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February 27, 2013

BY HAND DELIVERY

Jan Horbaly
Clerk of the Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439
(202) 275-8000

Re: *Apple Inc. v. Motorola Mobility, Inc.*, Fed. Cir. Nos. 2013-1150, -1182

Dear Mr. Horbaly

Pursuant to Fed. R. App. P. 28(j), Apple Inc. (“Apple”) respectfully submits this response to Motorola Mobility, Inc.’s (“Motorola”) submission of supplemental authority in support of its Motion to Dismiss for Lack of Jurisdiction.

Contrary to Motorola’s contention, the Supreme Court’s decision in *Gunn v. Minton*, No. 11-1118 (Feb. 20, 2013), has no bearing on this Court’s jurisdiction. *Gunn* addresses the circumstances in which a claim created by *state law*—there, a Texas legal malpractice claim—may nonetheless arise under federal patent law for purposes of 28 U.S.C. § 1338(a). *See Gunn* (slip op., at 1, 6). Here, Apple has asserted declaratory judgment claims created by *federal patent law*. *See Apple’s Opposition to Motorola’s Motion to Dismiss*, Fed. Cir. Dkt. No. 24, at 6-8. As *Gunn* explains, such claims arise under federal patent law for that reason alone. *See id.* (slip op., at 5) (“[A] case arises under federal law when federal law creates the cause of action asserted.”) (citing *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916)).

Only where federal patent law *does not* create the cause of action is it necessary to identify an alternative basis for jurisdiction by asking, as *Gunn* does, whether the claim raises a “necessarily disputed” and “substantial” patent law issue. *See id.* (slip op., at 6) (citing *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 314 (2005)). Motorola acknowledges as much by specifying that *Gunn* is relevant only to pp. 5-8 of Motorola’s Motion to Dismiss. *See Fed. Cir. Dkt. No. 29-1*, at 1. Those pages discuss only Apple’s antitrust, contract, and tort claims, not the declaratory judgment claims on which Apple premises this Court’s jurisdiction.

Consequently, *Gunn* does not affect this Court’s jurisdiction.

Very truly yours,

/s/ Mark Davies

Mark Davies

cc: counsel of record

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2013, I caused the foregoing letter to be filed with the court using CM/ECF which will automatically serve counsel who are registered for CM/ECF.

/s/ Mark S. Davies
Mark S. Davies