

1 1130. This Court now has jurisdiction over the matter. *See* 11 Charles Alan Wright, Arthur R.
2 Miller & Mary Kay Kane, Federal Practice and Procedure § 3987; *see also United States v.*
3 *Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996).

4 **I. Preliminary Injunction**

5 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
6 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
7 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*
8 *Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). In the December 2, 2011 Order, this Court
9 found that Apple had established that the Samsung Galaxy Tab 10.1 likely infringed upon the
10 D’889 Patent, and that Apple was likely to suffer irreparable harm as a result of Samsung’s
11 infringing conduct. *See* December 2 Order at 39-50. However, the Court denied the preliminary
12 injunction because the D’889 Patent was likely invalid based on several prior art references. *Id.* at
13 40-45, 50.

14 The Federal Circuit upheld the Court’s findings of infringement and irreparable harm with
15 respect to the D’889 Patent, but reversed the Court’s invalidity finding as to that patent. *See Apple*,
16 678 F.3d at 1328-33. The Federal Circuit remanded for a determination only to allow the Court to
17 make findings regarding the third and fourth *Winter* factors, and to determine as a whole whether
18 the injunction should issue. *Id.* at 1333. Specifically, the Federal Circuit instructed this Court, on
19 remand, to “conduct [an] assessment of the balance of hardships with respect to the D’889 Patent.
20 To the extent that the court finds that the public interest factor cuts in favor of either side, it should
21 weigh that factor as well in determining whether to issue a preliminary injunction against
22 Samsung’s Galaxy Tab 10.1 tablet computer.” *Id.* Apple has satisfied the first two *Winter* factors.
23 Thus, the Court’s task on remand is a narrow one.

24 Although the Court previously set this matter for hearing, upon further review of the
25 briefing and further consideration of the record on this matter, the Court concludes that another
26 hearing on these issues is unnecessary. The parties have had several opportunities to brief and
27 argue the motion for a preliminary injunction. Initially, the Court held a hearing on the motion,
28 after full briefing, on October 13, 2011. The Court issued its ruling on December 2, 2011. The

1 parties then briefed and had oral argument on these issues before the Federal Circuit. Finally,
 2 Apple filed a motion for an injunction pursuant to Rule 62(c) on May 18, 2012. *See* ECF No. 951.
 3 The Court set a briefing schedule on May 21, 2012, in which the parties were ordered to address
 4 the limited issues the Federal Circuit remanded for this Court's consideration, namely the balance
 5 of hardships and whether the public interest favored an injunction on the D'889 Patent. ECF No.
 6 962. The Court also requested briefing on an appropriate amount of bond. *Id.* at 2. The Court
 7 determined that no new facts, except with regard to the bond, would be considered on remand in
 8 light of the scope of the remand ordered by the Federal Circuit.¹ *Id.* Samsung filed its brief on
 9 May 25, 2012 addressing the issues identified above. Apple filed a reply brief on May 31, 2012.
 10 Based on this record, the Court determines that further briefing and argument from the parties on
 11 the issue of the preliminary injunction is unnecessary. Moreover, because this Court has already
 12 found that denial of an injunction would cause Apple irreparable harm, any further delay of the
 13 injunction is not justified. Therefore, the hearing set for Friday, June 29, 2012 is VACATED. Civ.
 14 L. R. 7-1(b). For the reasons set forth below, the Court GRANTS Apple's motion for a
 15 preliminary injunction and ENJOINS the sale of the Galaxy Tab 10.1 tablet computer.

16 **A. Balance of the Hardships**

17 In light of the Federal Circuit's ruling that Samsung has not raised a substantial question as
 18 to the validity of the D'889 Patent, this Court finds that the balance of hardships tips in Apple's
 19 favor. The Federal Circuit has acknowledged that "[t]he hardship on a preliminarily enjoined
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21 ¹ Samsung filed a motion seeking leave to file a motion for reconsideration of the Court's ruling
 22 prohibiting new evidence on remand. *See* ECF Nos. 962; 978. Samsung sought to introduce new
 23 prior art to relitigate the validity of the D'889 Patent and new financial information to relitigate the
 24 irreparable harm issue as to the D'889 Patent. *See* ECF No. 978. The Court denied Samsung's
 25 motion in its June 4, 2012 Order at n.1, ECF No. 1032. When Samsung raised the issue again at
 26 the June 21, 2012 hearing on cross motions for summary judgment, the Court again denied
 27 Samsung's request. On June 26, 2012, Samsung moved yet again for leave to file a motion for
 28 reconsideration. ECF No. 1132. Samsung once again seeks to introduce new prior art to relitigate
 the validity of the D'889 Patent and new financial information to relitigate the irreparable harm
 issue as to the D'889 Patent. Samsung has not met its burden under the Civil Local Rules in
 showing that one of the three requirements of Civil Local Rule 7-9(b) is met and thus warrants
 leave to file a motion for reconsideration. Moreover, the Federal Circuit's remand was explicitly
 limited to the issues of balancing of hardships and public interest and did not invite a reopening of
 the D'889 infringement, validity, and irreparable harm findings. Accordingly, Samsung's motion
 for leave to file a motion for reconsideration in order to reopen the record and to relitigate issues
 beyond the limits of the Federal Circuit's remand order is DENIED.

1 manufacturer who must withdraw its product from the market before trial can be devastating.” *Ill.*
2 *Tool Works, Inc. v. Grip-Pak, Inc.*, 906 F.2d 679, 683 (Fed. Cir. 1990). Nonetheless, in many
3 circumstances, the infringer’s hardship from an injunction is insufficient for a balance of hardships
4 to weigh in its favor. This is because “[o]ne who elects to build a business on a product found to
5 infringe cannot be heard to complain if an injunction against a continuing infringement destroys the
6 business so elected.” *Telebrands Direct Response Corp. v. Ovation Commc’ns, Inc.*, 802 F. Supp.
7 1169, 1179 (D.N.J. 1992) (quoting *Windsurfing Int’l Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12
8 (Fed. Cir. 1986).

9 In this case, although Samsung will necessarily be harmed by being forced to withdraw its
10 product from the market before the merits can be determined after a full trial, the harm faced by
11 Apple absent an injunction on the Galaxy Tab 10.1 is greater. Apple’s interest in enforcing its
12 patent rights is particularly strong because it has presented a strong case on the merits. This Court
13 previously found the Galaxy Tab 10.1 to be substantially similar “in the eyes of the ordinary
14 observer” to the D’889. *See* December 12 Order at 45. Indeed, the Court noted that the Galaxy
15 Tab 10.1 is “virtually indistinguishable” from Apple’s iPad and iPad 2. *See id.* at 47. In
16 combination with the Federal Circuit’s determination that the D’889 Patent will likely withstand
17 Samsung’s validity challenge, Apple has established a strong claim on the merits. Additionally,
18 the Federal Circuit did not upset this Court’s finding that Apple has established a likelihood of
19 irreparable harm absent an injunction. *Apple*, 678 F.3d at 1328. In comparison, Samsung’s
20 concern over the losses suffered as a result of an injunction cannot overcome Apple’s showing. *See*
21 *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 931 (Fed. Cir. 2012); *Sanofi–Synthelabo v.*
22 *Apotex, Inc.*, 470 F.3d 1368, 1383 (Fed. Cir. 2006). This is particularly true in light of the fact that
23 (1) there was some evidence that Samsung altered its design to make its product look more like
24 Apple’s, and (2) Apple will be required to post a bond in the event that this injunction was wrongly
25 issued. *See Apple*, 678 F.3d at 1338 (O’Malley, J., concurring); Ho Decl. Ex. HH, ECF No. 430.

26 Samsung essentially raises two arguments that the balance of hardships tips in its favor: (1)
27 an injunction on the Galaxy Tablet 10.1 is an overbroad injunction based on “one aspect of the
28 overall product,” and (2) an injunction would harm Samsung’s business relationships with wireless

1 carriers that provide the Galaxy Tab 10.1 to their customers. *See* Opp'n to Mot. for Rule 62(c)
2 Injunction ("Opp'n") at 6-9. The Court is unpersuaded by Samsung's arguments. Samsung
3 previously raised, and this Court previously rejected, Samsung's argument that design is but one
4 aspect of a technologically complex product. This Court previously found that design is an
5 important driver in the demand for tablet sales. December 2 Order at 49. This finding was upheld
6 by the Federal Circuit. *See Apple*, 678 F.3d at 1328. Even though the Tab 10.1 may be a "complex
7 technological device," there is no basis to revisit the Court's finding on this point.

8 Second, Samsung's argument that its business relationships would be damaged by an
9 injunction rings hollow. As explained above, "one who elects to build a business on a product
10 found to infringe cannot be heard to complain if an injunction against a continuing infringement
11 destroys the business so elected." *Telebrands Direct Response Corp.*, 802 F. Supp. at 1179.
12 Samsung cannot be heard to complain about broken business relationships that it has established on
13 infringing products.

14 Apple has established a strong case on the merits. This Court already found that Samsung's
15 products are "virtually indistinguishable" from Apple's products, and that the Galaxy Tab 10.1
16 likely infringed on the D'889 Patent. Moreover, this Court previously found that Apple had shown
17 that it was likely to suffer irreparable harm from the sales of Samsung's infringing tablets because:
18 (1) Apple and Samsung were direct competitors, (2) together the two companies held a relatively
19 large market share, with few other competitors in the relevant market; and (3) design mattered
20 more to customers in making tablet purchases, establishing the requisite nexus. *Apple*, 678 F.3d at
21 1328; December 2 Order at 48-49. Given the strength of Apple's case on the merits, and its
22 likelihood of irreparable harm, the balance of hardships tips in Apple's favor. While Samsung will
23 certainly suffer lost sales from the issuance of an injunction, the hardship to Apple of having to
24 directly compete with Samsung's infringing products outweighs Samsung's harm in light of the
25 previous findings by the Court.

26 **B. Public Interest**

27 The Federal Circuit also instructed this Court to consider whether the public interest favors
28 issuing a preliminary injunction of the Galaxy Tab 10.1. *Apple*, 678 F.3d at 1333. "In exercising

1 their sound discretion, courts of equity should pay particular regard for the public consequences in
2 employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24 (citation omitted).
3 Samsung argues that the public interest favors competition and thus weighs against issuing an
4 injunction which would preclude a product from the market. Opp’n at 10-11. On the other hand,
5 Apple argues that the public interest weighs in favor of enforcing patent rights. Mot. at 9.

6 The Court agrees with Apple that the public interest favors the enforcement of patent rights
7 here. *See Sanofi–Synthelabo*, 470 F.3d at 1383 (“We have long acknowledged the importance of
8 the patent system in encouraging innovation.”). Although Samsung has a right to compete, it does
9 not have a right to compete unfairly, by flooding the market with infringing products. As
10 explained by the Federal Circuit, “[a]lthough the public interest inquiry is not necessarily or always
11 bound to the likelihood of success o[n] the merits, . . . absent any other relevant concerns . . . the
12 public is best served by enforcing patents that are likely valid and infringed.” *Abbott Labs. v.*
13 *Andrx Pharm., Inc.*, 452 F.3d 1331, 1348 (Fed. Cir. 2006). This Court is persuaded by Judge
14 O’Malley’s concurrence that the public interest favors an injunction here “because the record at
15 this stage shows that the D’889 Patent is likely valid and infringed, and there are no other relevant
16 concerns, the public interest is best served by granting a preliminary injunction.” *Apple*, 678 F.3d
17 at 1338 (O’Malley, J. concurring). As a patent holder, Apple has a valid right to exclude others
18 from practicing Apple’s invention. In order to protect that right, and promote the “encouragement
19 of investment-based risk,” the public interest weighs in favor of Apple. *See Sanofi–Synthelabo*,
20 470 F.3d at 1383 (citing *Patlex Corp. v. Mossinghoff*, 758 F.2d 594, 599 (Fed. Cir. 1985)).

21 Finally, the Court should “weigh and measure each of the four factors against the other
22 factors and against the magnitude of the relief requested.” *Chrysler Motors Corp. v. Auto Body*
23 *Panels of Ohio, Inc.*, 908 F.2d 951, 953 (Fed. Cir. 1990). This Court has already found that Apple
24 was likely to succeed on establishing infringement at trial “[i]n light of the substantial similarities
25 between the design of the accused product and the D’889 Patent.” December 2, 2011 Order at 48.
26 The Court also found that Apple had established that it would likely be irreparably harmed by the
27 infringing conduct. *Id.* at 49. The Federal Circuit affirmed the Court’s findings on these issues,
28 and found that Samsung is not likely to establish that the D’889 is invalid at trial. Moreover, as

1 explained above, the remaining two *Winter* factors weigh in favor of an injunction. In light of the
2 fact that all *Winter* factors weigh in Apple's favor, the Court finds that the issuance of a
3 preliminary injunction is proper.

4 **C. Bond**

5 Federal Rule of Civil Procedure 65(c) requires that the Court order Apple to provide
6 security "in an amount that the court considers proper to pay the costs and damages sustained by
7 any party found to have been wrongfully enjoined or restrained." The amount of bond is within
8 the court's discretion. *See Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir.
9 2005). The bond requirement is "designed to protect the enjoined party's interests in the event that
10 future proceedings show the injunction issued wrongfully." *Apple*, 678 F.3d at 1339 (O'Malley, J.
11 concurring) (citing *Edgar v. MITE Corp.*, 457 U.S. 624, 649 (1982) (Stevens, J., concurring)). The
12 Court has reviewed the briefing. Although the parties disagree on the upper range of a potential
13 bond, the parties agree that a bond in the amount of \$2.6 million will be sufficient. *See* Opp'n to
14 Rule 62(c) Motion at 13; Reply to Rule 62(c) Motion at 7. In light of the agreement by the parties,
15 the Court sets the bond in the amount of \$2.6 million.

16 **II. Order**

17 For the foregoing reasons, the Court issues the following order enjoining the Galaxy Tab
18 10.1 from sale in the United States:

19 Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung
20 Telecommunications America, Inc., its officers, directors, partners, agents, servants, employees,
21 attorneys, subsidiaries, and those acting in concert with any of them, are enjoined from making,
22 using, offering to sell, or selling within the United States, or importing into the United States,
23 Samsung's Galaxy Tab 10.1 tablet computer, and any product that is no more than colorably
24 different from this specified product and embodies any design contained in U.S. Design Patent No.
25 D504,889. As a condition of the preliminary injunction, Apple is ordered to post a bond in the
26 amount of \$2,600,000 to secure payment of any damages sustained by defendant if it is later found
27 to have been wrongfully enjoined. This Order shall become effective upon posting of the bond.
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United States District Court
For the Northern District of California

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IT IS SO ORDERED.

Dated: June 26, 2012



LUCY H. KOH
United States District Judge