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7 *Attorneys for Plaintiffs*
HUAWEI TECHNOLOGIES CO., LTD.
8 HUAWEI DEVICE USA, INC.,
HUAWEI TECHNOLOGIES USA, INC., and
9 HISILICON TECHNOLOGIES CO., LTD.

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., and
15 HUAWEI TECHNOLOGIES USA, INC.,

16 Plaintiffs / Counterclaim-Defendants,
17 v.

18 SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
19 INC.,

20 Defendants / Counterclaim-Plaintiffs,

21 and

22 SAMSUNG RESEARCH AMERICA,

23 Defendant,

v.

24 HISILICON TECHNOLOGIES CO., LTD.,

25 Counterclaim-Defendant.
26
27
28

Case No. 16-cv-02787-WHO

**UNOPPOSED MOTION TO VACATE
THE ORDER GRANTING SAMSUNG'S
MOTION FOR ANTISUIT INJUNCTION
(DKT. 280-281)**

1 On February 26, 2019, Plaintiffs and Counterclaim-Defendants Huawei Technologies Co.,
2 Ltd., Huawei Device USA, Inc., Huawei Technologies USA, Inc., and HiSilicon Technologies Co.,
3 Ltd. (collectively, “Huawei”) and Defendants and Counterclaim-Plaintiffs Samsung Electronics
4 Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America, Inc. (collectively,
5 “Samsung”) notified the Court that the parties had entered into a confidential settlement agreement,
6 and that they anticipated that in the following weeks they would complete the pending steps to
7 finalize the settlement. Dkt. 461. Pursuant to the terms of the parties’ settlement, on March 6,
8 2019, Huawei moved to dismiss its appeal to the Federal Circuit of the Court’s order granting
9 Samsung’s motion for a preliminary antisuit injunction and requested that the Court of Appeals
10 remand the case to this Court for consideration of an anticipated unopposed motion to vacate the
11 order at issue in the appeal. *See* Dkt. 73, *Huawei Technologies Co., Ltd. v. Samsung Electronics*
12 *Co., Ltd.*, Appeal No. 18-1979 (Fed. Cir.). The Federal Circuit granted Huawei’s motion, in part,
13 on March 15, 2019, remanding the matter to this Court for consideration of Huawei’s unopposed
14 motion to vacate and otherwise holding the appeal in abeyance. Dkt. 74, *Huawei Technologies Co.,*
15 *Ltd. v. Samsung Electronics Co., Ltd.*, Appeal No. 18-1979 (Fed. Cir.). Huawei now files the
16 unopposed motion to vacate the Court’s order granting Samsung’s motion for a preliminary antisuit
17 injunction referenced in its motion in the Federal Circuit (Dkt. 280 (unsealed), Dkt. 281 (sealed),
18 hereinafter “the Order”).¹

19 Upon dismissal of a pending appeal, the Ninth Circuit’s “established procedure” is to remand
20 “so the district court can decide whether to vacate its judgment.” *American Games Inc. v. Trade*
21 *Products, Inc.*, 142 F.3d 1164, 1168 (9th Cir. 1998).² In the case of a preliminary injunction, once
22 the dispute has become moot, by reason of settlement or otherwise, the preliminary injunction
23

24 ¹ Upon resolution of this motion, the parties anticipate jointly filing a stipulation of dismissal of this
25 action.

26 ² Ninth Circuit law applies to this request to vacate, which does not involve matters unique to patent
27 law. *See Broyhill Furniture Industries, Inc. v. Craftmaster Furniture Corp.*, 12 F.3d 1080, 1082
28 (Fed. Cir. 1993) (noting that in reviewing motions to vacate, the Federal Circuit “defer[s] to the law
of the regional circuit in which the district court sits because such rulings commonly involve
procedural matters that are not unique to patent law”); *Microstrategy Inc. v. Apttus Corp.*, No. 3:15-
CV-21-JAG, 2015 WL 12839248 at *1 (E.D. Va. Nov. 5, 2015) (applying Fourth Circuit law to a
request to vacate an order dismissing a patent infringement suit for patent-ineligible subject matter).

1 should be vacated. *See Forest Service Employees for Environmental Ethics v. United States Forest*
2 *Service*, 408 F. Supp. 2d 916, 921 (N.D. Cal. 2006) (vacating a preliminary injunction order that
3 had become moot); *Berkeley Community Health Project v. City of Berkeley*, 119 F.3d 794, 794-795
4 (9th Cir. 1997) (parties settled while appeal of preliminary injunction was pending; Court of
5 Appeals remanded to allow district court to consider request to vacate, and dismissed the appeal
6 after the district court vacated its preliminary injunction order as moot). This Court entered the
7 preliminary antisuit injunction as a temporary measure to bar Huawei from seeking to enforce
8 injunction orders issued by the Shenzhen Court until this Court had “the ability to determine the
9 breach of contract claim,” *i.e.*, until the trial in this matter could be held. Dkt. 281 at 20-21. At the
10 time, the Court indicated that it expected the antisuit injunction to last “less than six months” and
11 that it was “limited to a particular order dealing with two patents” and “a specific form of relief.”
12 *Id.* at 20. Based on the parties’ settlement resolving all pending disputes between the parties—
13 including all disputes in the United States and China—the basis for the preliminary injunction no
14 longer exists.

15 Therefore, Huawei respectfully requests that the Court vacate its preliminary injunction,
16 which the Court issued as Dkt. 280 (unsealed) and Dkt. 281 (sealed). Counsel for Samsung has
17 stated that it does not oppose this motion.

18
19 Dated: March 15, 2019

Respectfully Submitted,

20 By: /s/ Michael J. Bettinger

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