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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MULTIMEDIA PATENT TRUST, vs. APPLE INC., et al., Defendants.	Plaintiff,
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CASE NO. 10-CV-2618-H (KSC)
**ORDER CONCLUDING THAT
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT ON
DEFENDANTS’ INEQUITABLE
CONDUCT DEFENSES AND
COUNTERCLAIMS IS MOOT**

On July 16, 2012, Plaintiff Multimedia Patent Trust (“MPT”) filed a motion for summary judgment on Defendant Apple Inc., Canon, Inc., and LG Electronics, Inc. (“Defendants”)’s inequitable conduct defenses and counterclaims. (Doc. No. 220.) On July 30, 2012, Defendants filed a response in opposition to MPT’s motion and requested additional time to conduct discovery regarding their inequitable conduct defenses and counterclaims. (Doc. No. 233.) On August 6, 2012, MPT filed its reply. (Doc. No. 239.) On August 8, 2012, the Court held a telephonic status conference with the parties and ordered Defendants to submit a substantive response to MPT’s motion for summary judgment by September 4, 2012. (Doc. No. 254.) On September 4, 2012, Defendants filed a response, withdrawing their inequitable conduct defenses and counterclaims. (Doc. No. 297.) On September 11, 2012, MPT filed its reply. (Doc. No. 317.) The Court, pursuant to its discretion under Local Rule 7.1(d)(1), determines this matter is appropriate for resolution without oral argument, vacates the hearing

1 scheduled for September 18, 2012, and submits the motion on the parties' papers. For the
2 following reasons, the Court concludes MPT's motion for summary judgment is moot.

3 In the joint response, Apple withdrew its Thirteenth Affirmative Defense for
4 unenforceability of the patents-in-suit for inequitable conduct, and it withdrew its Second,
5 Fourth, and Sixth Counterclaims for declaratory judgment of unenforceability of the asserted
6 patents due to inequitable conduct. (Id. at 2.) LG Electronics withdrew its Thirteenth
7 Affirmative Defense for unenforceability of the patents-in-suit for inequitable conduct, and it
8 withdrew its Second and Fourth Counterclaims for declaratory judgment of unenforceability
9 of the asserted patents due to inequitable conduct. (Id.) Canon withdrew its Eighth
10 Affirmative Defense for unenforceability of the patents-in-suit for inequitable conduct. (Id.)
11 As a result, Defendants have withdrawn all of their inequitable conduct defenses and
12 counterclaims.

13 In its reply, MPT argues that the time for Defendants to withdraw their counterclaims
14 and defenses has passed, relying on Federal Rule of Civil Procedure 15(a)(2). (Doc. No. 317
15 at 1.) However, under Federal Rule of Civil Procedure 41(a)(2), a claim or counterclaim may
16 be dismissed even after an answer is filed at the plaintiff or counterclaimant's request "by
17 court order, on terms that the court considers proper. Fed. R. Civ. P. 41(a)(2). The decision
18 to allow withdrawal of a claim pursuant to Rule 41(a)(2) is within the sound discretion of the
19 district court and may be reviewed only for abuse of that discretion. Sams v. Beech Aircraft
20 Corp., 625 F.2d 273, 277 (9th Cir. 1980). A court should allow withdrawal of a claim unless
21 the defendant/counterdefendant will "suffer clear legal prejudice, other than the prospect of
22 a subsequent suit on the same facts." Phillips v. Illinois Central Gulf Railroad, 874 F.2d 984,
23 986 (9th Cir. 1989). In its reply, MPT fails to argue that it will suffer any legal prejudice from
24 the withdrawal of these counterclaims. Therefore, Defendants' withdrawal of their inequitable
25 conduct counterclaims and defenses is proper, and the Court allows Defendants to withdraw
26 those counterclaims and defenses.

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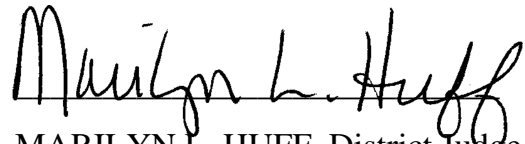
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Accordingly, based on Defendants' withdrawal of their inequitable conduct defenses and counterclaims, the Court determines that MPT's motion for summary judgment is moot.

IT IS SO ORDERED.

Dated: September 12, 2012



MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT