 grant equitable remedies—like injunctive relief—is the exclusive province of the Court and
 3 should not influence the jury’s decision on the merits of the case. *See Shannon v. United States*,
 4 512 U.S. 573, 576 (1994) (recognizing “the well-established principle that a jury is to base its
 5 verdict on the evidence before it, without regard to the possible consequences of the verdict”); *id.*
 6 at 579 (“Information regarding the consequences of a verdict is therefore irrelevant to the jury’s
 7 task.”); *see, e.g., Broadcom Corp. v. Emulex Corp.*, No. 09-CV-01058-JVS-AN (C.D. Cal. Aug.
 8 10, 2011), Dkt. 770 at 2 (excluding any reference to the possibility of permanent injunctive relief
 9 before the jury in a patent case); *Ciena Corp. v. Corvis Corp.*, 352 F. Supp. 2d 526, 529 (D. Del.
 10 2005) (same); *Computer Assocs. Int’l, Inc. v. Am. Fundware, Inc.*, 831 F. Supp. 1516, 1530 (D.
 11 Colo. 1993).

12 Samsung invited the jury to consider the possibility of a permanent injunction in assessing
 13 Apple’s claims—to decide the case based on the potential consequences of the verdict, not the
 14 facts or the law. Based on Samsung’s improper statement, the jury could have decided to reduce
 15 the damages it awarded to Apple or, even worse, the jury could have found no liability on certain
 16 patents as a way to reduce the impact of any injunction. The Court’s refusal to give Apple’s
 17 proffered instructions to address Samsung’s highly prejudicial statements is accordingly grounds
 18 for a new trial on infringement for the ’414 and ’959 patents, a new trial on willfulness for all
 19 patents other than the ’721 patent, and a new trial on damages for all five of Apple’s asserted
 20 patents. *See, e.g., Schuler*, 813 F.2d at 982.

21 **C. A New Trial Should Be Granted to Correct Samsung’s Prejudicial References**
 22 **to the Federal Circuit’s Preliminary Injunction Decision.**

23 During opening statements, Samsung’s counsel misleadingly suggested to the jury that the
 24 Federal Circuit held that Samsung was “entitled” to use Apple’s universal search feature:

25 What happened is they sued on a different search patent.
 26 They sued on the ’604 patent, not this one, and they went to court
 27 and they got an injunction against our doing this type of search.
 28 We didn’t think it was right. We didn’t agree, but we complied.
 And so we – it wasn’t hard to do. I mean, we turned that off.

We appealed it, and the court of appeals reversed and said

1 we were right, Apple was wrong, *we're entitled to do it*, and then
2 dropped that patent.

(Trial Tr. at 402:7-15 (Dkt. 1622) (emphasis added).)

3 Samsung's statement regarding the Federal Circuit's preliminary injunction decision was
4 incorrect. Even Samsung tacitly admitted as much in its opposition to Apple's motion for a
5 curative instruction. (Dkt. 1571 at 12-13.) Yet, the Court rejected Apple's proposed curative and
6 final jury instructions to address the issue. (*See* Dkt. 1578; Dkt. 1758 at 120-23.) Emboldened by
7 the Court's ruling, Samsung again improperly used the Federal Circuit's preliminary injunction
8 decision during the trial when cross-examining Apple's damages expert. (*See, e.g.*, Trial Tr. at
9 1342:5-12 (Dkt. 1715) (Velluro).)

10 Samsung's statements regarding the Federal Circuit's preliminary injunction decision
11 were highly prejudicial to Apple. They unfairly suggested to the jury that an appeals court sided
12 with Samsung and against Apple on an issue that was relevant in the current trial, when in fact the
13 Federal Circuit's decision had no relevance to the issues that were before the jury. Samsung's
14 opening statement also improperly suggested that the appeals court somehow ruled that Samsung
15 is entitled to use Apple's patented universal search feature claimed *in the '959 patent*, even
16 though the '959 patent was not at issue in the appeal.¹² The Court's refusal to give Apple's
17 proffered instructions to address Samsung's highly prejudicial statements warrants a new trial on
18 infringement, willfulness, and damages for the '959 patent. *See, e.g., Schuler*, 813 F.2d at 982.

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26 ¹² The prejudice to Apple is even more pronounced when considering that Apple was
27 precluded from referencing the fact that two prior juries found Samsung liable for infringing
28 Apple's patents. (*See, e.g.*, Trial Tr. at 263-64 (Dkt. 1621) (precluding Apple from mentioning
the 1846 litigation during its opening statement).)

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