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16 **IN THE UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION – LOS ANGELES**

19 NETGEAR, INC.,

20 Plaintiff,

21 vs.

22 HUAWEI TECHNOLOGIES CO.,
23 LTD.,

24 Defendant.

Case No. 2:24-cv-824 AB(AJRx)

HUAWEI’S RESPONSE IN
OPPOSITION TO NETGEAR’S
MOTION TO BIFURCATE AND
REQUEST FOR RAND
DETERMINATION

Date: Jan. 24, 2025

Time: 10:00 am

Place: 30 West First Street
Courtroom 7B

Los Angeles, CA 90012

Jud. Officer: Hon André Birotte Jr.

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1 **I. INTRODUCTION**

2 As this Court has recognized, bifurcation “is the exception rather than the rule
3 of normal trial procedure.” *Classical Silk, Inc. v. Dolan Grp., Inc.*, No. 14-cv-9224-
4 AB, 2016 WL 7638112, at *3 (C.D. Cal. Mar. 21, 2016). Netgear fails to carry its
5 burden of showing that the exception is warranted here.

6 Netgear builds its extraordinary request on a flawed premise: that a proposed
7 “mini-trial” to decide worldwide FRAND terms for Huawei’s Wi-Fi standard
8 essential patents would somehow be “dispositive” of unidentified aspects of this case.
9 Dkt. 114 (“Mot.”). Netgear’s request would resolve *zero* of Netgear’s *ten* asserted
10 claims for relief—not even Netgear’s FRAND-based breach-of-contract claim.
11 Resolving FRAND “terms” for a worldwide license does not resolve the actual
12 question of breach (or damages), and Netgear has no obligation to accept any Court-
13 determined FRAND terms. Accordingly, bifurcation would not advance efficiency
14 or judicial economy, but instead, result in wasteful duplication.

15 Netgear’s requested bifurcation would also prejudice Huawei. Netgear aims
16 to de-couple its requested FRAND “term-setting” from the adjudication of its own
17 breach-of-contract claim. Dkt. 1 (Count V). That is no accident. Netgear knows that
18 when these issues are properly joined, Netgear will expose itself to scrutiny over its
19 own negotiating behavior—holdout tactics that are a critical part of Huawei’s
20 defense. In its motion, Netgear represents that Huawei filed its infringement suits
21 abroad to “bludgeon” Netgear into taking a license “*before* providing Netgear with
22 any licensing offer.” Mot. at 1, 7.¹ But before Huawei ever filed suit, Huawei asked
23 Netgear to come to the negotiating table on *seven* separate occasions. Netgear ignored
24 every one of these requests. It was only after waiting nearly *two years* for a response
25 that Huawei filed suit in Germany and China (and later Europe) to protect its rights.
26 By moving for bifurcation, Netgear wants to hide its negotiating conduct by arguing

27
28 ¹ All emphases in this brief are added unless otherwise noted.

1 that it is irrelevant to the determination of FRAND terms. This Court should deny
2 Netgear’s request to use bifurcation as both a sword and a shield.

3 Netgear rushes for a mini-trial on an “expedited” basis, but there is no urgency
4 to what Netgear seeks. Netgear stonewalled Huawei for years. When Huawei sued
5 Netgear for patent infringement, Netgear still made no good-faith attempt to reach a
6 patent-license agreement. Instead, Netgear vigorously contested infringement and
7 asked those courts to decide the very issue it now asks this Court to re-adjudicate on
8 an expedited basis: whether Huawei complied with its FRAND obligations. Every
9 court to have reached that issue (two so far) has ruled *against* Netgear, finding that
10 Netgear infringed Huawei’s Wi-Fi 6 patents and rejecting Netgear’s arguments that
11 Huawei’s negotiating conduct failed to comply with its FRAND obligation. Ex. 2 (T.
12 Hessel Decl.) ¶¶ 13–15; Ex. 3 (J. Mao Decl.) ¶¶ 12–21. As one court explained—
13 after a comprehensive review of the parties’ negotiating history—Netgear was at
14 “obvious fault[]” in the licensing negotiations, while “Huawei fulfilled its FRAND
15 obligations.” Dkt. 115-3, at 21; *see also* Ex. 2 (T. Hessel Decl.), Ex. A at 145, 154
16 (holding that Netgear’s “FRAND objection cannot prevail” and noting that Netgear
17 “delayed the negotiations” and “did not signal a sufficient willingness to license after
18 an unobjectionable notice of infringement”). Netgear wants to ignore its repeated
19 losses and asks a do-over of those issues in this Court.

20 Nor is there any legal vehicle for Netgear’s request. Netgear’s 113-page
21 complaint does not seek a declaration of any FRAND terms for Huawei’s Wi-Fi
22 SEPs. *See* Dkt. 1. Netgear purports to bifurcate an “issue” from its breach-of contract
23 claim. But its breach-of-contract claim is a legal claim—not an equitable one—to
24 which Huawei is entitled to a jury trial. So, the “issue” of setting FRAND terms
25 cannot be bifurcated for a bench trial over Huawei’s objection. Unsurprisingly,
26 Netgear identifies no authority where a court has, over the objection of one party,
27 bifurcated a determination of a FRAND rate (or other terms) from a breach-of-
28 contract claim for trial.

1 Without any legal basis for bifurcation, Netgear seeks refuge in the Federal
2 Circuit’s recent decision in *Telefonaktiebolaget LM Ericsson v. Lenovo (United*
3 *States), Inc.* (“*Lenovo*”), 120 F.4th 864 (Fed. Cir. 2024)—a case having nothing to
4 do with bifurcation. Netgear contends that *Lenovo* confirms the urgency of resolving
5 Huawei’s FRAND obligations because that decision somehow shows that Huawei
6 improperly sought injunctive relief in the overseas litigation that pre-dated this suit.
7 Mot. at 10. Just the opposite: The Federal Circuit explained that there is *not* a
8 “categorical[] bar” on SEP-based injunctions, as long as the SEP-holder has first
9 sought to negotiate a FRAND license in good faith, *id.* at 877, as Huawei did here.

10 At bottom, Netgear’s motion (like its ten-count antitrust and RICO complaint)
11 is but another attempt to use the judicial process for leverage in the parties’ ongoing
12 licensing negotiations—all while avoiding payment for Netgear’s multi-year,
13 worldwide use of Huawei’s patented technology. Netgear admits that the purpose of
14 its request is to avoid injunctive remedies that Huawei has properly sought in
15 Germany, Europe, and China—remedies that are available *only if* Huawei proves that
16 Netgear has infringed Huawei’s patents in those countries and *only if* those courts
17 reject Netgear’s FRAND-based defenses, as two of those three courts have already
18 done. (A decision from the third court will issue in January. Ex. 2 (T. Hessel Decl.)
19 ¶ 16.) But Rule 42 is not a weapon for launching collateral attacks on the already-
20 issued decisions of tribunals abroad. Its purpose is to promote judicial economy and
21 fairness to the parties in *this* litigation in U.S. federal court. And the bifurcation
22 Netgear requests here—a “mini-trial” on FRAND licensing terms—would do the
23 opposite, resulting in wasteful and duplicative proceedings whose results are not even
24 binding on Netgear. The Court should deny Netgear’s motion.

1 **II. BACKGROUND**

2 **A. Huawei is both an SEP holder and an implementer; Netgear is only**
3 **an implementer.**

4 **Huawei:** Huawei is a leading contributor of standard-essential patents (SEPs)
5 to the Wi-Fi 6 and pre-Wi-Fi 6 networking standards promulgated by the Institute of
6 Electrical and Electronics Engineers (IEEE) Standards Association. Huawei has
7 made hundreds of contributions to the Wi-Fi 6 standard and is the leading contributor
8 for two of Wi-Fi 6’s most important features, OFDMA and MU-MIMO. Ex. 28
9 (Huawei’s Response to Netgear Interrogatory No. 4). Huawei is also a “major
10 implementer,” selling access points, routers and other devices that use Wi-Fi 6
11 worldwide outside of the United States. Ex. 1 (S. WanTing Decl.) ¶ 5.

12 Because Huawei is both a major Wi-Fi 6 SEP holder and implementer, Huawei
13 finds itself on both sides of the negotiating table in licensing discussions, granting
14 licenses to Huawei’s Wi-Fi SEPs while also paying other licensors for Wi-Fi SEP
15 licenses. Ex. 1 (S. WanTing Decl.) ¶ 5. Indeed, [REDACTED]

16 [REDACTED]. Ex. 1 (S.
17 WanTing Decl.) ¶ 11. As a result, and as public reporting has recognized, Huawei
18 takes a “balanced” approach to licensing because “going too far in one direction
19 would hurt the other side of the business.” See Ex. 6 (Florian Mueller, *Huawei Signs*
20 *Patent License Agreements with Amazon (After Munich Court Win) and Vivo (Without*
21 *Any Litigation)*, IPFRAY (Mar. 5, 2024)).

22 **Netgear:** Netgear, on the other hand, is only an “implementer.” Netgear
23 publicly touts the importance of Wi-Fi 6 technology, explaining that its benefits
24 “include receiving up to 4 times more device capacity, blazing-fast speeds on all your
25 connected devices, and 100% backwards compatibility.” Ex. 7 (*WiFi 6 Is a Big Deal*,
26 NETGEAR (2024), <https://www.netgear.com/home/discover/wifi6/>). But Netgear
27 has not contributed to the development of the Wi-Fi 6 technology standard, and
28 Netgear holds no SEPs on Wi-Fi 6 technology. See Ex. 8, at 9–11 (identifying the top

1 40 owners of active Wi-Fi-related patent families). Netgear simply makes products
2 that implement Wi-Fi 6 technology and does not need to be “balanced” or reasonable
3 when negotiating licenses to use that technology.

4 **B. Implementers frequently “holdout” on taking SEP licenses, which**
5 **Netgear has done here.**

6 In describing the standards-setting process, Netgear raises the specter of so-
7 called patent “hold up.” Mot. at 5-6. As Netgear recounts, technological standard-
8 setting helps ensure product interoperability and global compatibility. This benefits
9 consumers “by providing increased competition and consumer choice.” *Id.* But those
10 benefits, Netgear claims, come with risks—specifically, the risk of “patent hold up,”
11 where SEP holders “demand[] excessive royalties” for their SEPs once their
12 technologies have been adopted into a standard. *Id.*

13 But as commentators have explained in recent years, the theoretical concern of
14 “hold-up” is “devoid of economic or empirical evidence” showing it to be “a real
15 phenomenon.” Richard A. Epstein & Kayvan B. Noroozi, *Why Incentives for Patent*
16 *Holdout Threaten to Dismantle FRAND, And Why It Matters*, 32 BERKELEY TECH.
17 L.J. 1381, 1384 (2017). Rather, “[d]espite the 15 years proponents of the theories
18 have had to amass evidence, the empirical studies conducted thus far have not shown
19 that holdup . . . is a common problem in practice.” Anne Layne-Farrar, *Patent*
20 *Holdup and Royalty Stacking Theory and Evidence: Where Do We Stand After 15*
21 *Years of History?*, 122nd Meeting of the OECD Competition Committee, Dec. 17-18,
22 2014, at 2. Indeed, just a few months ago, Netgear itself submitted a declaration in
23 another case rebutting the very arguments its current expert, Mr. David Djavaherian,
24 makes now in this case:

25 Mr. Djavaherian[] overstates the importance of “patent hold-up”
26 [W]hile some scholars have asserted that patent hold-up is an important
27 issue, several empirical studies examined whether there is any evidence
28 of patent hold-up and did not find support for the testable implications
of the theory. On the whole, there is little evidence that patent hold-up
is a systemic problem.

1 Ex. 30, Declaration of Dr. Kirti Gupta, Ph.D., Redacted Version at 12 ¶ 25, *TP-Link*
2 *Corp. PTE Ltd. v. NETGEAR, Inc.*, No. 5:24-cv-3478 (N.D. Cal. Aug. 1, 2024), Dkt.
3 56 (“Gupta Decl.”).

4 The converse problem—patent *holdout*—is “far more concern[ing].” Epstein
5 & Noroozi, at 1384; *see also* Gupta Decl. at 12 ¶ 25. “Holdout” occurs when an
6 implementer like Netgear “refuses to negotiate in good faith with an innovator for a
7 license to valid patent(s) that the implementer infringes, and instead forces the
8 innovator to . . . undertake significant litigation costs and time delays to extract a
9 licensing payment through a court order.” Epstein & Noroozi, at 1384. This bad-faith
10 behavior is often carried out “under the guise that the patent owner’s offers to license
11 were not fair or reasonable.” Colleen V. Chien, *Holding Up and Holding Out*, 21
12 MICH. TELECOMMS. & TECH. L. REV. 1, 21–22 (2014).

13 As explained next, Netgear’s negotiation conduct—including ignoring
14 Huawei’s *seven* letters over nearly two years asking Netgear to accept a license to
15 Huawei’s Wi-Fi SEPs and responding to Huawei only after Huawei finally filed
16 suit—is a textbook example of patent holdout.

17 **C. Netgear ignored Huawei’s licensing outreach for two years and has**
18 **failed to meaningfully negotiate a license.**

19 Netgear’s recounting of the parties’ Wi-Fi SEP negotiations blatantly omits
20 key facts. By choosing to begin its story on March 2, 2022—the date Huawei first
21 brought suit against Netgear in Düsseldorf, Germany—Netgear misleadingly implies
22 that Huawei did nothing before it allegedly “improperly and aggressively pursued
23 patent litigation.” Mot. at 7. What Netgear fails to tell the Court is that, *for nearly*
24 *two years* before Huawei filed suit, Netgear stonewalled Huawei’s repeated attempts
25 to engage Netgear in licensing negotiations. Then, when Netgear finally responded
26 (only after Huawei sued), Netgear dragged its feet.

27 **1.** On July 9, 2020, Huawei first notified Netgear of Netgear’s infringement.
28 Huawei explained that its letter served “as a formal notice letter of infringement of

1 Huawei’s standard essential patents to 802.11 series standards (‘Wi-Fi Standards’)
2 by Netgear’s products.” Ex. 10, at NETGEAR_000000002, -06. Huawei attached a
3 91-page list of “Exemplary Patents of Huawei” identifying by number roughly 1,800
4 Huawei patents from its Wi-Fi portfolio. Ex. 10, at NETGEAR_000000009–99.
5 Netgear did not respond.

6 **2.** On August 14, 2020, Huawei followed up with a second letter “kindly
7 remind[ing]” Netgear that a license was required for “any NETGEAR products
8 compliant with Wi-Fi Standards.” Ex. 10, at NETGEAR_000000004. As Huawei
9 noted, “In compliance with our commitment to IEEE, we are willing to license our
10 Wi-Fi patent portfolio on fair, reasonable and non-discriminatory terms.” Ex. 10, at
11 NETGEAR_000000004–05. Netgear did not respond.

12 **3.** On September 8, 2020, Huawei sent a third letter urging Netgear to “please
13 contact us and begin licensing discussions as soon as possible” if it was “willing to
14 take a license under Huawei’s Wi-Fi patent portfolio.” Ex. 11, at
15 NETGEAR_000000199. Netgear did not respond.

16 **4.** On October 28, 2020, Huawei wrote a fourth letter stating it had
17 “sufficiently demonstrated” its willingness “to offer NETGEAR a license on fair and
18 reasonable terms and conditions.” Ex. 12, at NETGEAR_000000403. Netgear’s
19 “total silence,” Huawei said, “could only be considered” a “rejection of our invitation
20 and offer.” Ex. 12, at NETGEAR_000000403. Netgear did not respond.

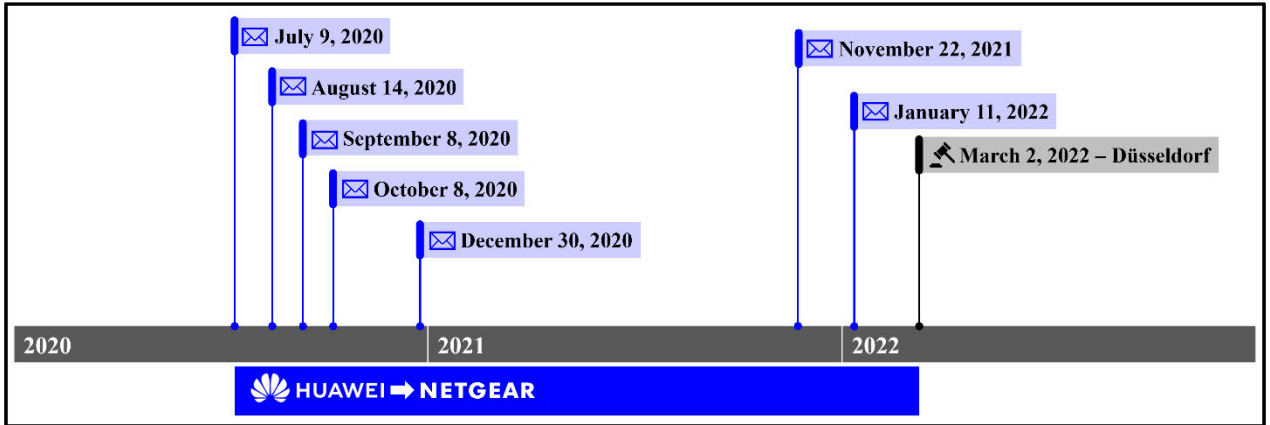
21 **5.** On December 30, 2020, Huawei made a fifth attempt to engage Netgear,
22 writing: “We have exhausted the commercially reasonable ways of notifying
23 NETGEAR of its infringement of Huawei’s Wi-Fi patent portfolio. Apparently,
24 NETGEAR refuses to enter into licensing discussions with Huawei.” Ex. 13, at
25 NETGEAR_000000613. Netgear again did not respond.

26 **6.** After nearly a year’s pause, Huawei contacted Netgear a sixth time on
27 November 22, 2021, stating matter-of-factly: “We sent five letters in 2020 inviting
28 Netgear to engage with Huawei discussing license matters with regard to Huawei’s

1 Wi-Fi patent portfolio. We have not received any response so far.” Ex. 14, at
2 NETGEAR_000000629. Netgear did not respond.

3 7. Huawei tried a seventh and final time on January 11, 2022: “Please let us
4 know before January 31, 2022 if Netgear is interested in obtaining a license under
5 Huawei’s Wi-Fi . . . patent portfolio.” Ex. 15, at NETGEAR_000000643. But
6 January 31 came and went, and again Netgear did not respond.

7 These communications are summarized in the timeline below:



15 Having been repeatedly ghosted by Netgear, Huawei sued Netgear on March
16 2, 2022, in Düsseldorf, Germany for infringing two Wi-Fi 6 patents. Shortly
17 thereafter, Huawei again wrote to Netgear explaining why it had brought suit, noting
18 that Huawei had been trying to engage with Netgear “to negotiate a license for the
19 Wi-Fi 6 standard essential patents” for “more than one and a half year[s].” Ex. 16, at
20 NETGEAR_000009079. Notwithstanding Netgear’s silence to date, Huawei stressed
21 that “to avoid any misunderstandings,” it remained “willing to grant a license to
22 Netgear on FRAND terms.” Ex. 16, at NETGEAR_000009079. To preserve its legal
23 rights in China, Huawei also sued for infringement of two patents on May 10, 2022.

24 Netgear finally responded for the first time on April 12, 2022—twenty-one
25 months after Huawei sent its first letter. Ex. 24, at NETGEAR_000016353. In its
26 response, Netgear said it believed “true FRAND terms . . . are determined best in out-
27 of-court negotiations” but asked for more information—including patent lists, claim
28 charts, and third-party licenses, among other information. Ex. 24, at

1 NETGEAR_000016353–54. (Huawei had sent Netgear its patent lists in its very first
2 communication in July 2020. *See* Ex. 10, at NETGEAR_000000009–99.)

3 Huawei promptly responded to Netgear’s requests for information once the
4 parties finalized a non-disclosure agreement. On June 16, 2022, Huawei sent Netgear
5 [REDACTED] detailed claim charts. Ex. 17, at NETGEAR_000009085. On June 25, Huawei
6 sent a 37-page slide deck on its Wi-Fi program along with a ready-to-sign draft
7 license agreement, which offered a rate of [REDACTED] per unit for Wi-Fi 6 compliant
8 products, Ex. 17, at NETGEAR_000009084, -93–147—the same rate that courts
9 have already found to be FRAND-compliant when offered to two other licensees:
10 Amazon and AVM. Ex. 4 (Redacted Judgment of Munich Regional Court I, Ref. 7
11 O 10988/22) ¶¶ 113–14 (holding Huawei’s offers “a suitable starting point for the
12 conclusion of a license agreement between willing license agreement parties within
13 the framework of negotiations”); Ex. 5 (Redacted Judgment of Munich Regional
14 Court I, Ref. 21 O 2576/22) at 42 (holding Huawei’s offer was “not arbitrary” but
15 could “be justified on the basis of comparative licenses”); Ex. 1 (S. WanTing Decl.),
16 ¶¶ 9–10.

17 Netgear did not accept Huawei’s offer. Instead, over the following year,
18 Netgear repeatedly asked Huawei for ever more information, while providing none
19 of its own. Not until May 1, 2023—nearly a year after Huawei’s initial offer and
20 nearly three years after Huawei asked Netgear to engage in licensing negotiations—
21 did Netgear make its first counteroffer. Ex. 18, at NETGEAR_000009908. But that
22 counteroffer [REDACTED]. Ex. 18, at
23 NETGEAR_000009911 ([REDACTED])
24 [REDACTED] *See generally* Ex. 18, at NETGEAR_000009908–20. Netgear
25 [REDACTED], *see* Ex. 25,
26 at 98 (NETGEAR 2023 Form 10-K) (showing that Netgear’s U.S. revenue comprises
27 roughly two-thirds of its worldwide revenue). Netgear proposed [REDACTED]
28 [REDACTED]. Ex. 18, at NETGEAR_000009911.

1 With Netgear’s actions evincing delay rather than good-faith negotiation,
2 Huawei sued on two more patents in the Unified Patent Court (UPC) in Europe on
3 July 3, 2023.² Even so, Huawei continued to express its preference for negotiating a
4 license, rather than litigating. Ex. 19, at NETGEAR_000010320. Toward that end,
5 Huawei suggested on September 1, 2023 that the parties resolve their disputes with
6 a third-party mediator. Ex. 19 (Sept. 1, 2023). But Huawei’s mediation overtures also
7 went ignored, despite follow-ups on September 21, September 29, and October 17,
8 2023. Ex. 20, at NETGEAR_000010352 (Sept. 21, 2023); Ex. 21, at
9 NETGEAR_000010384 (Sept. 29, 2023); Ex. 22, at NETGEAR_000010627 (Oct.
10 17, 2023). On January 28, 2024, Huawei wrote Netgear again, noting that Netgear
11 had left Huawei’s October 17, 2023 correspondence “entirely unanswered” and
12 asking again whether Netgear was “committing to enter into mediation.” Ex. 23, at
13 NETGEAR_000010662.

14 Netgear again did not respond. Instead, it filed this suit the next day on January
15 29, 2024—three-and-a-half years after Huawei first contacted Netgear to discuss
16 licensing of Huawei’s Wi-Fi SEPs. Dkt. 1.

17 **D. Netgear sues in the United States but does not request a declaration**
18 **of FRAND terms.**

19 Netgear elected to bring antitrust and RICO claims—claims that are
20 notoriously complex and complicated to litigate—as a way “to exert pressure in its
21 ongoing royalty discussions with Huawei.” Dkt. 80-1, at 8.

22 It now doubles down on using litigation for licensing leverage, albeit by a
23 different means. Netgear now asks that this “Court bifurcate the issue of Huawei’s
24 contractual obligation based on its IEEE LOAs and set an early bench trial to
25 determine appropriate worldwide RAND terms for Huawei’s Wi-Fi SEPs.” Mot. at
26 15. Notably, Netgear’s new strategy confirms what Huawei has argued all along—

27 _____
28 ² The UPC is a specialized patent court for Member States of the European Union
that was founded on June 1, 2023.

1 this case is, indeed, just a routine patent-licensing dispute. But Netgear’s request for
2 bifurcation finds no basis in its own complaint. Nowhere in Netgear’s 113-page
3 complaint did it request declaratory relief relating to FRAND licensing terms. *See*
4 *generally* Dkt. 1.

5 **E. Netgear files its bifurcation motion to undermine the results of**
6 **overseas infringement litigation where Netgear is faring poorly.**

7 Netgear admits the motivation for its extraordinary request. When Netgear
8 filed its motion, one court, the Intermediate People’s Court of Jinan (China), had
9 already found Netgear liable for infringing two of Huawei’s Wi-Fi SEPs. Dkt. 115-
10 3, at 6. Along the way, that court adjudicated the very FRAND issues Netgear raises
11 here. The Jinan court, having reviewed the parties’ negotiation history and licensing
12 offers, held that “Huawei fulfilled its FRAND obligations.” *Id.* at 21. By contrast, the
13 court held, Netgear “obviously delayed the negotiations, made unreasonable
14 counteroffer and did not actively respond to Huawei’s negotiation invitation, etc.” *Id.*
15 In short, Netgear “committed obvious faults during the negotiations.” *Id.*

16 Netgear feared that the Munich Regional Court (Germany) and the UPC would
17 imminently reach the same conclusion as the Jinan court. Mot. at 7 (noting that
18 decisions “in two of these cases are anticipated in December 2024 with an injunction
19 potentially issuing in December 2024 or January 2025”). Netgear’s fears were well-
20 founded. On December 18, 2024, the UPC confirmed Netgear’s infringement of
21 Huawei’s asserted Wi-Fi 6 patent, and it issued an injunction ordering Netgear to
22 “cease and desist” such infringement. Ex. 2 (T. Hessel Decl.) ¶¶ 13–14 & Ex. A
23 thereto. In doing so, the UPC held that Huawei had satisfied its FRAND obligations.³

24 _____
25 ³ The UPC also addressed Netgear’s defense that Huawei’s license agreement with
26 Qualcomm exhausted Huawei’s patent rights, holding only that products placed in
27 the market in the European Union during the limited term of the Qualcomm
28 agreement from January 1, 2020 to December 31, 2024 were affected. Ex. 2 (T.

1 Ex. 2 (T. Hessel Decl.) ¶¶ 13–14. The next day, on December 19, 2024, the Munich
2 court also presented its preliminary opinion that Netgear infringed another of
3 Huawei’s Wi-Fi 6 SEPs and that the patent’s validity would be upheld. Ex. 2 (T.
4 Hessel Decl.) ¶ 16.

5 **III. LEGAL STANDARD**

6 Under Fed. R. Civ. P. 42(b), “the Court may order separate trials for one or
7 more separate issues or claims ‘[f]or convenience, to avoid prejudice, or to expedite
8 and economize.” *Classical Silk*, 2016 WL 7638112, at *3. “‘Efficient judicial
9 administration’ is of the utmost concern to courts in determining whether bifurcation
10 is warranted.” *Yowan Yang v. ActioNet, Inc.*, No. 2:14-cv-792-AB-PJW, 2016 WL
11 8929250, at *11 (C.D. Cal. Feb. 19, 2016). And in deciding that question, courts
12 consider: (1) separability of issues; (2) simplification of discovery and conservation
13 of judicial resources; (3) potential unfair prejudice to the parties; and (4) preservation
14 of the parties’ right to a jury trial. *Classical Silk*, 2016 WL 7638112, at *3.

15 Bifurcation “is the exception rather than the rule of normal trial procedure.”
16 *Id.* It “should be used sparingly,” 9A WRIGHT & MILLER, FED. PRAC. & PROC. CIV.
17 § 2390 (3d ed.), and “[t]he moving party bears the burden to show bifurcation is
18 warranted” and “necessary.” *Wiggins v. Penske Logistics LLC*, No. 5:19-cv-2260-
19 FWS-KK, 2022 WL 1161628, at *1 (C.D. Cal. Mar. 1, 2022).

20 **IV. ARGUMENT**

21 Netgear comes nowhere close to meeting its burden to bifurcate one issue—
22 for which it never sought declaratory relief—from its remaining claims and to have
23

24
25 _____
26 Hessel Decl.), Ex. A at 122–30. One commentator has already explained that this
27 narrow holding in Netgear’s favor “won’t move the needle” because “patent
28 exhaustion applies only to components that are for the first time placed on the market
in a member state of the European Union.” Ex. 9 (Florian Mueller, *Netgear Running
Out of Time Against Huawei as Next Injunction Could Come Down on January 9,
Patent Exhaustion Won’t Move Needle*, IPFRAY (Dec. 19, 2024)).

1 a “mini-trial” on an expedited basis. Each of the bifurcation factors cuts against
2 Netgear’s extraordinary request.

3 **A. Netgear’s proposed bifurcation will not simplify any issue or**
4 **conserve judicial resources.**

5 **1. Bifurcation will not resolve any claim in this case.**

6 “Bifurcation is typically reserved for situations in which resolution of a single
7 claim or issue is potentially dispositive of the entire case.” *Liberty Mut. Ins. Co. v.*
8 *Hawaiya Techs., Inc.*, No. 1:18-cv-410, 2021 WL 54503, at *3 (D. Haw. Jan. 6, 2021)
9 (denying bifurcation of a “fraudulent transfer cause of action” where it was “not
10 potentially dispositive of the entire case”); *Gamble v. State Farm Mut. Auto. Ins. Co.*,
11 No. 3:19-cv-5956, 2020 WL 7342983, at *1 (W.D. Wash. Dec. 14, 2020) (denying
12 bifurcation where “disposition of the contractual claims would not necessarily
13 dispose of the extracontractual claims”). Here, far from resolving the entire case,
14 Netgear’s proposal for this Court to determine “appropriate worldwide RAND terms
15 for Huawei’s Wi-Fi SEPs,” Mot. at 15, will not dispose of *any* claim in this case.

16 Take, for instance, Netgear’s breach-of-contract claim. Determining FRAND
17 terms for Huawei’s Wi-Fi portfolio does not (and cannot) resolve that claim. Because
18 the IEEE agreement “anticipate[s] that the parties will negotiate towards a RAND
19 license,” courts have not required that “initial offers . . . be on RAND terms.”
20 *Microsoft Corp. v. Motorola, Inc.*, 864 F. Supp. 2d 1023, 1038 (W.D. Wash. 2012);
21 *see also Ericsson v. D-Link Sys., Inc.*, No. 6:10-cv-473, 2013 WL 4046225, at *25
22 (E.D. Tex. Aug. 6, 2013) (holding that a “patent holder does not violate its RAND
23 obligations by seeking a royalty greater than its potential licensee believes is
24 reasonable”). So, a determination of FRAND terms will not decide whether Huawei’s
25 offers breached a FRAND obligation. A jury would also need to evaluate whether
26 Huawei’s actions as a whole in response to Netgear’s stonewalling violated any
27 FRAND commitment. And even if Netgear could establish liability for breach (it
28 cannot), Netgear would still need to prove damages. *See Troyk v. Farmers Grp., Inc.*,

1 171 Cal. App. 4th 1305, 1352 (Cal. Ct. App. 2009) (“An essential element of a claim
2 for breach of contract are damages resulting from the breach.”).

3 The same conclusion follows for the other causes of action Huawei has sought
4 to dismiss—i.e., Netgear’s fraud (Count VII), negligent misrepresentation (Count
5 VIII), promissory estoppel (Count IX), antitrust (Counts I & II), RICO (Counts III &
6 IV), and unfair business practices (Count X) claims. Those claims assert that Huawei
7 defrauded the IEEE and other standards-setting organizations—i.e., that Huawei’s
8 Letters of Assurance were knowingly false when submitted—in order to “dominate”
9 markets worldwide. A judicial determination of FRAND terms would not resolve any
10 aspect of these claims, and Netgear does not argue otherwise.

11 Finally, by Netgear’s own admission, this Court’s determination of FRAND
12 terms “would not include resolution of the patent exhaustion issue,” and thus would
13 not resolve Netgear’s claim for “declaratory judgment of implied license and/or
14 exhaustion” (Count VI). Ex. 26 (B. Jacobs Nov. 7, 2024 Email).

15 Netgear does not (and cannot) argue that bifurcation will aid this Court in
16 administering its own docket. Instead, Netgear speculates that rushing this Court to
17 determine FRAND terms might resolve *other litigation* in which Netgear is not faring
18 well. According to Netgear, bifurcation here will “promot[e] equity by simplifying
19 the numerous patent infringement actions Huawei has serially filed against
20 NETGEAR abroad.” Mot. at 11. But that misapprehends the purpose of Rule 42—
21 which empowers the court to separate (or consolidate) trials as a means of controlling
22 its *own* docket “so that the business of the court may be dispatched with expedition
23 and economy,” not to collaterally attack litigation pending in other courts. 9A
24 WRIGHT & MILLER § 2381.

25 Netgear’s citation to *Lenovo*, 120 F.4th 864 (Fed. Cir. 2024) is likewise a red
26 herring. Mot. at 10–11. That decision did not involve bifurcation, but rather
27
28

1 addressed a motion for an anti-suit injunction.⁴ 120 F.4th at 870. And it provides no
2 support for Netgear’s request for an “expedited” mini-trial on FRAND terms. *Lenovo*
3 merely reaffirmed that an SEP holder must have “first complied with the good-faith-
4 negotiation obligation imposed by the FRAND commitment” before seeking
5 injunctive relief. *Id.* at 877. That is what Huawei did here by trying for nearly two
6 years to initiate negotiations with Netgear.

7 **2. Bifurcation will not promote settlement.**

8 Because setting FRAND terms will not actually resolve any other claim in the
9 case, Netgear’s only other argument in support of judicial economy is its hope that
10 the Court’s ruling may induce the parties to settle. *See* Mot. at 9. The mere prospect
11 that a bifurcated mini-trial could yield settlement is not a sufficient basis for
12 bifurcation. In *Puterbaugh v. Oorah, Inc.*, Judge Carney rejected the argument that
13 the increased “possibility of settlement without trial” was a basis for bifurcation
14 because that rationale would render bifurcation “appropriate in every case.” No. 8:21-
15 cv-1593-CJC-DFM, 2023 WL 4317358, at *2 (C.D. Cal. June 1, 2023). Likewise, in
16 *Poe v. Cook*, a court reasoned that “[i]t would be improper for the Court to decide
17 the bifurcation issue based on the possibility of encouraging settlement.” No. 2:17-
18 cv-062, 2019 WL 2419460, at *2 (D. Or. June 10, 2019).

19 Regardless, Netgear does not explain how its request—that the Court
20 “determine appropriate worldwide RAND terms for Huawei’s Wi-Fi SEPs,” Mot. at
21 15—could move the parties closer together. First, Netgear provides no details for its
22 proposal. It is not clear how the Court could decide worldwide RAND terms, for
23 example, without also resolving issues such as unit counts and past-due royalties.
24 Those issues are invariably affected by the patent-exhaustion issue that Netgear has
25 asserted in its complaint but carved out of its bifurcation request.

26
27
28 ⁴ Huawei will address *Lenovo* in greater detail in its forthcoming opposition to
Netgear’s own request for a similar anti-suit injunction. *See* Dkt. 127.

1 Second, and more importantly, Netgear has never committed to accepting a
2 license based on terms set by the Court—rendering any potential settlement entirely
3 speculative. Netgear has instead only feinted at that possibility, stating that it is
4 “willing to accept the determined worldwide license,” Mot. at 14, but never explicitly
5 committing to do so. Even if Netgear made such a commitment now, nothing
6 prevents Netgear from renegeing if the result is not to its liking. In similar
7 circumstances, the court in *InterDigital Communications, Inc. v. ZTE Corp.*
8 dismissed claims seeking a declaration of a FRAND rate, explaining that it was
9 “unclear” how the court “could actually enforce such a ruling.” Nos. 1:13-cv-009,
10 1:13-cv-010, 2014 WL 2206218, at *3 (D. Del. May 28, 2014). In *InterDigital*, both
11 accused infringers had “indicated their ‘willingness’ to accept a license.” *Id.* But the
12 court recognized that companies “can change or sell their product lines,” “enter and
13 withdraw from markets,” or “appeal” and “initiate other litigation”—all of which
14 could “derail a final judgment.” *Id.*

15 And Netgear is already laying the groundwork to back out of any Court-
16 determined terms, hedging that it may later contest infringement, validity, and
17 essentiality of Huawei’s Wi-Fi SEPs. For example, in responding to Huawei’s
18 interrogatory asking “[i]f You contend that any Huawei Patent contains one or more
19 Essential Patent Claims, describe in detail the complete factual and legal basis for
20 Your contention,” Netgear riddles its response with caveats: “[F]or purposes of this
21 case and NETGEAR’s claims against Huawei, and in view of how Huawei interprets
22 the claims in the above-identified patents, NETGEAR states that Huawei’s identified
23 patents are either optional or necessary to practice the Wi-Fi 6 standard and/or pre
24 Wi-Fi 6 standards.” Ex. 27 (Netgear’s Response to Huawei Interrogatory 2).

1 **B. Netgear’s requested relief has no legal basis and would improperly**
2 **eliminate Huawei’s Seventh Amendment right to a jury trial.**

3 Netgear’s bifurcation request—to declare the FRAND terms for a potential
4 license to Huawei’s Wi-Fi SEPs—also lacks any legal basis and would violate
5 Huawei’s right to a jury trial.

6 First, there is no vehicle for this Court to declare FRAND terms. In Netgear’s
7 ten-count, 113-page Complaint, Netgear does not seek a declaration of any FRAND
8 terms for Huawei’s Wi-Fi SEPs. *See* Dkt. 1. Netgear purports to bifurcate an “issue”
9 from its breach-of contract claim. But to decide that claim, the Court need never
10 decide the complete FRAND terms of a worldwide license to Huawei’s Wi-Fi SEPs.
11 Certainly, Netgear does not argue that a rate-setting is a necessary predicate to
12 resolving liability for breach of FRAND. And even if it were, deciding whether
13 Huawei’s [REDACTED] offer was a breach of FRAND—an argument two courts have
14 expressly rejected, *see* Ex. 4, at ¶¶ 113–14, Ex. 5, at 42—would require *at most*
15 deciding a range of reasonable FRAND rates. *See Microsoft Corp. v. Motorola, Inc.*,
16 No. 2:10-cv-1823, 2012 WL 4827743, at *6–10 (W.D. Wash. Oct. 10, 2012) (noting
17 that determining “a RAND royalty range” would “provide the jury guidance in
18 deciding whether” Motorola’s offers breached its “duty to make offers for its standard
19 essential patents in good faith”).

20 At bottom, Netgear’s request is an end-run around the legal standards
21 governing the propriety of declaratory relief. Declaratory relief is discretionary,
22 *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir. 1998) (en banc), and a
23 court should not grant it unless it is “convinced that by its action a useful purpose
24 will be served.” *ZTE Corp.*, 2014 WL 2206218, at *2; *see also Wilton v. Seven Falls*
25 *Co.*, 515 U.S. 277, 288 (1995). Had Netgear pleaded a declaratory judgment rate-
26 setting claim, its bifurcation request would be subject to this Court’s determination
27 of the prudence of granting such relief.

28

1 Netgear’s request would fail the standards for declaratory relief. For one, it
2 does not serve any useful purpose. Again, Netgear has not actually committed to
3 accepting this Court’s determination of license terms. *ZTE Corp.*, 2014 WL 2206218,
4 at *2. So, this Court’s determination of FRAND terms would serve no purpose other
5 than providing Netgear “a ceiling on the potential license rate” and other terms “that
6 it could use for negotiating purposes.” *Apple Inc. v. Motorola Mobility, Inc.*, No.
7 3:11-cv-178, 2012 U.S. Dist. LEXIS 168986, at *8–9 (W.D. Wisc. Nov. 28, 2012);
8 *see also ZTE Corp.*, 2014 WL 2206218, at *3 (same).

9 *Interdigital Communications., Inc. v. Huawei Techs. Co. Ltd.* is also
10 instructive. Nos. 1:13-cv-008-RGA, 1:13-cv-009-RGA, 2013 WL 8507613, at *1 (D.
11 Del. Mar. 14, 2013). There, Huawei requested an expedited ruling on its declaratory
12 judgment claim for the FRAND rate in advance of a parallel International Trade
13 Commission proceeding. *Id.* The court denied that request, reasoning that
14 “determination of the FRAND rate would at most resolve a tiny sliver of this case”
15 and that it did “not seem . . . like a very practicable idea to try to race to a partial
16 judgment” just so that Huawei could “be in a better position” in the parallel ITC
17 litigation. *Id.* The same is true here. Netgear’s request that this Court “race to a partial
18 judgment” merely to strengthen its hand in overseas litigation is not a cognizable
19 basis for bifurcation under Rule 42.

20 Netgear suggests that the *Interdigital* case shows that Huawei has previously
21 “recogniz[ed] the efficiencies advanced by isolating a single issue.” Mot. at 3, 4 n.2.
22 But unlike Netgear here, Huawei had counterclaimed for a declaratory judgment. So,
23 Huawei sought merely to resolve its own counterclaim before *Interdigital*’s patent
24 infringement claims. And as explained, the court *denied* Huawei’s request.

25 At the same time, Netgear’s demand for “worldwide” licensing terms puts
26 international comity at risk by intruding on issues of foreign patent rights. One court
27 has declined to exercise declaratory-judgment jurisdiction over a “global FRAND
28 determination[.]” for just that reason. *Optis Wireless Tech., LLC v. Huawei Techs. Co.*

1 *Ltd.*, No. 2:17-cv-123, 2018 WL 3375192, at *8 (E.D. Tex. July 11, 2018). In
2 reaching that conclusion, *Optis* relied in part on the Federal Circuit’s holding in *Voda*
3 *v. Cordis Corp.*, 476 F.3d 887, 897–905 (Fed. Cir. 2007), that “considerations of
4 comity, judicial economy, convenience, fairness, and other exceptional
5 circumstances constitute compelling reasons to decline jurisdiction” over foreign
6 patent infringement claims.

7 Netgear’s request also would violate Huawei’s jury trial right. Rule 42(b)
8 “specifically requires that separate trial orders ‘preserve any federal right to a jury
9 trial,’” meaning bifurcation “cannot be used to deprive a party of its right to a jury
10 trial on legal issues.” *Liberty Mut.*, 2021 WL 54503, at *3 (quoting *Beacon Theatres,*
11 *Inc. v. Westover*, 359 U.S. 500, 504 (1959)); *M.Z. v. Goleta Union Sch. Dist.*, No. 17-
12 cv-8431-AB-GJS, 2018 WL 5794520, at *1 (C.D. Cal. June 12, 2018) (same). But
13 that is precisely what Netgear’s request aims to do.

14 Huawei is entitled to a jury trial on Netgear’s breach claim, which is a *legal*
15 claim and not an *equitable* one. “To determine whether a particular action will resolve
16 legal rights” and thereby implicate the jury trial right, a court must “examine both the
17 nature of the issues involved and the remedy sought.” *TCL Comm. Tech. Holdings*
18 *Ltd. v. Telefonaktiebolaget LM Ericsson*, 943 F.3d 1360, 1372 (Fed. Cir. 2019)
19 (quoting *Chauffeurs v. Terry*, 494 U.S. 558, 565 (1990)). The “more important”
20 inquiry is “the remedy sought” and “whether it is legal or equitable in nature.” *Id.*
21 (holding that a “release payment,” even when “ordered in the form of an injunction,”
22 constituted legal relief because it was “payment for past unlicensed sales”).

23 Netgear’s breach claim is plainly legal: It seeks money damages for Huawei’s
24 alleged breach of its FRAND commitment. *See* Dkt. 1, at 112–13. Netgear’s Prayer
25 for Relief asks for “[r]ecovery of actual damages from Defendant according to proof
26 at trial” and “[a] judgment that Huawei is liable for breach of its contractual
27 commitments to the IEEE.” *Id.* Even if Netgear had sought a declaratory judgment
28 of FRAND licensing terms (an equitable claim), the breach claim would have to be

1 tried first: “[L]egal claims must be tried first to a jury where they share common
2 issues with equitable claims,” such as whether Huawei’s licensing offer complied
3 with its FRAND obligations. *TCL*, 943 F.3d at 1366.

4 In *TCL*, for example, the trial court had engaged in a lengthy bench proceeding
5 to determine FRAND terms, over Ericsson’s Seventh Amendment objection. *Id.* at
6 1366–67. All that work was for naught, however, as the Federal Circuit vacated all
7 of the court’s bench determinations, including the court’s ruling of FRAND terms,
8 and ordered that the issues be “redecided by the jury.” *Id.* at 1375–76.

9 Given these fundamental defects in Netgear’s request, it is unsurprising that
10 Netgear cites no authority (and Huawei is aware of none) where a court has, over the
11 objection of one party, bifurcated a determination of a FRAND rate (or other terms)
12 from a breach-of-contract claim for trial.

13 The four cases that Netgear does cite—*Ericsson Inc. v. Samsung Elecs. Co.*
14 *Ltd.*, No. 2:06-cv-063, 2007 WL 1202728 (E.D. Tex. Apr. 20, 2007); *Microsoft Corp.*
15 *v. Motorola, Inc.*, No. 2:10-cv-1823, 2012 WL 4827743 (W.D. Wash. Oct. 10, 2012);
16 *In re Innovatio IP Ventures, LLC Patent Litig.*, No. 1:11-cv-9308, 2013 WL 5593609
17 (N.D. Ill. Oct. 3, 2013); and *One-Blue, LLC v. Imation Corp.*, No. 1:13-cv-00917 (D.
18 Del. Jan. 7, 2014), Dkt. 35—prove Huawei’s point. None of these cases addresses
19 the legal defects Huawei raises here because they either included declaratory
20 judgment claims, were bifurcated by consent, or involved bifurcation of the breach
21 claim entirely from other claims. In both *Microsoft* and *Innovatio*, the parties
22 expressly consented to bench trial of the FRAND rate. *Microsoft*, 2012 WL 4827743,
23 at *4 (“On June 14, 2012, both Microsoft and Motorola agreed to determine the
24 RAND royalty rate by bench trial.”); *Innovatio*, 2013 WL 5593609, at *2 (“[B]oth
25 sides have waived their jury trial right and consented to this court’s determination of
26 the disputed damages question.”). The *Ericsson* and *One-Blue* courts, meanwhile,
27 bifurcated the *entire breach claim* from competing patent infringement claims for
28 separate jury trials. *Ericsson*, 2007 WL 1202728, at *3; Ex. 29, *One-Blue*, No. 1:13-

1 cv-00917 (D. Del. Nov. 25, 2013), Dkt. 27 (noting that the defendant had sought
2 generally “to bifurcate FRAND issues” and that defendant’s counterclaim had sought
3 both a declaration of breach of FRAND and a declaration of the FRAND royalty
4 rate). Netgear’s request shares none of those features.

5 In short, Netgear’s request is categorically different from the circumstances
6 where courts consider bifurcation in FRAND litigation—usually of competing claims
7 and counterclaims of patent infringement and breach of FRAND. Each of Netgear’s
8 cited cases—*Ericsson*, *Microsoft*, *Innovatio*, and *One-Blue*—arose in that posture.
9 By contrast, here, Netgear seeks to bifurcate a purportedly subsidiary (and non-
10 dispositive) issue of its breach claim from the rest of *its own complaint*, before this
11 Court has even entered a scheduling order, and to hold a “mini-trial” on that lone
12 issue on an *expedited* basis. There is no authority for granting that request.

13 **C. Netgear’s proposed bifurcation prejudices Huawei.**

14 Bifurcation would also prejudice Huawei. First, by seeking to try separately
15 the determination of FRAND terms from the overall question of breach, Netgear
16 attempts to obscure the evidence of its own FRAND negotiation holdout—which
17 Netgear will surely argue is not relevant to the rate determination. That evidence,
18 however, *is* relevant to Huawei’s defense of Netgear’s breach claim. Netgear has no
19 right to dictate how Huawei presents its own defense.

20 Second, Netgear has not only sought to separate the issue of FRAND terms,
21 but also to have that unpled issue decided (1) by bench trial (2) on an expedited basis.
22 As already explained, the former obviates Huawei’s Seventh Amendment jury-trial
23 right. As for Netgear’s request to expedite, that request—far from being convenient
24 for anyone—would (in Netgear’s words) impose the “burdens of expedited
25 proceedings for all parties.” Mot. at 14. Those burdens are especially significant for
26 Netgear’s proposed “mini-trial,” which asks this Court to undertake the task of
27 deciding worldwide FRAND licensing terms. For reference, in *Microsoft v.*
28 *Motorola*—a bench trial involving just determining the FRAND royalty rate (and

1 range) and no other licensing terms—the court held a week-long bench trial involving
2 *eighteen* witnesses. No. 2:10-cv-1823, 2013 WL 2111217, at *3 (W.D. Wash. Apr.
3 25, 2013). Netgear tries to mitigate that prejudice by suggesting that its proposal
4 “should result in a license.” *Id.* But given Netgear’s stances (or lack thereof)
5 concerning whether it will accept this Court’s determination of FRAND terms, that
6 is pure conjecture.

7 Third, Netgear’s proposal would cause wasteful duplication of evidence.
8 *Liberty Mut.*, 2021 WL 54503, at *3 (prejudice includes “increasing expense[s],
9 causing duplication of evidence, or deciding overlapping issues”). Although
10 determining FRAND licensing terms would not resolve Netgear’s breach of contract
11 claim, the two share overlapping issues, such as whether Huawei’s initial licensing
12 offer was FRAND. *See TCL*, 943 F.3d at 1366 (noting that “TCL’s damages claim
13 for breach of contract” and its “claim for the court to set a prospective FRAND rate”
14 “shared a common issue: whether Ericsson’s licensing offer complied with its
15 FRAND obligations”). The result would be duplication of an already complex
16 proceeding, with numerous witnesses required to testify multiple times in front of
17 two different triers of fact: once in the expedited “mini-trial” to the bench, and
18 separately in front of a jury.

19 For its part, Netgear points only to “countervailing equities”—namely, the
20 “inequity of Huawei shirking its contractual obligation while employing a worldwide
21 litigation blitz.” Mot. at 14. Needless to say, those “countervailing equities” assume
22 the merits of the very issue that Netgear is seeking to bifurcate.

23 * * *

24 Netgear’s proposal flouts Rule 42’s requirements. There is no legal authority
25 supporting Netgear’s highly unusual request—expedited bifurcation of a jury issue
26 over a party’s objection. Concerning judicial economy, Netgear’s proposal would not
27 resolve a single claim. Instead, it would cause wasteful duplication of resources to
28 resolve overlapping issues. And Netgear’s request would prejudice Huawei in

1 multiple ways, including by preventing Huawei from presenting its complete
2 defense, obviating Huawei’s jury-trial right, and imposing the burden of expedited
3 proceedings. Against those certain harms, Netgear offers only the speculative
4 possibility of settlement and the question-begging “inequity” imposed by Huawei’s
5 supposed “worldwide litigation blitz.” In short, every factor courts consider in
6 deciding whether to bifurcate—separability of issues, conservation of judicial
7 resources, potential unfair prejudice to the parties, and preservation of the parties’
8 right to a jury trial, *Classical Silk*, 2016 WL 7638112, at *3—disfavors bifurcation
9 here.

10 **V. CONCLUSION**

11 For these reasons, the Court should deny Netgear’s motion.

12
13 Dated: December 20, 2024

SUSMAN GODFREY L.L.P.

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Certificate of Compliance

The undersigned, counsel of record for Huawei Technologies Co., Ltd., certifies that this brief is no more than 25 pages in length, which:

___ complies with the word limit of L.R. 11-6.1.

X complies with the page limit set by court order dated March 14, 2024 (ECF No. 41).

Dated: December 20, 2024

By: /s/ Kalpana Srinivasan

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PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 1400, Los Angeles, California 90067-6029.

On December 20, 2024, I served the foregoing document(s) described as follows:

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on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

 BY MAIL:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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I caused said documents to be prepared in portable document format (PDF) for e-mailing and served by electronic mail as indicated on the attached service list.

Executed on December 20, 2024, at Los Angeles, California.

 (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 XX (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Larry Liu
(Type or Print Name)

/s/ Larry Liu
(Signature)