

1 ROBERT T. HASLAM (Bar No. 71134)
2 (rhaslam@cov.com)
3 COVINGTON & BURLING LLP
4 333 Twin Dolphin Drive, Suite 700
5 Redwood Shores, California 94065
6 Telephone: (650) 632-4700
7 Facsimile: (650) 632-4800

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10 *Attorneys for Plaintiffs*
11 *Apple Inc. and Apple Sales International*

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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 APPLE INC. and APPLE SALES
16 INTERNATIONAL,
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18 Plaintiffs,
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20 v.
21
22 MOTOROLA MOBILITY, INC.
23
24 Defendant.

Civil Case No.: '12CV0355 JLS BLM
**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 **COMPLAINT**

2 Plaintiffs Apple Inc. and Apple Sales International (collectively, “Apple”), for its
3 complaint against Motorola Mobility, Inc. (“Motorola”), allege and state as follows:

4 **PARTIES**

5 1. Plaintiff Apple Inc. is a California corporation having its principal place of
6 business at 1 Infinite Loop, Cupertino, California, 95014.

7 2. Plaintiff Apple Sales International is an unlimited company organized under the
8 laws of the Republic of Ireland having its principal place of business at Hollyhill Industrial
9 Estate, Hollyhill, Cork, Republic of Ireland.

10 3. On information and belief, Motorola Mobility, Inc. is a wholly-owned subsidiary
11 of Motorola, Inc. organized under the laws of Delaware with its principal place of business at 600
12 North U.S. Highway 45, Libertyville, Illinois 60048.

13 **JURISDICTION AND VENUE**

14 4. This action for declaratory and injunctive relief arises under Title 35 of the United
15 States Code. The Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C.
16 §§ 1331, 1338(a), 2201, and 2202.

17 5. This Court has personal jurisdiction over Motorola under California Code of Civil
18 Procedure § 410.10.

19 6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and pursuant to
20 a license between Qualcomm, Inc. and Motorola at issue in this action.

21 **I. NATURE OF THE ACTION**

22 7. This is a lawsuit asserting claims for breach of contract, declaratory, and injunctive
23 relief related to Motorola’s European Patent No 1 010 336 (“the ‘336 patent”) and the equivalent
24 U.S. Patent No. 6,359,898 (“the ‘898 patent”). Motorola has sued Apple in Germany, claiming
25 infringement of the ‘336 patent based on Apple’s use of Qualcomm components in Apple’s
26 iPhone 4S product. Motorola’s German lawsuit is in direct breach of a Patent Licensing
27 Agreement between Motorola and Qualcomm. As a Qualcomm customer, Apple is a third-party
28

1 beneficiary of that contract. Moreover, under this same contract, Motorola's rights under the '336
2 and the '898 patents are exhausted. Accordingly, Apple brings this suit for breach of contract,
3 declaratory, and injunctive relief, and asks this Court to enjoin Motorola from prosecuting and
4 enforcing its claims against Apple in Germany.

5 **II. MOTOROLA'S LICENSE WITH QUALCOMM**

6 8. The provisions of the Patent Licensing Agreement upon which this dispute is
7 based are set forth in the confidential Complaint filed under seal concurrently in this Court.

8 **III. THE QUALCOMM COMPONENTS SUPPLIED FOR INCORPORATION INTO 9 APPLE PRODUCTS ARE LICENSED BY MOTOROLA**

10 9. Qualcomm CDMA Technologies Asia-Pacific Pte. Ltd. ("QCTAP"), which is a
11 wholly-owned subsidiary of Qualcomm Incorporated, now sells the MDM6610 baseband
12 processors to Apple's contract manufacturers and those components are incorporated into Apple's
13 CDMA2000-compliant iPhone 4S.

14 10. The MDM6610 supplied by Qualcomm enables such devices to communicate via
15 cellular networks using various standards, including the UMTS and GPRS standards at issue here.

16 11. Qualcomm has informed Apple that Qualcomm has already paid Motorola for the
17 licenses and covenants for Qualcomm and its customers, including Apple.

18 **MOTOROLA'S LITIGATION AGAINST APPLE ON DECLARED STANDARD 19 ESSENTIAL PATENTS**

20 **A. Motorola's Breach of its FRAND Promise**

21 12. Motorola has declared to the European Telecommunications Standards Institute's
22 ("ETSI") that the '898 patent is essential to practicing ETSI's GPRS standard. Motorola also
23 committed to license its patent on fair, reasonable, and non-discriminatory ("FRAND") terms.

24 13. A promise to license under fair, reasonable and nondiscriminatory terms is the
25 quid pro quo that standards setting participants extend to the industry in return for the right to
26 collaborate with competitors in creating a standard that has the power to block market access.
27 Apple believes that parties who commit to license their standards essential patents on FRAND
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1 terms have obligations they cannot ignore, evade, or apply only prospectively after an abuse has
2 occurred.

3 14. Apple's position on FRAND licensing is long standing. When Apple makes a
4 promise to license its standards essential patents under FRAND terms, Apple will not waiver.
5 Apple will keep its commitment and, should it transfer any such patents to a third party, will take
6 best efforts to ensure that the third party adheres to Apple's FRAND obligations. If parties are
7 interested in licensing these patents, Apple will offer to make the patents available on FRAND
8 terms, as long as those terms are reciprocal, and will do so without requiring others to license
9 back to Apple anything more than their similarly held standards essential patents. Apple also
10 commits not to seek an injunction or exclusion order on the basis of its standards essential patents
11 that are subject to a FRAND licensing commitment. Despite owning scores of standards essential
12 patents, Apple has never asserted a standard essential patent in litigation and, therefore—unlike
13 some in the technology industry—has never used a patent subject to a FRAND commitment to
14 deny market access to a rival.

15 15. Apple went a step further in November 2011 when it clarified its FRAND
16 commitment to ETSI on cellular standards essential patents. In its letter, Apple emphasized that
17 seeking injunctive relief is inconsistent with a FRAND licensing obligation and went on to
18 propose a reciprocal framework for calculating FRAND that emphasizes an appropriate royalty
19 rate and a common base as a way to bring meaning to a concept that has been too long abused.

20 16. Motorola, on the other hand, has pursued an aggressive international campaign of
21 litigation that flies in the face of its promise to license its cellular standards essential patents on
22 FRAND terms.

23 **B. The Apple Sales International Mannheim Action: District Court Proceedings**

24 17. On April 1, 2011, Motorola Mobility, Inc. sued Apple Sales International in case
25 number 7 O 122/11 in the District Court of Mannheim in the Federal Republic of Germany (“the
26 ASI Mannheim Action”) alleging, among other things, that Apple Sales International infringes
27 the ‘336 patent.
28

1 18. Motorola alleges in the ASI Mannheim Action that it is not possible to practice the
2 European Telecommunications Standards Institute’s (“ETSI’s”) GPRS standard, a cellular
3 standard, without infringing the ‘336 patent—in other words, that the ‘336 patent is essential to
4 that standard. Motorola contends that certain Apple mobile communications devices infringe the
5 ‘336 patent because they are compliant with the GPRS standard.

6 19. Motorola did not name the Apple iPhone 4S as an accused product in its complaint
7 in the ASI Mannheim Action. The iPhone 4S was not on sale in Germany at the time that
8 Motorola filed its complaint.

9 20. On December 9, 2011, the District Court of Mannheim ordered Apple Sales
10 International to cease and desist selling products that it found infringe the ‘336 patent. The
11 District Court also ordered Apple Sales International to perform an accounting and pay the costs
12 of the lawsuit.

13 21. As a condition of enforcement of its order, the District Court imposed on Motorola
14 a security requirement in the amount of EUR 100,000,000 in connection with enforcement of the
15 cease and desist order, EUR 50,000 in connection with the enforcement of the accounting
16 requirement, and 120% of the costs of the lawsuit in connection with the enforcement of the
17 reimbursement of Motorola’s costs of the lawsuit.

18 **C. The Apple Sales International Mannheim Action: Suspension Proceedings**

19 22. Apple Sales International immediately appealed the order of the Mannheim
20 District Court to the Higher Regional Court of Karlsruhe. Apple Sales International also
21 immediately filed a Request for Suspension of the Mannheim District Court’s Order.

22 23. In response, Motorola for the first time in a brief submitted to the Higher Regional
23 Court of Karlsruhe on January 12, 2012, made the assertion that Apple’s iPhone 4S was subject to
24 the Mannheim District Court’s cease and desist order. The Apple iPhone 4S had not been named
25 in the complaint.

26 24. Motorola alleges that Apple infringes the ‘336 patent based on Apple’s use of a
27 MDM 6610 baseband chip in the iPhone 4S, which is provided to Apple’s contract manufacturers
28 by Qualcomm Inc. (“Qualcomm”). Motorola alleges that because the MDM 6610 baseband chip

1 is compliant with GPRS standards issued by ETSI, and because Motorola has declared to ETSI
2 that the '336 patent is essential to GPRS standards, the Apple iPhone 4S infringes the '336 patent
3 by virtue of incorporating the Qualcomm MDM 6610 chip.

4 25. On January 19, 2012, Apple filed a responsive brief in the Higher Regional Court
5 of Karlsruhe asserting that the Apple iPhone 4S was not properly subject to the Mannheim
6 District Court's cease and desist order and explaining that Apple had a complete legal defense to
7 any allegation that Motorola infringed the '336 patent under the doctrine of patent exhaustion and
8 because Apple was the third party beneficiary to contracts between Qualcomm and Motorola, Inc.
9 under which Motorola made a covenant not to sue Qualcomm customers for infringement of,
10 *inter alia*, the '336 patent. On information and belief, these contracts have been assigned to
11 Motorola Mobility, Inc. by Motorola, Inc.

12 26. In its papers before the Higher Regional Court, Motorola has made arguments in
13 breach of its agreement with Qualcomm that would require the German court construe the
14 Motorola/Qualcomm agreements. For example, Motorola has argued against Apple's claim that
15 it is a third-party beneficiary under the Motorola/Qualcomm agreement and Motorola has argued
16 that its termination of the Qualcomm agreement with respect to Apple sales was effective under
17 the Motorola/Qualcomm agreement.

18 27. Apple Sales International's Appeal of the District Court's Order is pending, and is
19 not expected to be resolved until the end of 2012.

20 28. On January 23, 2012, the Higher Regional Court of Karlsruhe initially declined to
21 stay the Mannheim District Court's cease and desist order in response to Apple Sales
22 International's Request for Suspension, based in part on the fact that the Court did not have
23 access to the confidential license agreements between Motorola and Qualcomm.

24 29. On February 2, 2012 the Higher Regional Court provisionally suspended
25 enforcement of the injunction pending further briefing. Motorola is to submit a brief on February
26 17, 2011.

1 **D. The Apple Sales International Mannheim Action: Enforcement Proceedings**

2 30. On January 30, 2012, Motorola initiated enforcement of the cease and desist order
3 by sending a letter to Apple’s German counsel indicating that it had deposited an amount of EUR
4 100,000,000 with the local court in Mannheim in order to obtain enforceability of the District
5 Court’s cease and desist order, and EUR 50,000 to obtain enforceability of the District Court’s
6 Order for an accounting. The letter further demanded that “Apple Sales International fully
7 comply with the ruling of the Mannheim court of 9 December 2011. Otherwise our client will be
8 forced to enforce the judgment by virtue of holding your client in contempt of court.”

9 31. Motorola’s letter threatens an action for contempt of court against Apple Sales
10 International. Such an action would normally involve a claim for a fine in an amount up to EUR
11 250,000 for each violation, or imprisonment of up to 6 months of the legal representative of
12 Apple Sales International for contempt of court.

13 32. If Apple’s request to the Higher Regional Court for a suspension is denied,
14 Motorola may bring one or more action for contempt to the German District Court, attempting to
15 show that Apple is in violation of the cease and desist order. Motorola may bring a separate
16 action for each violation of the order for which it seeks sanctions from Apple.

17 **E. The Apple Inc. Mannheim Proceeding**

18 33. On April 26, 2011, Motorola Mobility, Inc. sued Apple Inc. for patent
19 infringement in case number 7 O 169/11 in the District Court of Mannheim alleging that Apple
20 Inc. infringes the ‘336 patent.

21 34. Motorola is attempting to accuse the iPhone 4S in the Apple Inc. Mannheim
22 proceeding as well, in breach of its contract with Qualcomm and covenant not to sue Apple.
23 Accordingly, a construction of the Motorola/Qualcomm license agreement will also be necessary
24 in this proceeding.

25 35. The Mannheim District Court held a hearing merits on February 3, 2012. A
26 judgment will be entered on April 13, 2012.

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1 **F. Motorola’s Claims Against Apple Pending in the Northern District of Illinois**

2 36. In *Apple Inc. v. Motorola, Inc., et al.* case number 1:11-cv-08540 pending before
3 the United States District Court for the Northern District of Illinois, Motorola accuses Apple of
4 infringing the ‘898 patent. This case was filed on October 29, 2010 in the Western District of
5 Wisconsin, case no. 3:10-cv-662, and was transferred to the Northern District of Illinois from that
6 court on December 1, 2011.

7 37. To date Motorola has not attempted to accuse the Apple iPhone 4S product of
8 infringing the ‘898 patent and has not accused Apple of patent infringement based on Apple’s use
9 of Qualcomm’s MDM 6610 baseband chip in the iPhone 4S.

10 38. However, on January 23, 2012, Motorola filed a brief in the Higher District Court
11 of Karlsruhe in the Federal Republic of Germany indicating that it may seek to accuse the Apple
12 iPhone 4S of infringement of the ‘898 patent in the United States. Motorola stated as follows:

13 “Also the further assertions with regard to the iPhone 4S are
14 inaccurate. There is no strategy in place not to challenge these
15 products. The fact that the Plaintiff has not yet challenged the 4S in
Wisconsin has tactical reasons of a procedural nature, which the
Plaintiff naturally will not expose to the Defendant.”

16 **IV. MOTOROLA’S INEFFECTIVE ATTEMPT TO TERMINATE APPLE’S RIGHT**
17 **TO USE THE QUALCOMM COMPONENTS**

18 39. On January 11, 2011, Mr. Kirk Dailey, Motorola’s Corporate Vice President,
19 Intellectual Property, sent a letter to Qualcomm, copying Apple, purporting “to terminate any and
20 all license and covenant rights with respect to Apple, effective February 10, 2011 (30 days from
21 the date of this letter).”

22 40. Apple has not asserted any of its Customer Essential Patents against Motorola and
23 did not first assert any of its patents against Motorola. It was Motorola who first sued Apple for
24 patent infringement on October 6, 2010 in the United States District Courts for the Northern
25 District of Illinois, the Southern District of Florida, and in the International Trade Commission.
26 Accordingly, Motorola is not entitled to terminate license and covenant rights that flow to Apple
27 under the Qualcomm/Motorola agreements.
28

1 41. On April 25, 2011, Mr. Derek Aberle, Executive Vice President of Qualcomm and
2 President of Qualcomm Technology Licensing responded to Motorola’s letter of January 11,
3 2011. Mr. Aberle disagreed with Motorola’s contention that it could invoke the Defensive
4 Suspension Provision with respect to Apple. He noted that the Defensive Suspension provision
5 did not entitle Motorola to terminate rights based on suits brought by Apple.

6 **V. MOTOROLA’S ATTEMPTS TO BAR APPLE FROM PRESENTING THE**
7 **QUALCOMM/MOTOROLA LICENSE AGREEMENTS TO THE GERMAN**
8 **COURTS**

9 42. As noted above, on January 12, 2012, Motorola for the first time alleged in the
10 Higher Regional Court of Karlsruhe, Germany, that the iPhone 4S is subject to the Mannheim
11 District Court’s cease and desist order as to the ’336 patent. On January 19, 2012, Apple filed a
12 responsive brief asserting that under contracts between Qualcomm and Motorola, in which
13 Motorola licensed Qualcomm and granted a covenant not to sue Qualcomm customers for
14 infringement of *inter alia*, the ’336 patent, the iPhone 4S cannot possibly be found to infringe the
15 ’336 patent.

16 43. In order to present its defenses based on the Qualcomm/Motorola licenses to the
17 German court, Apple filed on January 17, 2012 an *ex parte* Application in this Court requiring
18 Qualcomm to produce, *inter alia*, the relevant license agreements between Qualcomm and
19 Motorola. These agreements, while produced by Motorola to Apple in other U.S. litigation, are
20 subject to protective orders that prevent disclosure to the German court.

21 44. This Court granted Apple’s application on January 25, 2012, and on January 26,
22 2012, Qualcomm communicated to Apple its willingness to provide Apple’s U.S. and German
23 outside counsel with copies of the license agreements between Qualcomm and Motorola, so that
24 Apple could submit those agreements to the German court.

25 45. Intent on blocking Apple’s ability to submit the license agreements to the Court,
26 on January 27, 2012, Motorola filed a motion to quash the subpoena to Qualcomm. The Court
27 denied Motorola’s motion on February 2, 2012.
28

1 **COUNT ONE**

2 **(BREACH OF CONTRACT TO WHICH APPLE IS A THIRD PARTY BENEFICIARY)**

3 46. Apple incorporates paragraphs 1-45 as if fully set forth herein.

4 47. As a Qualcomm customer, Apple is an intended third party beneficiary to the
5 Qualcomm/Motorola agreement.

6 48. Motorola has breached its obligations under the licenses to Qualcomm and the
7 covenant to Apple by alleging in Germany that Apple infringes the '336 patent by virtue of
8 incorporating the Qualcomm MDM6610 baseband processor into Apple's iPhone 4S.

9 49. As an intended third-party beneficiary of the agreement, Apple may bring suit for
10 this breach.

11 50. Apple has incurred or will incur harm as the result of Motorola's breach of
12 contract. Apple is threatened in particular by loss of profits, loss of customers, loss of goodwill
13 and product image, and uncertainty among customers and potential customers.

14 **COUNT TWO**

15 **(DECLARATORY JUDGMENT THAT APPLE IS AUTHORIZED TO USE
16 QUALCOMM COMPONENTS UNDER A COVENANT NOT TO SUE)**

16 51. Apple incorporates paragraphs 1-50 as if fully set forth herein.

17 52. An actual and justiciable controversy exists between Apple and Motorola with
18 respect to whether Apple is authorized to use Qualcomm components, including but not limited to
19 the MDM6610 Qualcomm chip, in its products, including but not limited to the iPhone 4S. This
20 is based, *inter alia*, on (1) Motorola's allegations in German proceedings that Apple infringes its
21 '336 patent by virtue of incorporating the Qualcomm chips; (2) Motorola's ineffective attempt to
22 terminate Apple's right to use Qualcomm components; and (3) Motorola's statements in German
23 proceedings that "[t]here is no strategy in place not to challenge [the iPhone 4S]. The fact that the
24 Plaintiff has not yet challenged the 4S in Wisconsin has tactical reasons of a procedural nature,
25 which the Plaintiff naturally will not expose to the Defendant."

26 53. Absent a declaration that Apple is authorized to use Qualcomm components
27 licensed under Motorola patents, Motorola will continue to wrongfully assert its '336 patent
28

1 against Apple's iPhone 4S and other Apple products, and thereby cause Apple irreparable harm
2 and injury.

3 54. Apple is authorized to use Qualcomm's MDM6610 baseband processor and other
4 Qualcomm components licensed under Motorola's patents and is entitled to a declaration to that
5 effect.

6 55. This is an exceptional case entitling Apple to an award of its attorney's fees
7 incurred in connection with this action pursuant to 35 U.S.C. § 285.

8 **COUNT THREE**
9 **(DECLARATORY JUDGMENT THAT MOTOROLA'S PATENT RIGHTS ARE**
10 **EXHAUSTED)**

11 56. Apple incorporates paragraphs 1-55 as if fully set forth herein.

12 57. An actual and justiciable controversy exists between Apple and Motorola with
13 respect to whether Motorola's patent rights in the MDM6610 Qualcomm chip and other
14 Qualcomm components licensed under Motorola patents are exhausted. This is based, *inter alia*,
15 on (1) Motorola's allegations in German proceedings that Apple infringes its '336 patent by
16 virtue of incorporating the Qualcomm chips; (2) Motorola's ineffective attempt to terminate
17 Apple's right to use Qualcomm components; and (3) Motorola's statements in German
18 proceedings "[t]here is no strategy in place not to challenge [the iPhone 4S]. The fact that the
19 Plaintiff has not yet challenged the 4S in Wisconsin has tactical reasons of a procedural nature,
20 which the Plaintiff naturally will not expose to the Defendant."

21 58. Absent a declaration that Motorola's patent rights in the MDM6610 Qualcomm
22 chip and other Qualcomm components licensed under Motorola patents are exhausted, Motorola
23 will continue to wrongfully assert its '336 patent against Apple's iPhone 4S and thereby cause
24 Apple irreparable harm and injury.

25 59. Motorola's patent rights in the MDM6610 Qualcomm chip and other Qualcomm
26 components licensed under Motorola patents are exhausted, and Apple is entitled to a declaration
27 to that effect.

28 60. This is an exceptional case entitling Apple to an award of its attorney's fees
incurred in connection with this action pursuant to 35 U.S.C. § 285.

1 **COUNT FOUR**

2 **(PERMANENT EQUITABLE INJUNCTION)**

3 61. Apple incorporates paragraphs 1-60 as if fully set forth herein.

4 62. Apple will incur irreparable harm if Motorola is not enjoined from initiating
5 litigation outside of this Court alleging that Apple infringes its patents by virtue of incorporating
6 Qualcomm chips. This harm will include the loss of a volume of sales that cannot be quantified
7 with specificity, as well as a loss of consumer goodwill, negative publicity, damage to
8 relationships with distributors and resellers, and with current owners of the iPhone 4S.

9 63. Apple is likely to succeed on the merits of its breach of contract and declaratory
10 judgment claims. First, Apple is likely to show that Motorola's pursuit of litigation alleging
11 infringement by Apple by virtue of incorporating Qualcomm components breaches Motorola's
12 contract with Qualcomm to which Apple is a third-party beneficiary. Second, Apple is likely to
13 show that it is a third party beneficiary to the licenses between Qualcomm and Motorola and is
14 therefore authorized to use Qualcomm components licensed under Motorola patents. Third,
15 Apple is also likely to establish that Motorola's patent rights in the Qualcomm MDM6610 chip
16 and other Qualcomm components licensed under Motorola patents are exhausted. Apple is
17 therefore likely to succeed on the merits of its claims that the iPhone 4S does not infringe the
18 '336 patent.

19 64. The public interest and balance of equities further favor the issuance of an
20 injunction. Motorola's continued prosecution of its '336 patent against Apple's iPhone 4S in
21 German proceedings based on Apple's use of Qualcomm components frustrates the law and
22 policy of the United States with respect to patent license and patent exhaustion. Motorola's
23 continued prosecution of its '336 patent against Apple's iPhone 4S in German proceedings based
24 on Apple's use of Qualcomm components and its procedural attempts to block Apple from
25 presenting its defenses based on the Qualcomm/Motorola licenses to the German courts is
26 vexatious, oppressive, and inequitable. The public interest as well as the balance of harms favors
27 Apple's request for an injunction.

28

- 1 A. Judgment in favor of Apple and against Motorola;
- 2 B. A declaratory judgment that Apple, as a third party beneficiary to the
- 3 Motorola/Qualcomm license agreement, is licensed to use the Qualcomm MDM6610 chip and
- 4 other Qualcomm components licensed under Motorola’s patents in Apple products;
- 5 C. A declaratory judgment that Motorola’s patent rights in the Qualcomm MDM6610
- 6 chip and other Qualcomm components licensed under Motorola patents are exhausted;
- 7 D. Permanent injunctive relief restraining Motorola and its subsidiaries, affiliates,
- 8 officers, directors, agents, employees, servants, licensors, successors, assigns, and all those acting
- 9 in concert with them, from prosecuting patent infringement proceedings against Apple based on
- 10 Apple’s use of the Qualcomm MDM6610 chip and other Qualcomm components licensed under
- 11 Motorola patents in the Federal Republic of Germany or in any other country;
- 12 E. Permanent injunctive relief restraining Motorola and its subsidiaries, affiliates,
- 13 officers, directors, agents, employees, servants, licensors, successors, assigns, and all those acting
- 14 in concert with them, from prosecuting patent infringement proceedings against Apple based on
- 15 Apple’s use of the Qualcomm MDM6610 chip and other Qualcomm components licensed under
- 16 Motorola patents in any forum other than this Court.
- 17 F. A judgment awarding Apple all available damages for its breach of contract;
- 18 G. An order ordering Motorola to specifically perform its contractual covenant not to
- 19 sue Apple based on Apple’s use of Qualcomm components;
- 20 H. An order granting Apple its attorneys’ fees and costs;
- 21 I. Such further relief as this Court may deem proper in law or equity.

22

23

24 Dated: February 9, 2012

Respectfully submitted,

25

26 /s/ Robert T. Haslam

27 Robert T. Haslam

28 rhaslam@cov.com

COVINGTON & BURLING LLP

333 Twin Dolphin Drive, Suite 700

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Redwood Shores, CA 94065-1418
Telephone: (650) 632-4700
Facsimile: (650) 632-4800

CIVIL COVER SHEET

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I. (a) PLAINTIFFS

Apple Inc. and Apple Sales International

(b) County of Residence of First Listed Plaintiff Santa Clara (CA)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Covington & Burling LLP, 333 Twin Dolphin Drive, Suite 600,
Redwood Shores, CA 94065; (650) 632-4700

DEFENDANTS

Motorola Mobility, Inc.

County of Residence of First Listed Defendant Lake (IL)
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

'12CV0355 JLS BLM

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|---------|--|---|---------|--|
| Citizen of This State | PTF DEF | <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF DEF | <input checked="" type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | | <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |
- (JMD)

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1338

Brief description of cause: **DECLARATORY JUDGMENT; BREACH OF CONTRACT; INJUNCTION**

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMANDS**
Injunction
- CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
02/09/2012

SIGNATURE OF ATTORNEY OF RECORD

Robert J. Haskin / KB

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____