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

17 APPLE INC. and APPLE SALES  
18 INTERNATIONAL,

19 Plaintiffs,

20 v.

21 MOTOROLA MOBILITY LLC,

22 Defendant.

Case No. 3:12-cv-00355-DMS-BLM

**MOTOROLA’S ANSWER AND  
AFFIRMATIVE DEFENSES TO APPLE’S  
SECOND AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

Complaint filed: February 10, 2012  
(amended April 2, 2012)  
(amended August 3, 2012)

Judge: Hon. Dana M. Sabraw  
Magistrate Judge: Hon. Barbara Lynn Major

Trial Date: Not Set

PUBLIC VERSION -- REDACTED

1 Defendant, Motorola Mobility LLC, formerly known as Motorola Mobility, Inc.<sup>1</sup>  
2 (“Motorola”), files the following answer and affirmative defenses in response to the Confidential  
3 Second Amended Complaint (“Complaint”) filed by plaintiffs, Apple Inc. and Apple Sales  
4 International (collectively “Apple”). The numbered paragraphs in the Answer correspond to the  
5 like-numbered paragraphs of the Complaint, to the extent possible. Any factual allegation  
6 admitted below is admitted only as to the specific admitted facts, and not as to any purported  
7 conclusions, characterizations, or implications that may allegedly follow from the admitted facts.  
8 Motorola denies that Apple is entitled to the relief requested or any other relief.

9 **ANSWER TO COMPLAINT**

10 **GENERAL DENIAL**

11 Unless expressly admitted below, Motorola denies each and every allegation Apple has  
12 made in the Complaint.

13 **RESPONSE TO APPLE’S SPECIFIC ALLEGATIONS**

14 Motorola answers the allegations in the separately numbered paragraphs of Apple’s  
15 Complaint as follows:

16 **PARTIES<sup>2</sup>**

17 1. Motorola lacks information sufficient to form a belief as to the allegations of  
18 Paragraph 1 and, on that basis, denies same.

19 2. Motorola lacks knowledge or information sufficient to form a belief as to the  
20 allegations that Plaintiff Apple Sales International is an unlimited company organized under the  
21 laws of the Republic of Ireland in Paragraph 2 and therefore denies same. Motorola admits the  
22 remaining allegations in Paragraph 2.

23  
24 <sup>1</sup> Apple filed its original Complaint and its First Amended Complaint in this action against  
25 Motorola Mobility, Inc. On June 22, 2012, Motorola Mobility, Incorporated obtained a  
26 Certificate of Conversion from the Delaware Department of State, Division of Corporations, in  
27 which Motorola Mobility, Inc. was converted to Motorola Mobility LLC. Apple filed its Second  
28 Amended Complaint against Motorola Mobility LLC.

<sup>2</sup> To the extent that any of the headings Apple used in its Second Amended Complaint contain  
any allegations or characterizations, Motorola denies the truth of those allegations or  
characterizations.

1 3. Admitted.

2 **JURISDICTION AND VENUE**

3 4. Motorola denies that this action, as pled, is a proper action for declaratory and  
4 injunctive relief arising under Title 35 of the United States Code. Motorola denies that this  
5 Court has subject matter jurisdiction over Apple's claims pursuant to 28 U.S.C. §§ 1331,  
6 1338(a), 1367, 2201, and 2202. Motorola admits that this is an action among diverse parties but  
7 denies that the amount in controversy as a result of Apple's claims exceeds the sum or value of  
8 \$75,000. Motorola denies all remaining allegations of Paragraph 4.

9 5. Motorola admits this Court has personal jurisdiction over Motorola for the  
10 purposes of this case only. Motorola denies all remaining allegations of Paragraph 5.

11 6. Motorola admits that venue is proper under 28 U.S.C. § 1391(b) and (c), but  
12 denies that venue is proper pursuant to [REDACTED]

13 [REDACTED] Motorola denies all  
14 remaining allegations of Paragraph 6.

15 **I. APPLE'S ALLEGATIONS REGARDING NATURE OF THE ACTION**

16 7. Motorola admits that Apple alleges this is a lawsuit for anticipatory breach of  
17 contract by repudiation and declaratory relief related to Motorola's certain license agreements  
18 with Qualcomm, but Motorola specifically denies that it committed any breach and that Apple is  
19 entitled to any declaratory relief. Motorola admits that Motorola Inc. entered a license  
20 agreement with Qualcomm and that interests of Motorola Inc. in that agreement have been  
21 assigned to Motorola. Motorola admits that it sued Apple Sales International and Apple Inc. in  
22 separate actions in the Mannheim District Court in the Federal Republic of Germany, claiming  
23 infringement of Motorola's European Patent No. 1 010 336 ("the '336 patent"), a foreign  
24 counterpart to the '898 patent, by Apple mobile communications devices because they  
25 incorporate functionality defined in part by the European Telecommunications Standards  
26 Institute's ("ETSI's") GPRS standard. Apple's iPhone 4S is compliant with the GPRS standard,  
27 and therefore became an accused product in the ASI Mannheim proceeding and subject to the

1 Mannheim Court’s injunctive order entered December 9, 2011. Motorola admits that the  
2 question of liability is no longer an issue in Germany because Apple has voluntarily  
3 acknowledged its liability for past damages even though, technically, the issue of liability with  
4 regard to infringement of the ‘336 patent is still pending before the Karlsruhe Court. Motorola  
5 admits that the parties continue to litigate in the future the amount of damages Apple must pay  
6 Motorola for the past infringement and the amount of a FRAND license. Motorola admits that  
7 Apple has brought the present case but specifically denies that the counts in the case are well  
8 founded or that Apple is entitled to the relief that it requests. Motorola denies all remaining  
9 allegations of Paragraph 7.<sup>3</sup>

10  
11 **II. APPLE’S ALLEGATIONS REGARDING MOTOROLA’S LICENSE WITH QUALCOMM**

12 8. Motorola admits that Motorola, Inc. entered an agreement and amendments with  
13 Qualcomm [REDACTED], but Motorola otherwise denies any attempt to characterize  
14 the agreement and denies all remaining allegations of Paragraph 8.

15 9. [REDACTED]

16 10. [REDACTED] Motorola denies  
17 the remaining allegations of Paragraph 10.

18 11. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 12. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25  
26 <sup>3</sup> Footnote text does not constitute pleading allegations and do not require response. To avoid  
27 ambiguity, to the extent that a response to footnotes is required, Motorola denies all allegations  
28 of Apple’s footnotes to Paragraph 7.

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13. [REDACTED]

[REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

[REDACTED]

20. [REDACTED]

[REDACTED]

[REDACTED]

21. Paragraph 21 states a vague legal conclusion, to which no answer is required, and is therefore denied. [REDACTED]

[REDACTED]

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**III. APPLE’S ALLEGATIONS THAT THE QUALCOMM COMPONENTS SUPPLIED FOR INCORPORATION INTO APPLE PRODUCTS ARE LICENSED BY MOTOROLA<sup>4</sup>**

22. Upon information and belief, Motorola admits that Apple incorporates or has incorporated Qualcomm baseband processors into the iPhone 4S “new iPad” and that Apple has, at some time, been an indirect customer of Qualcomm and/or a customer of Qualcomm [REDACTED]. [REDACTED] Motorola is without knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 22 and, on that basis, denies same.

23. Motorola is without information sufficient to admit or deny the allegations of the first and second sentences of Paragraph 23 and, on that basis, denies same. Upon information and belief, Motorola denies the allegations of the third sentence of Paragraph 23. Motorola denies all remaining allegations of Paragraph 23.

24. [REDACTED] Motorola is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 24, and, therefore denies same.

25. Denied.

**APPLE’S ALLEGATIONS THAT MOTOROLA MADE THREATS AND INSTITUTED LITIGATION AGAINST APPLE ON DECLARED STANDARD ESSENTIAL PATENTS**

**A. Apple’s Allegations that Motorola’s Breached a FRAND Promise<sup>5</sup>**

26. Admitted.

27. The first sentence of the allegations of Paragraph 27 is a vague legal argument, to which no answer is required, and is therefore denied. Motorola is without sufficient information

<sup>4</sup> Motorola specifically denies the characterizations and allegations contained in this and the following headings used by Apple in its Complaint.

<sup>5</sup> Motorola specifically denies the characterizations and allegations contained in this heading used by Apple in its Complaint.

1 to form a belief as to the truth or falsity of the allegations of the second sentence in Paragraph 27  
2 and therefore denies same. Motorola denies all remaining allegations of Paragraph 27.

3 28. Motorola is without sufficient information to form a belief as to the truth or falsity  
4 of the allegations in Paragraph 28 and therefore denies same.

5 29. Motorola is without sufficient information to form a belief as to the truth or falsity  
6 of the allegations in Paragraph 29 and therefore denies same.

7 30. Denied.

8 **B. Apple's Allegations that Motorola Allegedly Repudiated its Contract with**  
9 **Qualcomm<sup>6</sup>**

10 31. [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 32. Motorola admits that, on January 11, 2011, Mr. Kirk Dailey, then, Motorola  
14 Mobility, Inc.'s Corporate Vice President, Intellectual Property, sent a letter to Qualcomm,  
15 copying Apple. Motorola denies any selective quotations of that letter or characterizations in  
16 Paragraph 32 of this or other language in the referenced letter, and Motorola denies all remaining  
17 allegations of Paragraph 32.

18 33. Denied.

19 34. Motorola admits the allegations of the first sentence of Paragraph 34. [REDACTED]

20 [REDACTED] Motorola denies all remaining  
21 allegations of Paragraph 34.

22 **C. The German Proceedings**

23 35. Admitted.

24 36. Admitted.

25 37. Motorola admits that Motorola Mobility, Inc. did not specifically identify the  
26 iPhone 4S in its complaint in the ASI Mannheim Action on April 1, 2011 and that the Apple

27 <sup>6</sup> Motorola specifically denies the characterizations and allegations contained in this heading  
28 used by Apple in its Complaint.

1 iPhone 4S was not on sale in Germany at the time Motorola Mobility, Inc. filed its complaint in  
2 the ASI Mannheim Action. Motorola denies that the Apple iPhone 4S is not an accused product  
3 in the ASI Mannheim Action, because the accused devices in the ASI Mannheim Action are  
4 Apple's GPRS-enabled devices. Those devices include the iPhone 4S which, upon information  
5 and belief, was first sold in Germany in October of 2011, during the pendency of the ASI  
6 Mannheim Action. Motorola denies all remaining allegations of Paragraph 37.

7 38. Admitted.

8 39. Motorola admits that on December 14, 2011, Apple Sales International appealed  
9 the December 9, 2011 Order of the Mannheim District Court to the Higher Regional Court in  
10 Karlsruhe. Motorola admits that on December 14, 2011, Apple Sales International filed with the  
11 Mannheim District Court a Request for Suspension of Enforcement of the Mannheim District  
12 Court's December 9, 2011 Order. Motorola denies that Apple's appeal was immediate and  
13 denies all remaining allegations of Paragraph 39.

14 40. Motorola admits that on January 12, 2012, it submitted a Reply to Request for  
15 Stay to the Higher Regional Court of Karlsruhe stating that Apple's iPhone 4S was subject to the  
16 Mannheim District Court's cease and desist order. Motorola denies any allegation that the  
17 iPhone 4S was not at issue in the ASI Mannheim Action and denies all remaining allegations of  
18 Paragraph 40.

19 41. Motorola admits that in the Mannheim ASI Action, Motorola alleged that all of  
20 the mobile communication devices of Apple Sales International that support the GPRS standard,  
21 including the iPhone 4S infringed the '336 patent. Motorola admits that the '336 patent has been  
22 declared to ETSI as essential to the GPRS standard. Motorola denies all remaining allegations of  
23 Paragraph 41.

24 42. Motorola admits that, in its decision of January 23, 2012, the Higher Regional  
25 Court of Karlsruhe declined to stay the Mannheim District Court's cease and desist order in  
26 response to Apple Sales International's Request for Suspension, but Motorola denies any attempt  
27 to characterize or explain the basis for that Court's decision and denies all remaining allegations  
28



1 of Paragraph 42.

2 43. Admitted.

3 44. Motorola admits the allegations of the first sentence of Paragraph 44. Motorola  
4 denies the remaining allegations of Paragraph 44.

5 45. Motorola admits that ASI's appeal is pending only regarding the general  
6 declaration of damages and claims for accounting. Motorola denies all remaining allegations of  
7 Paragraph 45.

8 46. Admitted.

9 47. Admitted.

10 48. Motorola admits that Apple has made offers to license Motorola's declared  
11 cellular standards-essential patents. Motorola is without sufficient information to form a belief  
12 as to the truth or falsity of the remaining allegations of the first sentence in Paragraph 28 and  
13 therefore denies same. The Higher Regional Court of Karlsruhe has not made a final  
14 determination regarding whether Apple's FRAND offer is valid, an allegation that has been  
15 mooted by Motorola's acceptance of the offer after Apple admitted liability for past damages for  
16 infringement, and on those bases, Motorola denies the allegations of the second sentence of  
17 Paragraph 48. Motorola admits that the question of liability is no longer an issue in Germany  
18 because Apple has voluntarily acknowledged its liability for past damages even though this issue  
19 is pending before the Karlsruhe appellate court regarding ASI's liability for infringement of the  
20 '336 patent. Motorola admits that the parties will continue to litigate in the future the amount of  
21 damages Apple must pay Motorola for the past infringement and the amount of a FRAND  
22 license. Motorola denies the remaining allegations of Paragraph 48.

23 **D. Apple's Allegations that Motorola Threatened to Sue Apple for Infringement**  
24 **Outside of Germany**<sup>7</sup>

25 49. Motorola admits that *Apple Inc., et al. v. Motorola, Inc., et al.*, case number 1:11-  
26 cv-08540, before the United States District Court for the Northern District of Illinois, was

27 <sup>7</sup> Motorola specifically denies the characterizations and allegations contained in this heading  
28 used by Apple in its Complaint.

1 originally filed by Apple on October 29, 2010 in the Western District of Wisconsin, case no.  
2 3:10-cv-662, and transferred to the Northern District of Illinois from that court on December 1,  
3 2011. Motorola admits that Motorola included, in its Answer to Apple's Complaint, a  
4 counterclaim for infringement of U.S. Patent No. 6,359,898 by Apple Inc. Motorola denies all  
5 remaining allegations of Paragraph 49.

6 50. Motorola admits that Motorola did not accuse Apple's iPhone 4S, the new iPad,  
7 or Apple's use of Qualcomm's MDM6610 or other Qualcomm components in those or other  
8 Apple products of infringing the '898 patent in *Apple Inc., et al. v. Motorola, Inc., et al.*, case  
9 number 1:11-cv-08540, before the United States District Court for the Northern District of  
10 Illinois. Motorola denies all remaining allegations of Paragraph 50.

11 51. Motorola admits that Motorola and Apple entered into an agreement with respect  
12 only to the cited Illinois case, but Motorola denies any attempt to partially quote or characterize  
13 that agreement and denies all remaining allegations of Paragraph 51.

14 52. Admitted.

15 53. Admitted.

16 54. Motorola admits that on January 23, 2012, it filed a brief, written in the German  
17 language, in the Higher District Court of Karlsruhe in the Federal Republic of Germany, in  
18 which the subject matter of the purportedly translated, quoted text in Paragraph 54 was  
19 addressed. Motorola denies the accuracy of the translation and denies any attempt to  
20 characterize Motorola's statements and therefore denies the remaining allegations of Paragraph  
21 54.

22 55. Motorola admits that Apple's outside counsel made an inquiry of Motorola's  
23 outside counsel on March 27, 2012 as to whether Motorola would enter a stipulation not to sue  
24 Apple. Motorola denies all remaining allegations of Paragraph 55.

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**IV. APPLE’S ALLEGATIONS THAT MOTOROLA’S ACTIONS THREATEN APPLE WITH IRREPARABLE HARM<sup>8</sup>**

- 56. Denied.
- 57. Denied.
- 58. Denied.

**COUNT ONE**

**(APPLE’S ALLEGATIONS OF ANTICIPATORY BREACH OF CONTRACT TO WHICH APPLE ALLEGES IT IS A THIRD PARTY BENEFICIARY)<sup>9</sup>**

59. Motorola repeats, realleges, and incorporates its responses to Paragraphs 1-58 as if fully set forth herein.

- 60. Denied.
- 61. Denied.
- 62. Denied.
- 63. Denied.
- 64. Denied.
- 65. Denied.
- 66. Denied.

**COUNT TWO**

**(DECLARATORY JUDGMENT THAT APPLE IS AUTHORIZED TO USE QUALCOMM COMPONENTS UNDER A COVENANT NOT TO SUE)<sup>10</sup>**

67. Motorola repeats, realleges, and incorporates its responses to Paragraphs 1-66 as if fully set forth herein.

- 68. Denied.<sup>11</sup>

<sup>8</sup> Motorola specifically denies the characterizations and allegations contained in this heading used by Apple in its Complaint.

<sup>9</sup> Motorola specifically denies the characterizations and allegations contained in this heading used by Apple in its Complaint.

<sup>10</sup> Motorola specifically denies the characterizations and allegations contained in this heading used by Apple in its Complaint.

<sup>11</sup> Motorola notes that Apple and Motorola are litigating issues concerning whether Motorola terminated any alleged rights under the Motorola-Qualcomm agreement and the impact of any such termination in *Apple, Inc. v. Motorola Mobility, Inc.*, C.A. No. 11-cv-178, pending in the U.S. District Court for the Western District of Wisconsin.

- 1           69.    Denied.
- 2           70.    Denied.
- 3           71.    Denied.

**COUNT THREE**

**(DECLARATORY JUDGMENT THAT THE QUALCOMM-MOTOROLA LICENSE AGREEMENT SHIELDS APPLE IN ANY LAWSUIT FROM LIABILITY FOR INFRINGEMENT OF THE ‘898 PATENT BY THE IPHONE 4S)<sup>12</sup>**

72.    Motorola repeats, realleges, and incorporates its responses to Paragraphs 1-71 as if fully set forth herein.

- 9           73.    Denied.
- 10          74.    Denied.

75.    The first sentence of Paragraph 75 states a vague legal conclusion, to which no answer is required, and is therefore denied. [REDACTED]

[REDACTED]

[REDACTED] Motorola is without information sufficient to admit or deny the allegations of the second and third sentences of Paragraph 75 and, on that basis, denies same. Upon information and belief, Motorola denies the allegations of the fourth sentence of Paragraph 75. Motorola denies the remaining allegations of Paragraph 75.

- 19          76.    Denied.

**COUNT FOUR**

**(DECLARATORY JUDGMENT THAT THE QUALCOMM-MOTOROLA LICENSE AGREEMENT SHIELDS APPLE IN ANY LAWSUIT FROM LIABILITY FOR INFRINGEMENT OF MOTOROLA’S GSM ESSENTIAL PATENTS, AS THAT TERM IS DEFINED IN THE SEPTEMBER 30, 2006 AMENDMENT, BASED ON APPLE’S USE OF THE MDM6610 BASEBAND PROCESSOR)<sup>13</sup>**

77.    Motorola repeats, realleges, and incorporates its responses to Paragraphs 1-76 as if fully set forth herein.

<sup>12</sup> Motorola specifically denies the characterizations and allegations contained in this heading used by Apple in its Complaint.

<sup>13</sup> Motorola specifically denies the characterizations and allegations contained in this heading used by Apple in its Complaint.

1 78. Denied.

2 79. Denied.

3 80. The first sentence of Paragraph 80 states a vague legal conclusion, to which no  
4 answer is required, and is therefore denied. [REDACTED]

5 [REDACTED]

6 [REDACTED] Motorola is  
7 without information sufficient to admit or deny the allegations of the second and third sentences  
8 of Paragraph 80 and, on that basis, denies same. Motorola denies the remaining allegations of  
9 Paragraph 80.

10 81. Denied.

11

12

**COUNT FIVE**

13

**(DECLARATORY JUDGMENT THAT MOTOROLA’S PATENT RIGHTS UNDER  
MOTOROLA’S PATENT, MOTOROLA’S ESSENTIAL PATENTS, AND  
MOTOROLA’S GSM ESSENTIAL PATENTS, AS THOSE TERMS ARE DEFINED IN  
THE QUALCOMM-MOTOROLA LICENSE AGREEMENT, ARE EXHAUSTED)<sup>14</sup>**

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16 82. Motorola repeats, realleges, and incorporates its responses to Paragraphs 1-81 as  
if fully set forth herein.

17

83. Denied.

18

84. Denied.

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85. Denied.

20

86. Denied.

21

**V. PRAYER FOR RELIEF**

22

23 The allegations in the paragraph requesting relief are in the nature of a prayer. Although  
24 no answer is required, Motorola denies each and every allegation contained under heading “V”  
25 found on pages 21-22 of the Complaint. Motorola denies Apple’s allegation that it is entitled to  
26 or should be granted any relief in this matter, including any of the relief Apple seeks in heading  
V, subparts A-J.

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<sup>14</sup> Motorola specifically denies the characterizations and allegations contained in this heading  
used by Apple in its Complaint.

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**DEFENSES AND AFFIRMATIVE DEFENSES**

Motorola asserts the following affirmative and other defenses, and, by asserting such defenses, does not concede that Motorola bears the burden of proof as to any of them. No discovery has transpired in this case, and, therefore, Motorola is not aware of information and materials that may be relevant to the matters and issues raised herein. Accordingly, Motorola reserves the right to amend, modify, or expand the following defenses and to take further positions as the case proceeds and facts develop.

**FIRST AFFIRMATIVE DEFENSE  
(Laches)**

Apple’s claims are barred in whole or in part by the equitable doctrine of laches.

**SECOND AFFIRMATIVE DEFENSE  
(Waiver)**

Apple’s claims are barred in whole or in part by the equitable doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE  
(Equitable Estoppel)**

Apple’s claims are barred in whole or in part by the doctrine of equitable estoppel.

**FOURTH AFFIRMATIVE DEFENSE  
(Acquiescence)**

Apple’s claims are barred in whole or in part by the equitable doctrine of acquiescence.

**FIFTH AFFIRMATIVE DEFENSE  
(Unclean Hands)**

Apple’s claims are barred in whole or in part by the equitable doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE  
(Judicial Estoppel)**

Apple is judicially estopped from proceeding with its claims because of conflicting positions taken in litigation against Motorola in other courts and administrative proceedings.

**SEVENTH AFFIRMATIVE DEFENSE  
(Apple is Not a Third Party Beneficiary)**

Apple’s claims are barred because Apple is not a third party beneficiary to any contract described in Apple’s Complaint.

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**EIGHTH AFFIRMATIVE DEFENSE  
(No Injunctive Relief)**

Apple is not entitled to injunctive relief because any alleged injury to Apple is not immediate or irreparable, Apple has adequate remedies at law, the balance of hardships does not favor Apple over Motorola, and the public interest does not favor an injunction.

**NINTH AFFIRMATIVE DEFENSE  
(Lack of Standing and Capacity to Sue)**

At the time of filing its complaint, Apple was an improper party and lacked standing and capacity to sue.

**TENTH AFFIRMATIVE DEFENSE  
(Caused Own Damages and Failure to Mitigate)**

To the extent that Apple suffered injury alleged in the complaint, Apple caused or contributed to its own damages or loss and failed to mitigate its damages.

**ELEVENTH AFFIRMATIVE DEFENSE  
(Res Judicata and Collateral Estoppel)**

Apple's claims and/or some of the underlying factual or legal issues it seeks to prove in support of its claims are barred by the doctrines of res judicata and/or collateral estoppel to the extent that such issues were litigated and decided in other suits or administrative proceedings between or involving Apple and Motorola.

**TWELFTH AFFIRMATIVE DEFENSE  
(Failure to State a Claim Upon Which Relief Can Be Granted)**

Apple has failed to state a claim against Motorola upon which relief may be granted.

**THIRTEENTH AFFIRMATIVE DEFENSE  
(No Breach of Contract)**

Apple's claims are barred as Motorola has not breached any contract described in Apple's complaint.

**FOURTEENTH AFFIRMATIVE DEFENSE  
(Effective Termination of Apple's Rights)**

Apple's claims are barred, as Motorola effectively terminated any rights held by Apple under the Qualcomm-Motorola Agreements and any rights allegedly held by Qualcomm as applied to Apple in its status as a Qualcomm customer.

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**FIFTEENTH AFFIRMATIVE DEFENSE  
(No License)**

Apple’s iPhone 4S is not shielded by virtue of license or otherwise from assertion of the ‘898 patent.

**SIXTEENTH AFFIRMATIVE DEFENSE  
(No License)**

Apple’s use and incorporation of the Qualcomm MDM6610 chip in Apple products is not shielded by virtue of licenses or otherwise from assertions of Motorola’s GSM Essential Patents, as that term is defined in the September 30, 2006 Amendment.

**SEVENTEENTH AFFIRMATIVE DEFENSE  
(Motorola’s Patent Rights Are Not Exhausted)**

Motorola’s patent rights in the Qualcomm MDM6610 chip under Motorola’s Patents, Motorola’s Essential Patents, and Motorola’s GSM Essential Patents, to the extent implicated in the MDM6610 chip, are not exhausted outside of Germany.

**EIGHTEENTH AFFIRMATIVE DEFENSE  
(Denial of Discretionary Relief)**

The Court should exercise its discretion to not hear Apple’s claims seeking declaratory relief and to not grant any declaratory relief.

**NINETEENTH AFFIRMATIVE DEFENSE  
(Reservation of Remaining Defenses)**

Motorola reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Motorola demands a trial by jury on Apple’s claims and Motorola’s defenses.



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**REQUEST FOR RELIEF**

WHEREFORE, Motorola prays that this Court enter judgment and provide relief as follows:

a. Judgment be entered that Apple take nothing by reason of the Complaint and that the Complaint be dismissed with prejudice;

b. Judgment be entered that this is an exceptional case entitling Motorola to an award of its attorneys' fees for Motorola's defense against Apple's Complaint, together with pre-judgment and post-judgment interest, and costs of the action, pursuant to 35 U.S.C. §285; and

c. Judgment be entered awarding Motorola such other and further relief as this Court may deem just and proper.

Dated: August 27, 2012

Respectfully submitted,

**WINSTON & STRAWN LLP**

By: /s/ Peter E. Perkowski

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*Attorneys for Motorola Mobility LLC (f/k/a  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2012, I caused this motion document and the declaration in support to be electronically filed with the Clerk of the Court using the ECF System of the U.S. District Court for the Southern District of California, which will send notification of such filing to, constituting service of this document on, all filing users.

/s/ Peter Perkowski  
Peter E. Perkowski