

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

FRACTUS, S.A.,	§	
	§	
Plaintiff,	§	Civil Action No. 6:09-cv-00203
	§	
v.	§	
	§	
SAMSUNG ELECTRONICS CO., LTD.;	§	
<i>et al.</i>	§	
Defendants.	§	

**NOTICE OF APPEAL**

Notice is hereby given that Samsung Electronics Co., Ltd; Samsung Telecommunications America LLC; Samsung Electronics Research Institute; and Samsung Semiconductor Europe GmbH, defendants in the above named case (collectively “Samsung”), hereby appeal to the United States Court of Appeals for the Federal Circuit from the judgment of the District Court entered on June 28, 2012 (Dkt. No. 1114),\* which is styled as a “Final Judgment,” and all underlying decisions, findings, orders, and rulings related to, supporting, or incorporated in the Judgment.

The District Court entered the “Final Judgment” after *sua sponte* “severing” the question of ongoing royalties from the merits of the patent-infringement case (Dkt. No. 1113 at 77, 80; Dkt. No. 1114 at 2). Because this severance was improper under Fed. R. Civ. P. 21, and because there has been no determination as to ongoing royalties, there is no valid final judgment. Accordingly, on July 26, 2012, Samsung filed a timely motion under Rule 59(e) to alter or amend the judgment (Dkt. No. 1129). This motion is pending before the District Court.

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\* That judgment was amended by order of the District Court on July 24, 2012 (Dkt. No. 1128). That order granted the unopposed motion (Dkt. No. 1126) to remove from the final judgment a party that had inadvertently been listed despite having been dismissed from the suit in December 2009.

Because Samsung's Rule 59(e) motion remains pending in the District Court, this Notice of Appeal may and should be deemed premature. *See* Fed. R. App. P. 4(a)(4)(A)(iv). If deemed premature, this Notice will "become[] effective" upon the District Court's ruling as to Samsung's pending Rule 59(e) motion. Fed. R. App. P. 4(a)(4)(B)(i). If that ruling denies Samsung's Rule 59(e) motion, therefore, the Court of Appeals will be able to address the significant jurisdictional problems presented by the purportedly final judgment without delay. If the ruling grants the Rule 59(e) motion, or in some other way modifies the judgment, Samsung will move to dismiss this Notice of Appeal, or will amend it as necessary. Fed. R. App. P. 4(a)(4)(B)(ii). Regardless, this Notice preserves Samsung's broader right of appeal in the event that the Court of Appeals determines, contrary to Samsung's position, that the June 28, 2012, judgment was truly final.

Accordingly, Samsung files this Notice of Appeal (1) subject to, and without waiver of, its right to move to dismiss the appeal due to the absence of appellate jurisdiction and (2) conditioned upon a determination by the Court of Appeals that the District Court validly entered a final judgment. Without agreeing that Samsung *could* take an interlocutory appeal under the provisions of 28 U.S.C. § 1292(c)(2), Samsung expressly disavows any intent to pursue such an interlocutory appeal if the Court of Appeals concludes (as Samsung argues) that the purportedly final judgment was interlocutory rather than final. It will await a genuinely final judgment, and (if necessary) appeal that judgment to the Court of Appeals.

Dated: August 23, 2012

Respectfully submitted,

/s/ Michael J. Barta, with permission by  
Michael E. Jones

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on August 23, 2012.

*/s/ Michael E. Jones* \_\_\_\_\_