

ALERT

Federal Circuit Patent Bulletin: *Apple, Inc. v. Samsung Elecs. Co.*

December 17, 2015

“When a patentee alleges it suffered irreparable harm stemming from lost sales solely due to a competitor’s infringement, a finding that the competitor’s infringing features drive consumer demand for its products satisfies the causal nexus inquiry.”

On December 16, 2015, in *Apple, Inc. v. Samsung Elecs. Co.*, the U.S. Court of Appeals for the Federal Circuit (Prost, Moore,* Reyna) vacated and remanded the district court’s order denying Apple’s motion for a permanent injunction following a judgment entering the jury verdict that Samsung infringed, *inter alia*, U.S. Patents No. 5,946,647, No. 8,046,721, and No. 8,074,172, which related to slide-to-unlock iPhone technology, and a damages award of almost \$120 million. The Federal Circuit stated:

A party seeking a permanent injunction must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. The decision to award or deny permanent injunctive relief lies within the equitable discretion of the district court; these traditional equitable principles do not permit the adoption of “certain expansive principles suggesting that injunctive relief could not issue in a broad swath of cases.” . . .

When a patentee alleges it suffered irreparable harm stemming from lost sales solely due to a competitor’s infringement, a finding that the competitor’s infringing features drive consumer demand for its products satisfies the causal nexus inquiry. In that case, the entirety of

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the patentee's alleged harm weighs in favor of injunctive relief. Such a showing may, however, be nearly impossible from an evidentiary standpoint when the accused devices have thousands of features, and thus thousands of other potential causes that must be ruled out. Nor does the causal nexus requirement demand such a showing. Instead, it is a flexible analysis, as befits the discretionary nature of the four-factor test for injunctive relief. We have explained that proving a causal nexus requires the patentee to show "some connection" between the patented features and the demand for the infringing products. Thus, in a case involving phones with hundreds of thousands of available features, it was legal error for the district court to effectively require Apple to prove that the infringement was the sole cause of the lost downstream sales. The district court should have determined whether the record established that a smartphone feature impacts customers' purchasing decisions. Though the fact that the infringing features are not the only cause of the lost sales may well lessen the weight of any alleged irreparable harm, it does not eliminate it entirely. To say otherwise would import a categorical rule into this analysis. . . .

The district court was correct that evidence of copying does not, by itself, establish a causal nexus. But that does not make the evidence wholly irrelevant. Here, too, we must avoid categorical rules. Where the precise question is about consumer preferences and buying choices, the strength and weight to be given to such evidence is to be determined on a case-by-case basis based on what the evidence indicates. Sometimes this evidence will have little or no probative value, for example, if the record contains evidence that the infringer's belief may be at odds with consumer preferences. But here, Apple's evidence of copying established a further link between Apple's and Samsung's subjective beliefs and consumers' perceptions, thereby strengthening a causal nexus and irreparable harm to Apple.

In short, the record establishes that the features claimed in the '721, '647, and '172 patents were important to product sales and that customers sought these features in the phones they purchased. While this evidence of irreparable harm is not as strong as proof that customers buy the infringing products only because of these particular features, it is still evidence of causal nexus for lost sales and thus irreparable harm. Apple loses sales because Samsung products contain Apple's patented features. The district court therefore erred as a matter of law when it required Apple to show that the infringing features were the reason why consumers purchased the accused products. Apple does not need to establish that these features are the reason customers bought Samsung phones instead of Apple phones—it is enough that Apple has shown that these features were related to infringement and were important to customers when they were examining their phone choices. On this record, applying the correct legal standard for irreparable harm, Apple has established irreparable harm. The strength of its evidence of irreparable harm goes to this factor's weight when assessing the propriety of the injunction. Apple established that customers wanted, preferred, and would pay extra for these features. Apple established that Samsung believed these features were important and copied them. The evidence establishes that Samsung's carriers and users wanted these features on phones. The evidence establishes that Apple believed these features were important to customer demand. The evidence establishes that Samsung was Apple's biggest rival, its fiercest competitor. It was clear error in the face of this evidence for the district court to conclude that Apple failed to establish "some connection" between the patented features and demand for the infringing products. Apple did not establish that these features were the exclusive driver of customer demand, which certainly would have weighed more heavily in its favor. Apple did,

however, show that “a patented feature is one of several features that cause consumers to make their purchasing decisions.” We conclude that this factor weighs in favor of granting Apple’s injunction. . . .

Because we find the district court’s finding that Apple did not suffer any irreparable harm stemming from its losses of sales was predicated on a legal error, it also erred when it found that this factor weighs against an injunction. This factor strongly weighs in favor of Apple because, as the district court found, the extent of Apple’s downstream and network effect losses are very difficult to quantify. . . .

The district court did not abuse its discretion in finding the balance of hardships favors an injunction; to the contrary, this factor strongly weighs in favor of an injunction. Samsung’s infringement harmed Apple by causing lost market share and lost downstream sales and by forcing Apple to compete against its own patented invention, which “places a substantial hardship” on a patentee, especially here where it is undisputed that it is essentially a two-horse race. Furthermore, as the district court found, Apple’s proposed injunction was narrowly tailored to cause no harm to Samsung other than to deprive it of the ability to continue to use Apple’s patented features. The court has overseen the Apple-Samsung litigation from the beginning and has worked extensively with parties and their counsel. Given the court’s familiarity with the infringing products, the parties, and their history of litigation, it is best-positioned to determine the impact of the scope of the injunction on the parties. . . .

The district court did not abuse its discretion in finding that the public interest favors an injunction. Indeed, the public interest strongly favors an injunction. Samsung is correct—the public often benefits from healthy competition. However, the public generally does not benefit when that competition comes at the expense of a patentee’s investment-backed property right. To conclude otherwise would suggest that this factor weighs against an injunction in every case, when the opposite is generally true. We base this conclusion not only on the Patent Act’s statutory right to exclude, which derives from the Constitution, but also on the importance of the patent system in encouraging innovation. Injunctions are vital to this system. As a result, the public interest nearly always weighs in favor of protecting property rights in the absence of countervailing factors, especially when the patentee practices his inventions. “[T]he encouragement of investment-based risk is the fundamental purpose of the patent grant, and is based directly on the right to exclude.” This is not a case where the public would be deprived of Samsung’s products. Apple does not seek to enjoin the sale of lifesaving drugs, but to prevent Samsung from profiting from the unauthorized use of infringing features in its cellphones and tablets. Again, Apple seeks only a narrow feature-based injunction commensurate in scope with its monopoly rights. And the evidence of record is that Samsung can effect the removal of the patented features without recalling any products or disrupting customer use of its products. Apple has not attempted to expand the scope of its monopoly. Given the important public interest in protecting patent rights, the nature of the technology at issue, and the limited nature of the injunction, this factor strongly favors an injunction.