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18
19 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
20 **SAN FRANCISCO DIVISION**

21 FIRSTFACE CO., LTD.,
22 Plaintiff,
23 v.
24 APPLE INC.,
25 Defendant.

CASE NO. 3:18-cv-02245-JD

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PARTIAL
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

DATE: March 30, 2023
TIME: 10:00 a.m.
PLACE: Courtroom 11
JUDGE: Hon. James Donato

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TABLE OF AUTHORITIES**Cases**

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3	<u>Cases</u>	
4	<i>3M Innovative Props. Co. v. Tredegar Corp.</i> ,	
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14	<i>Ariad Pharmaceuticals, Inc. v. Eli Lilly and Co.</i> ,	
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16	<i>Astra Aktiebolag v. Andrx Pharms, Inc.</i> ,	
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18	<i>Augme Techs., Inc. v. Yahoo!, Inc.</i> ,	
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20	<i>BASF Corp. v. SNF Holding Co.</i> ,	
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22	<i>Baughman v. Walt Disney World Co.</i> ,	
23	685 F.3d 1131 (9th Cir. 2012)	16
24	<i>Bracco Diagnostics v. Maia Pharms.</i> ,	
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30	<i>Celgene Corp. v. Peter</i> ,	
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1	<i>Cooper v. Goldfarb,</i> 154 F.3d 1321 (Fed. Cir. 1998).....	13
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3		
4	<i>Dawson v. Dawson,</i> 710 F.3d 1347 (Fed. Cir. 2013).....	12
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6	<i>DMF, Inc. v. AMP Plus, Inc.,</i> No. 2:18-CV-07090-CAS (GJSx), 2021 WL 6499980 (C.D. Cal. May 5, 2021).....	23
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12	<i>Hyatt v. Boone,</i> 146 F.3d 1348 (Fed. Cir. 1998).....	13
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14	<i>Hybritech Inc. v. Monoclonal Antibodies, Inc.,</i> 802 F.2d 1367 (Fed. Cir. 1986).....	25
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16	<i>Impax Laboratories, Inc. v. Aventis Pharmaceuticals, Inc.,</i> 545 F.3d 1312 (Fed. Cir. 2008).....	12
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18	<i>Kara Tech. Inc. v. Stamps.com Inc.,</i> 582 F.3d 1341 (Fed. Cir. 2009).....	14
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20	<i>Kruse Tech. P'ship v. Dmax Ltd.,</i> No. SAVC 09-00458-JVS (JWJx), 2010 WL 11519252 (C.D. Cal. Sept. 21, 2010).....	17
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24	<i>Microsoft Corp. v. i4i Ltd. Partnership,</i> 131 S. Ct. 2238 (2011).....	11
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26	<i>Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC,</i> 692 F.3d 983 (9th Cir. 2011)	16
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28	<i>Minton v. Nat'l Ass'n of Sec. Dealers, Inc.,</i> 336 F.3d 1373 (Fed. Cir. 2003).....	19
29		
30	<i>Monsanto Co. v. Mycogen Plant Science, Inc.,</i> 261 F.3d 1356 (Fed. Cir. 2001).....	12
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