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25 **UNITED STATES DISTRICT COURT**
26 **SOUTHERN DISTRICT OF CALIFORNIA**

27 APPLE INC.,
28 Plaintiff,
v.
QUALCOMM INCORPORATED,
Defendant.

No. 17-cv-0108-GPC-MDD

**QUALCOMM
INCORPORATED'S
REDACTED ANSWER AND
DEFENSES;**

**REDACTED
COUNTERCLAIMS FOR
DAMAGES, DECLARATORY
JUDGMENT, AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Judge: Hon. Gonzalo P. Curiel

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QUALCOMM INCORPORATED,

Counterclaim-Plaintiff,

v.

APPLE INC.,

Counterclaim-
Defendant.

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ANSWER

Defendant Qualcomm Incorporated (“Qualcomm”), by its undersigned counsel, hereby answers Apple Inc.’s Complaint for Damages, Declaratory Judgment and Injunctive Relief (the “Complaint”), filed January 20, 2017, and asserts its defenses.

Except as otherwise expressly set forth below, Qualcomm denies each and every allegation contained in the Complaint, including without limitation the Table of Contents, headings, sub-headings, footnotes, diagrams, and tables contained in the Complaint.

Qualcomm specifically denies liability to Apple, or that Apple has suffered any legally cognizable damage for which Qualcomm is responsible. Qualcomm expressly reserves the right to amend and/or supplement its answer and defenses.

Subject to the foregoing, Qualcomm states as follows:

1. Qualcomm denies the allegations in Paragraph 1, except states that investigations of Qualcomm by certain regulatory agencies are ongoing.
2. Qualcomm denies the allegations in Paragraph 2, except states that
 - (i) Qualcomm has made substantial contributions to the development of standards related to how cellular phones connect to voice and data networks; and
 - (ii) Qualcomm is entitled to a fair royalty for its intellectual property.
3. Qualcomm denies the allegations in Paragraph 3.
4. Qualcomm denies the allegations in Paragraph 4, except states that Apple purports to describe the relief it seeks. Qualcomm refers to the Business Cooperation and Patent Agreement between Qualcomm and Apple (“Cooperation Agreement”) and the Korea Fair Trade Commission (“KFTC”) Decision No. 2017-0-25, dated January 20, 2017, in Case No. 2015SiGam2118 for their contents. Qualcomm filed a complaint and stay application regarding KFTC Decision No. 2017-0-25 with the Seoul High Court on February 21, 2017; the complaint proceeding is Case No. 2017Nu48, and the stay proceeding is Case

1 No. 2017Ah66. Qualcomm refers to its complaint and stay application for their
2 contents. Qualcomm further states that, pursuant to the terms of the Cooperation
3 Agreement, Qualcomm was not required to and did not make any payments to
4 Apple under that Agreement for the second, third, and fourth quarters of 2016.

5 5. Qualcomm denies the allegations of the first and third sentences of
6 Paragraph 5, except states that (i) Apple purports to describe the relief it seeks;
7 and (ii) the iPhone was not the first cellular phone or smartphone.

8 6. Qualcomm denies the allegations in Paragraph 6, except states that
9 common standards are beneficial in that they, among other things, allow cellular
10 phones to work together, facilitate the collaborative development of new
11 technologies, enable improvements in the overall cellular ecosystem, and promote
12 investment in R&D.

13 7. Qualcomm denies the allegations in Paragraph 7, except states that
14 (i) standardization can provide many benefits, including, among other things,
15 promoting interoperability among wireless devices and networks and incentivizing
16 investments in infrastructure, as well as fostering improvements in the technology;
17 and (ii) certain standard-setting organizations request members to make certain
18 commitments to license standard-essential patents (“SEPs”) on “reasonable and
19 non-discriminatory” (“RAND”) or “fair, reasonable and non-discriminatory”
20 (“FRAND”) terms.

21 8. Qualcomm denies the allegations in Paragraph 8.

22 9. Qualcomm denies the allegations in Paragraph 9.

23 10. Qualcomm denies the allegations in Paragraph 10, except states that
24 (i) Qualcomm filed certain actions against Meizu in China on June 30, 2016;
25 and (ii) Apple purports to assert claims relating to certain patents that it contends
26 are related to patents that Qualcomm asserted in its June 30, 2016 actions against
27 Meizu and that Qualcomm has disclosed as potentially essential to the 3G/UMTS
28 and/or 4G/LTE standard.

1 11. Qualcomm denies the allegations in Paragraph 11, except states that
2 Apple purports to describe the relief it seeks.

3 12. Qualcomm denies the allegations in Paragraph 12, except states that
4 Apple is a California corporation with its principal place of business at 1 Infinite
5 Loop, Cupertino, California 95014, and that Apple designs and markets certain
6 products.

7 13. Qualcomm denies the allegations in Paragraph 13, except states
8 that Qualcomm is a Delaware corporation with its principal place of business at
9 5775 Morehouse Drive, San Diego, California 92121. Qualcomm further states
10 that it is a global company and that its business includes, but is not limited to, the
11 development and commercialization of wireless telecommunications technologies,
12 products, and services.¹

13 14. Qualcomm denies the allegations in Paragraph 14, except states that
14 (i) Qualcomm has offices and employees in the Southern District of California; and
15 (ii) Qualcomm conducts business in the Southern District of California.

16 15. Qualcomm denies the allegations in Paragraph 15, except states that
17 (i) Qualcomm conducts business primarily through two reportable segments,
18 Qualcomm CDMA Technologies (“QCT”) and Qualcomm Technology Licensing
19 (“QTL”); (ii) Qualcomm Technologies, Inc. (“QTI”) is a wholly owned subsidiary
20 of Qualcomm Incorporated; (iii) QTI operates as a separate legal entity from
21 Qualcomm Incorporated; and (iv) QTI, together with its subsidiaries, operates
22 substantially all of Qualcomm’s product and services business, including QCT.

23 16. Qualcomm denies the allegations in Paragraph 16, except states that
24 Apple purports to describe its claims and the relief it seeks.

25 _____
26 ¹ Qualcomm objects to the Complaint’s definition of “Qualcomm” to the extent
27 that it does not distinguish between Qualcomm Incorporated and the subsidiaries
28 and/or divisions of Qualcomm. Qualcomm reserves all rights to object to Apple’s
purported definition for purposes of discovery or any other aspect of this action.

1 17. Qualcomm denies the allegations in Paragraph 17.

2 18. Qualcomm denies the allegations in Paragraph 18.

3 19. Qualcomm denies the allegations in Paragraph 19, except states that
4 Qualcomm's principal place of business is in the Southern District of California.

5 20. Qualcomm denies the allegations in Paragraph 20.

6 21. Qualcomm denies the allegations in Paragraph 21, except states that
7 venue is proper in this Court.

8 22. Qualcomm denies the allegations in Paragraph 22.

9 23. Qualcomm denies the allegations in Paragraph 23, except states that
10 (i) Apple purports to assert claims related to the Cooperation Agreement; and
11 (ii) the Cooperation Agreement contains a forum selection clause that requires any
12 litigation initiated by Apple to be filed in San Diego County, California.
13 Qualcomm refers to the Cooperation Agreement for its contents.

14 24. Qualcomm denies the allegations in Paragraph 24, except states that
15 (i) Apple's first iPhone was released in 2007; and (ii) Apple purports to describe the
16 certain features of the iPhone.

17 25. Qualcomm denies the allegations in Paragraph 25, except states that
18 (i) Apple's iPad was released in 2010; and (ii) Apple purports to describe certain
19 features of the iPad and its market share.

20 26. Qualcomm denies the allegations in Paragraph 26.

21 27. Qualcomm denies the allegations in Paragraph 27, except states that
22 (i) the iPhone and certain models of the iPad can send and receive, over cellular
23 networks, telephone calls and/or other voice and video communications, text
24 messages, and Internet data; (ii) baseband processor chipsets are among the
25 hardware components that, together with software and other components, enable
26 mobile wireless devices to utilize a standardized telecommunications network; and
27 (iii) AT&T, Verizon, Sprint, and T-Mobile are carrier companies.

28

1 28. Qualcomm denies the allegations in Paragraph 28, except states that
2 (i) baseband processor chipsets are components contained in certain Apple iPhone
3 and iPad devices; and (ii) iPhones and iPads contain a number of components and
4 technologies. Qualcomm further states that Apple’s contract manufacturers
5 purchase baseband processor chipsets from Qualcomm.

6 29. Qualcomm denies the allegations in Paragraph 29, except states that
7 (i) certain cellular service providers, baseband processor chipset manufacturers, and
8 wireless device manufacturers are members of standard-setting organizations
9 (“SSOs”); and (ii) SSOs in the wireless telecommunications industry generally
10 create and promulgate standards that may be implemented by mobile devices and
11 network infrastructure.

12 30. Qualcomm denies the allegations in Paragraph 30, except states that
13 standards are critical to the wireless communications industry and can provide
14 many benefits, including, among other things, promoting interoperability among
15 wireless devices and networks and incentivizing investments in infrastructure, as
16 well as fostering improvements in the technology.

17 31. Qualcomm denies the allegations in Paragraph 31.

18 32. Qualcomm denies the allegations in Paragraph 32, except refers to
19 the cited materials for their contents.

20 33. Qualcomm denies the allegations in Paragraph 33, except refers to the
21 cited ETSI document for its contents.

22 34. Qualcomm denies the allegations in Paragraph 34, except states that
23 some disclosed patents may relate to mandatory features of a standard while others
24 may relate only to optional features. Qualcomm refers to the opinion in *Microsoft*
25 *v. Motorola, Inc.*, No. C10-1823JLR (W.D. Wash.) (the “*Microsoft* opinion”), for
26 its contents.

27 35. Qualcomm denies the allegations in Paragraph 35, except states that
28 wireless telecommunications standards are complex and that a number of entities

1 have disclosed patents that may be essential to such standards. Qualcomm refers
2 to the *Microsoft* opinion for its contents.

3 36. Qualcomm denies the allegations in Paragraph 36.

4 37. Qualcomm denies the allegations in Paragraph 37.

5 38. Qualcomm denies the allegations in Paragraph 38.

6 39. Qualcomm denies the allegations in Paragraph 39, except refers to the
7 *Microsoft* opinion for its contents.

8 40. Qualcomm denies the allegations in Paragraph 40.

9 41. Qualcomm denies the allegations in Paragraph 41, except refers to the
10 opinion in *Broadcom Corp. v. Qualcomm Inc.*, No. 06-4292 (3d Cir.), for its
11 contents.

12 42. Qualcomm denies the allegations in Paragraph 42.

13 43. Qualcomm denies the allegations in Paragraph 43, except states that
14 (i) ETSI is an SSO; (ii) Qualcomm is a member of ETSI; (iii) ETSI produces
15 globally accepted standards for the telecommunications industry; and (iv) ETSI
16 created or helped create numerous telecommunication standards, including the
17 2G/GSM, 3G/UMTS, and 4G/LTE cellular communication standards. Qualcomm
18 further states that ETSI is based in Sophia Antipolis, France and has more than
19 800 members, including Apple, from countries across five continents.

20 44. Qualcomm denies the allegations in Paragraph 44, except refers to
21 ETSI's Intellectual Property Rights ("IPR") Policy for its contents.

22 45. Qualcomm denies the allegations in Paragraph 45, except refers to
23 ETSI's IPR Policy for its contents.

24 46. Qualcomm denies the allegations in Paragraph 46, except refers to
25 ETSI's "Dynamic Reporting" portal and database for their contents.

26 47. Qualcomm denies the allegations in Paragraph 47, except refers to its
27 IPR undertakings submitted to ETSI for their contents.

28 48. Qualcomm denies the allegations in Paragraph 48.

1 49. Qualcomm denies the allegations in Paragraph 49, except refers to its
2 contract with ETSI for its contents.

3 50. Qualcomm denies the allegations in Paragraph 50.

4 51. Qualcomm denies the allegations in Paragraph 51.

5 52. Qualcomm denies the allegations in Paragraph 52, except states that
6 cellular technology has evolved over time, beginning with so-called “1G”, which
7 used analog technology and allowed only voice transmission.

8 53. Qualcomm denies the allegations in Paragraph 53, except states that
9 (i) so-called “2G” cellular technology includes GSM and CDMA standards; and
10 (ii) 2G digital technology offers improved capacity and functioning compared to
11 1G analog technology. Qualcomm further states that most cellular telephones in the
12 United States today use at least 2G technology.

13 54. Qualcomm denies the allegations in Paragraph 54, except states that
14 (i) so-called “3G” cellular technology includes the UMTS and CDMA2000
15 standard; (ii) UMTS incorporates WCDMA technology; and (iii) certain products
16 employ both 2G and 3G technologies.

17 55. Qualcomm denies the allegations in Paragraph 55, except states that
18 LTE, which is sometimes referred to as a “4G” cellular standard, includes a number
19 of releases that have provided a number of improved features.

20 56. Qualcomm denies the allegations in Paragraph 56, except states that
21 certain “multimode” chipsets support both 3G and 4G standards.

22 57. Qualcomm denies the allegations in Paragraph 57, except states that
23 each baseband processor chipset supports certain cellular communication standards.

24 58. Qualcomm denies the allegations in Paragraph 58, except states that
25 certain carrier networks employ certain cellular standards. Qualcomm further states
26 that in the United States, AT&T and T-Mobile use 2G GSM and 3G
27 UMTS/WCDMA, and Verizon and Sprint use 2G CDMA One and 3G
28 CDMA2000, and that all of those carriers use 4G LTE.

1 59. Qualcomm denies the allegations in Paragraph 59, except states that
2 (i) wireless handsets may be configured to a particular carrier's specifications; and
3 (ii) different regions and countries may use different cellular standards.

4 60. Qualcomm denies the allegations in Paragraph 60.

5 61. Qualcomm denies the allegations in Paragraph 61.

6 62. Qualcomm denies the allegations in Paragraph 62.

7 63. Qualcomm denies the allegations in Paragraph 63, except refers to its
8 2016 Annual Report on Form 10-K, dated November 2, 2016, for its contents.

9 64. Qualcomm denies the allegations in Paragraph 64.

10 65. Qualcomm denies the allegations in Paragraph 65, except states that
11 the development of commercially viable cellular chipsets requires investments of
12 time, effort, and money.

13 66. Qualcomm denies the allegations in Paragraph 66, except states
14 that Qualcomm owns patents relating to implementations of certain cellular
15 standards and has made disclosures of patents pursuant to the policies of certain
16 SSOs.

17 67. Qualcomm denies the allegations in Paragraph 67, except states that
18 becoming a successful supplier of cellular chipsets requires investments of time,
19 effort, and money to provide reliable products.

20 68. Qualcomm denies the allegations in Paragraph 68.

21 69. Qualcomm denies the allegations in Paragraph 69, except states that
22 multiple vendors offered baseband chipsets during the year 2006, including
23 Infineon, Broadcom, Ericsson, Renesas, and Texas Instruments.

24 70. Qualcomm denies the allegations in Paragraph 70.

25 71. Qualcomm denies the allegations in Paragraph 71.

26 72. Qualcomm denies the allegations in Paragraph 72, except states that
27 since 2007, Apple has been reimbursing its contract manufacturers for royalties
28

1 they paid to Qualcomm under license agreements the contract manufacturers signed
2 with Qualcomm.

3 73. Qualcomm denies the allegations in Paragraph 73, except states that
4 (i) Apple released the first iPhone using Intel (then Infineon) baseband processor
5 chipsets in 2007; (ii) Qualcomm has license agreements with certain contract
6 manufacturers that make products for Apple and pay royalties directly to
7 Qualcomm; and (iii) the contract manufacturers pass certain costs and expenses to
8 Apple.

9 74. Qualcomm denies the allegations in Paragraph 74, except states that
10 (i) Qualcomm has license agreements with certain contract manufacturers that make
11 products for Apple and pay royalties directly to Qualcomm; and (ii) those license
12 agreements contain confidentiality provisions.

13 75. Qualcomm denies the allegations in Paragraph 75.

14 76. Qualcomm denies the allegations in Paragraph 76, except states that
15 (i) Qualcomm and Apple have engaged in licensing negotiations; and (ii) the parties
16 have exchanged written correspondence regarding licensing and refers to that
17 correspondence for its contents.

18 77. Qualcomm denies the allegations in Paragraph 77.

19 78. Qualcomm denies the allegations in Paragraph 78, except states that
20 Qualcomm and Apple have engaged in licensing negotiations.

21 79. Qualcomm denies the allegations in Paragraph 79, except states that it
22 is without knowledge or information sufficient to form a belief as to the truth of the
23 allegations regarding Apple's royalty payments to other patent holders, and
24 therefore Qualcomm denies the allegations regarding Apple's royalty payments to
25 other patent holders.

26 80. Qualcomm states that it is without knowledge or information sufficient
27 to form a belief as to the truth of the allegations in Paragraph 80, and therefore
28 Qualcomm denies the allegations in Paragraph 80. Qualcomm further states that

1 Apple has not provided Qualcomm an unredacted version of the allegations in
2 Paragraph 80.

3 81. Qualcomm states that it is without knowledge or information sufficient
4 to form a belief as to the truth of the allegations in Paragraph 81 and footnote 1, and
5 therefore Qualcomm denies the allegations in Paragraph 81 and footnote 1.
6 Qualcomm further states that Apple has not provided Qualcomm an unredacted
7 version of the allegations in Paragraph 81 and footnote 1.

8 82. Qualcomm denies the allegations in Paragraph 82, except refers to the
9 U.S. Fair Trade Commission’s (“FTC”) complaint in Case No. 5:17-cv-00220
10 (N.D. Cal.) (the “FTC Complaint”) for its contents.

11 83. Qualcomm denies the allegations in Paragraph 83, except states that
12 the retail price for certain baseband processor chipsets can be approximately \$10 to
13 \$20, or more.

14 84. Qualcomm denies the allegations in Paragraph 84, except states that
15 (i) Apple’s contract manufacturers buy certain components from Qualcomm; and
16 (ii) separately, the contract manufacturers pay agreed-upon patent royalties to
17 Qualcomm.

18 85. Qualcomm states that it is without knowledge or information sufficient
19 to form a belief as to the truth of the allegations in Paragraph 85, and therefore
20 Qualcomm denies the allegations in Paragraph 85.

21 86. Qualcomm denies the allegations in Paragraph 86.

22 87. Qualcomm denies the allegations in Paragraph 87, except refers to the
23 U.S. Supreme Court’s opinion in *Quanta Computer, Inc. v. LG Elecs., Inc.*, No. 06-
24 937, for its contents.

25 88. Qualcomm denies the allegations in Paragraph 88, except refers to the
26 FTC Complaint for its contents.

27
28

1 89. Qualcomm denies the allegations in Paragraph 89, except states that
2 (i) QTI is a wholly owned subsidiary of Qualcomm Incorporated; and (ii) QTI
3 operates QCT.

4 90. Qualcomm denies the allegations in Paragraph 90, except refers to the
5 press release, entitled “Qualcomm Implements New Corporate Structure”, dated
6 October 1, 2012, for its contents.

7 91. Qualcomm denies the allegations in Paragraph 91, except states that it
8 is without knowledge or information sufficient to form a belief as to the truth of the
9 allegations regarding Apple’s purported intentions, and therefore Qualcomm denies
10 the allegations regarding Apple’s purported intentions.

11 92. Qualcomm denies the allegations in Paragraph 92.

12 93. Qualcomm denies the allegations in Paragraph 93.

13 94. Qualcomm denies the allegations in Paragraph 94.

14 95. Qualcomm denies the allegations in Paragraph 95.

15 96. Qualcomm denies the allegations in Paragraph 96.

16 97. Qualcomm denies the allegations in Paragraph 97.

17 98. Qualcomm denies the allegations in Paragraph 98, except states that
18 Qualcomm and Apple have entered certain agreements, and refers to those
19 agreements for their contents.

20 99. Qualcomm denies the allegations in Paragraph 99, except refers to the
21 Cooperation Agreement for its contents.

22 100. Qualcomm denies the allegations in Paragraph 100, except refers to the
23 Cooperation Agreement for its contents. Qualcomm further states that Apple has
24 not provided Qualcomm an unredacted version of the allegations in Paragraph 100.

25 101. Qualcomm denies the allegations in Paragraph 101, except refers to the
26 Cooperation Agreement for its contents.

27 102. Qualcomm denies the allegations in Paragraph 102, except refers to the
28 Cooperation Agreement for its contents.

1 103. Qualcomm denies the allegations in Paragraph 103, except refers to the
2 Cooperation Agreement for its contents.

3 104. Qualcomm denies the allegations in Paragraph 104.

4 105. Qualcomm denies the allegations in Paragraph 105, except refers to the
5 Cooperation Agreement for its contents.

6 106. Qualcomm denies the allegations in Paragraph 106, except refers to the
7 Cooperation Agreement for its contents.

8 107. Qualcomm denies the allegations in Paragraph 107, except refers to its
9 letter to Apple regarding the Cooperation Agreement, dated October 9, 2016, for its
10 contents.

11 108. Qualcomm denies the allegations in Paragraph 108, except states that
12 Qualcomm and Apple have entered certain agreements, and refers to those
13 agreements for their contents.

14 109. Qualcomm denies the allegations in Paragraph 109, except refers to the
15 Marketing Incentive Agreement, dated January 8, 2007 (the “MIA”), for its
16 contents.

17 110. Qualcomm denies the allegations in Paragraph 110, except refers to the
18 Strategic Terms Agreement, dated December 16, 2009 (the “STA”), and the
19 Amended and Restated Strategic Terms Agreement, dated February 28, 2013 (the
20 “ASTA”) for their contents.

21 111. Qualcomm denies the allegations in Paragraph 111, except refers to the
22 Transition Agreement, dated February 11, 2011 (the “TA”), for its contents.

23 112. Qualcomm denies the allegations in Paragraph 112, except refers to the
24 First Amendment to the Transition Agreement, dated January 1, 2013 (the
25 “FATA”), for its contents.

26 113. Qualcomm denies the allegations in Paragraph 113, except refers to the
27 MIA, the STA, the ASTA, the TA, and the FATA for their contents.
28

1 114. Qualcomm denies the allegations in Paragraph 114, except states that
2 Qualcomm and Apple have engaged in certain negotiations over a period of time.

3 115. Qualcomm denies the allegations in Paragraph 115, except states that
4 (i) in 2015, Qualcomm offered to license to Apple a portfolio of Qualcomm's
5 Chinese 3G and 4G standard-essential patents on terms consistent with
6 Qualcomm's FRAND commitments to ETSI and with the decision and order of
7 China's NDRC; and (ii) Apple rejected that offer.

8 116. Qualcomm denies the allegations in Paragraph 116, except states
9 that (i) Qualcomm and Apple exchanged correspondence regarding patent licensing
10 on multiple occasions on and after February 5, 2016, and refers to that
11 correspondence for its contents; and (ii) Qualcomm provided Apple with nearly
12 2,000 pages of detailed information regarding its portfolio of patents disclosed to
13 ETSI as potentially essential to 3G and 4G standards, including Qualcomm's list of
14 U.S. patents disclosed to ETSI as potentially essential to 3G and 4G standards.
15 Qualcomm refers to its website for its contents.

16 117. Qualcomm denies the allegations in Paragraph 117, except states that
17 (i) on June 15, 2016, Qualcomm offered Apple a license to Qualcomm's Chinese
18 3G and 4G SEPs on FRAND terms and conditions and sent Apple a draft Complete
19 Terminal Chinese Patent License Agreement, and refers to that correspondence and
20 draft agreement for their contents; and (ii) on July 15, 2016, Qualcomm offered
21 Apple a license to Qualcomm's "rest of world" 3G and 4G SEPs on FRAND terms
22 and conditions and sent Apple a draft Complete Terminal Patent License
23 Agreement, and refers to that correspondence and draft agreement for their
24 contents.

25 118. Qualcomm denies the allegations in Paragraph 118, except states that
26 in a letter dated September 13, 2016, Apple made a non-FRAND offer to
27 Qualcomm, and Qualcomm refers to that correspondence for its contents.
28

1 119. Qualcomm denies the allegations in Paragraph 119 and footnote 2,
2 except states that (i) Qualcomm and Apple have engaged in licensing negotiations;
3 and (ii) the parties have exchanged written correspondence regarding licensing, and
4 Qualcomm refers to that correspondence for its contents. Representatives of
5 Qualcomm and Apple met in-person on December 16, 2016, and December 21,
6 2016. During those meetings, Qualcomm presented claim charts for certain of its
7 patents, and answered Apple’s questions regarding those claim charts. Qualcomm
8 offered to present hundreds of additional claim charts. Rather than engage in
9 further negotiation and discussion, Apple chose to engage in litigation.

10 120. Qualcomm denies the allegations in Paragraph 120 and footnote 3,
11 except states that Meizu was a smartphone maker in the Chinese market in 2015,
12 and Qualcomm filed certain actions against Meizu in June 2016. Qualcomm refers
13 to those actions and the Reuters article entitled “Qualcomm Files 17 New
14 Complaints in China Courts Against Smartphone Maker Meizu”, dated June 30,
15 2016, for their contents.

16 121. Qualcomm denies the allegations in Paragraph 121 and footnote 4,
17 except refers to its complaints against Meizu, the press release entitled “Qualcomm
18 Files Complaint Against Meizu in China”, dated June 24, 2016, and the press
19 release entitled “Qualcomm Files Patent Infringement Complaints Against Meizu in
20 China”, dated June 30, 2016, for their contents.

21 122. Qualcomm denies the allegations in Paragraph 122, except states that
22 Qualcomm disclosed to ETSI that each of the Patents-in-Suit may be or may
23 become essential to a 3G/UMTS and/or 4G/LTE standard.

24 123. Qualcomm denies the allegations in Paragraph 123, except states that
25 Qualcomm owns U.S. Patent No. 7,246,242 (“the ’242 patent”), entitled “Integrity
26 Protection Method for Radio Network Signaling”, and refers to the ’242 patent for
27 its contents and relation to other patents.

28

1 124. Qualcomm denies the allegations in Paragraph 124, except states that
2 Qualcomm owns U.S. Patent No. 6,556,549 (“the ’549 patent”), entitled “Method
3 and Apparatus for Signal Combining in a High Data Rate Communication System”,
4 and refers to the ’549 patent for its contents and relation to other patents.

5 125. Qualcomm denies the allegations in Paragraph 125, except states that
6 Qualcomm owns U.S. Patent No. 9,137,822 (“the ’822 patent”), entitled “Efficient
7 Signaling over Access Channel”, and refers to the ’822 patent for its contents and
8 relation to other patents.

9 126. Qualcomm denies the allegations in Paragraph 126, except states that
10 Qualcomm owns U.S. Patent No. 7,289,630 (“the ’630 patent”), entitled “Counter
11 Initialization, Particularly for Radio Frames”, and refers to the ’630 patent for its
12 contents and relation to other patents.

13 127. Qualcomm denies the allegations in Paragraph 127, except states that
14 Qualcomm owns U.S. Patent No. 8,867,494 (“the ’494 patent”), entitled “System
15 and Method for Single Frequency Dual Cell High Speed Downlink Packet Access”,
16 and refers to the ’494 patent for its contents.

17 128. Qualcomm denies the allegations in Paragraph 128, except states that
18 Qualcomm owns U.S. Patent No. 7,095,725 (“the ’725 patent”), entitled “Method
19 and Apparatus for Data Transmission on a Reverse Link in a Communication
20 System”, and refers to the ’725 patent for its contents.

21 129. Qualcomm denies the allegations in Paragraph 129, except states that
22 Qualcomm owns U.S. Patent No. 6,694,469 (“the ’469 patent”), entitled “Method
23 and Apparatus for a Quick Retransmission of Signals in a Communication System”,
24 and refers to the ’469 patent for its contents.

25 130. Qualcomm denies the allegations in Paragraph 130, except
26 states that Qualcomm owns U.S. Patent No. 9,059,819 (“the ’819 patent”), entitled
27 “Flexible Uplink Control Channel Configuration”, and refers to the ’819 patent for
28 its contents.

1 131. Qualcomm denies the allegations in Paragraph 131, except states that
2 Qualcomm owns U.S. Patent No. 7,096,021 (“the ’021 patent”), entitled “Method
3 for Initiating in a Terminal of a Cellular Network the Measurement of Power Levels
4 of Signals and a Terminal”, and refers to the ’021 patent for its contents.

5 132. Qualcomm denies the allegations in Paragraph 132.

6 133. Qualcomm denies the allegations in Paragraph 133.

7 134. Qualcomm denies the allegations in Paragraph 134.

8 135. Qualcomm denies the allegations in Paragraph 135, except states that it
9 owns a very large number of patents around the world that have been disclosed to
10 ETSI as potentially essential to one or more cellular standards and refers to ETSI’s
11 “Dynamic Reporting” portal and database for their contents.

12 136. Qualcomm denies the allegations in Paragraph 136.

13 137. Qualcomm denies the allegations in Paragraph 137, except refers to the
14 *Microsoft* opinion for its contents.

15 138. Qualcomm denies the allegations in Paragraph 138, except refers to the
16 *Microsoft* opinion for its contents.

17 139. Qualcomm denies the allegations in Paragraph 139, except refers to the
18 opinion in *LaserDynamics, Inc. v. Quanta Computer, Inc.*, Nos. 2011-1440, 2011-
19 1470 (Fed. Cir.), for its contents.

20 140. Qualcomm denies the allegations in Paragraph 140.

21 141. Qualcomm denies the allegations in Paragraph 141.

22 142. Qualcomm denies the allegations in Paragraph 142.

23 143. Qualcomm denies the allegations in Paragraph 143.

24 144. Qualcomm denies the allegations in Paragraph 144, except refers to
25 the opinion in *In re Innovatio IP Ventures, LLC Patent Litig.*, No. 11 C 9308 (N.D.
26 Ill.), for its contents.

27 145. Qualcomm denies the allegations in Paragraph 145, except states that
28 (i) Apple currently sells the 16GB iPhone SE for \$399; and (ii) Apple currently

1 sells the 256 GB iPhone 7 Plus for \$969. Qualcomm further states that it is without
2 knowledge or information sufficient to form a belief as to the truth of the
3 allegations regarding products sold by Walmart, and therefore Qualcomm denies
4 the allegations regarding products sold by Walmart. Qualcomm refers to the cited
5 Walmart web page for its contents.

6 146. Qualcomm denies the allegations in Paragraph 146, except states that
7 Apple sells multiple versions of each generation of iPhones and iPads at different
8 prices.

9 147. Qualcomm denies the allegations in Paragraph 147, except refers to the
10 cited opinions for their contents.

11 148. Qualcomm denies the allegations in Paragraph 148, except refers to the
12 opinion in *GPNE Corp. v. Apple, Inc.*, No. 12-CV-02885-LHK (N.D. Cal.), for its
13 contents.

14 149. Qualcomm denies the allegations in Paragraph 149, except refers to the
15 cited opinions for their contents.

16 150. Qualcomm denies the allegations in Paragraph 150.

17 151. Qualcomm denies the allegations in Paragraph 151, except refers to the
18 *Microsoft* opinion and ETSI's "Dynamic Reporting" portal and database for their
19 contents.

20 152. Qualcomm denies the allegations in Paragraph 152.

21 153. Qualcomm denies the allegations in Paragraph 153, except refers to the
22 opinion in *Apple, Inc. v. Motorola Mobility, Inc.*, No. 11-cv-178-bbc (W.D. Wis.),
23 for its contents.

24 154. Qualcomm denies the allegations in Paragraph 154, except states that it
25 has entered into non-exhaustive patent agreements, including non-exhaustive
26 license agreements, with modem chipmakers and has never excluded a competing
27 cellular modem chip maker from supplying cellular modem chips. Qualcomm
28

1 refers to the final transcript of its Q4 and Fiscal 2005 Earnings Conference Call of
2 November 2, 2005, for its contents.

3 155. Qualcomm denies the allegations in Paragraph 155, except states that
4 (i) Qualcomm presented at the Jefferies Technology Conference on October 2,
5 2007, and refers to the transcript of that presentation for its contents; and (ii) on
6 December 10, 2007, Qualcomm filed a Brief of Qualcomm Inc. as Amicus Curiae
7 Supporting Respondent in *Quanta Computer, Inc. v. LG Elecs., Inc.*, No. 06-937,
8 and refers to that brief for its contents.

9 156. Qualcomm denies the allegations in Paragraph 156, except refers to its
10 2016 Annual Report on Form 10-K, dated November 2, 2016, its 2007 Annual
11 Report on Form 10-K, dated November 8, 2007, and its 2008 Annual Report on
12 Form 10-K, dated November 6, 2008, for their contents.

13 157. Qualcomm denies the allegations in Paragraph 157, except refers to its
14 2014 Annual Report on Form 10-K, dated November 5, 2014, and the KFTC's
15 Decision No. 2017-0-25, dated January 20, 2017, in Case No. 2015SiGam2118, for
16 their contents.

17 158. Qualcomm denies the allegations in Paragraph 158.

18 159. Qualcomm denies the allegations in Paragraph 159.

19 160. Qualcomm denies the allegations in Paragraph 160, except refers to the
20 Cooperation Agreement for its contents.

21 161. Qualcomm denies the allegations in Paragraph 161, except refers to the
22 FTC Complaint for its contents.

23 162. Qualcomm denies the allegations in Paragraph 162, except states that
24 Qualcomm has been subject to investigations by competition authorities in China,
25 South Korea, Taiwan, Japan, Europe, and the United States.

26 163. Qualcomm denies the allegations in Paragraph 163, except states
27 that (i) the Japan Fair Trade Commission ("JFTC") issued an order on
28 September 30, 2009; (ii) the Tokyo High Court issued a decision to stay the JFTC's

1 September 30, 2009 order, dated February 11, 2010; (iii) China’s NDRC issued an
2 Administrative Sanction Decision in connection with its investigation of
3 Qualcomm on February 9, 2015; (iv) Qualcomm implemented a Rectification Plan,
4 dated February 9, 2015, in connection with the NDRC’s Administrative Sanction
5 Decision; (v) the NDRC published a press release on February 10, 2015, stating
6 that Qualcomm’s Rectification Plan satisfied its Administrative Sanction Decision;
7 (vi) the European Commission (“EC”) issued a Statement of Objections in Case
8 AT.39711, dated December 8, 2015; (vii) the EC issued a Statement of Objections
9 in Case AT.40220, dated December 8, 2015; (viii) the KFTC issued Decision
10 No. 2017-0-25, dated January 20, 2017, in Case No. 2015SiGam2118; and
11 (ix) Qualcomm filed a complaint and stay application regarding KFTC Decision
12 No. 2017-0-25 with the Seoul High Court on February 21, 2017, the complaint
13 proceeding is Case No. 2017Nu48, and the stay proceeding is Case No. 2017Ah66,
14 and refers to the foregoing documents for their contents.

15 164. Qualcomm denies the allegations in Paragraph 164, except states that
16 (i) the FTC notified Qualcomm of an investigation in September 2014; (ii) the FTC
17 filed the FTC Complaint on January 17, 2017; and (iii) the FTC issued a press
18 release titled “FTC Charges Qualcomm With Monopolizing Key Semiconductor
19 Device Used in Cell Phones”, on January 17, 2017. Qualcomm refers to the FTC
20 Complaint and the cited press release for their contents.

21 165. Qualcomm denies the allegations in Paragraph 165, except states that
22 (i) China’s NDRC issued an Administrative Sanction Decision in connection with
23 its investigation of Qualcomm on February 9, 2015; (ii) Qualcomm implemented a
24 Rectification Plan, dated February 9, 2015, in connection with the NDRC’s
25 Administrative Sanction Decision; and (iii) the NDRC published a press release on
26 February 10, 2015, stating that Qualcomm’s Rectification Plan satisfied its
27 Administrative Sanction Decision. Qualcomm refers to the foregoing documents
28 for their contents.

1 166. Qualcomm denies the allegations in Paragraph 166, except states that
2 (i) China's NDRC issued an Administrative Sanction Decision in connection with
3 its investigation of Qualcomm on February 9, 2015; (ii) Qualcomm implemented a
4 Rectification Plan, dated February 9, 2015, in connection with the NDRC's
5 Administrative Sanction Decision; (iii) the NDRC published a press release on
6 February 10, 2015, stating that Qualcomm's Rectification Plan satisfied its
7 Administrative Sanction Decision; and (iv) since February 9, 2015, Qualcomm has
8 entered into more than 100 license agreements with Chinese companies on terms
9 consistent with the Rectification Plan. Qualcomm refers to the foregoing
10 documents for their contents.

11 167. Qualcomm denies the allegations in Paragraph 167, except states that
12 (i) in 2006, the JFTC notified Qualcomm of a possible investigation; (ii) the JFTC
13 issued an order, dated September 30, 2009; and (iii) the Tokyo High Court issued a
14 decision to stay the JFTC's September 30, 2009 order on February 11, 2010.
15 Qualcomm refers to the foregoing documents for their contents.

16 168. Qualcomm denies the allegations in Paragraph 168, except states
17 that (i) the KFTC issued Decision No. 2009-281, dated December 30, 2009, in
18 Case No. 2009Jisik0329; (ii) the Seoul High Court issued a judgment, dated June
19 19, 2013, in Case No. 2010Nu3932, which modified KFTC Decision No. 2009-281;
20 (iii) the KFTC's Decision No. 2009-281 and the Seoul High Court's June 19, 2013
21 judgment are at issue in Case No. 2013Du14726 pending before the Supreme Court
22 of Korea; (iv) the KFTC issued Decision No. 2017-0-25 in Case
23 No. 2015SiGam2118, dated January 20, 2017; (v) the KFTC issued a press release,
24 dated December 28, 2016; and (vi) Qualcomm filed a complaint and stay
25 application regarding KFTC Decision No. 2017-0-25 with the Seoul High Court on
26 February 21, 2017, the complaint proceeding is Case No. 2017Nu48, and the stay
27 proceeding is Case No. 2017Ah66. Qualcomm refers to the foregoing documents
28 for their contents.

1 169. Qualcomm denies the allegations in Paragraph 169, except states that
2 (i) the EC notified Qualcomm of an investigation in October 2014; (ii) the EC
3 issued a Statement of Objections in Case AT.39711 on December 8, 2015; (iii) the
4 EC issued a Statement of Objections in Case AT.40220 on December 8, 2015; and
5 (iv) the EC issued a press release on December 8, 2015. Qualcomm refers to the
6 foregoing documents for their contents.

7 170. Qualcomm denies the allegations in Paragraph 170, except states that
8 investigations of Qualcomm by the JFTC and the Taiwan Fair Trade Commission
9 (“TFTC”) were ongoing as of the date of Apple’s Complaint.

10 171. Qualcomm denies the allegations in Paragraph 171, except states
11 that regulatory agencies investigating Qualcomm have sought information from
12 third-parties, including Apple.

13 172. Qualcomm denies the allegations in Paragraph 172 and footnote 5,
14 except states that (i) Apple produced documents to the FTC; (ii) a representative of
15 Apple gave a presentation in an open session before the KFTC in Case
16 No. 2015SiGam2118 on August 17, 2016; and (iii) Apple has provided certain
17 information to the EC and TFTC in connection with investigations of Qualcomm.
18 Qualcomm states that it is without knowledge or information sufficient to form a
19 belief as to the truth of the allegations regarding depositions of Apple executives.

20 173. Qualcomm denies the allegations in Paragraph 173, except states
21 that (i) Qualcomm has made submissions to the KFTC in connection with
22 Case No. 2015SiGam2118; and (ii) Qualcomm representatives, including its
23 President, were present when Apple testified in an open session before the KFTC in
24 Case No. 2015SiGam2118 on August 17, 2016.

25 174. Qualcomm denies the allegations in Paragraph 174.

26 175. Qualcomm denies the allegations in Paragraph 175.

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1 176. Qualcomm denies the allegations in Paragraph 176, except states that
2 from 2013 through mid-2016, Qualcomm made payments to Apple under various
3 agreements, including the Cooperation Agreement.

4 177. Qualcomm denies the allegations in Paragraph 177, except states that
5 pursuant to the terms of the Cooperation Agreement, Qualcomm was not required
6 to and did not make certain payments to Apple.

7 178. Qualcomm denies the allegations in Paragraph 178, except states that
8 pursuant to the terms of the Cooperation Agreement, Qualcomm was not required
9 to and did not make certain payments to Apple. Apple submitted certain
10 documentation to Qualcomm in connection with the Cooperation Agreement for
11 each quarter of 2016, and Qualcomm refers to that documentation for its contents.

12 179. Qualcomm denies the allegations in Paragraph 179, except states that
13 Qualcomm and Apple executives met around mid-September 2016.

14 180. Qualcomm denies the allegations in Paragraph 180, except states
15 that Apple made a presentation to the KFTC in Case No. 2015SiGam2118 on
16 August 17, 2016, titled “Apple’s Response to KFTC: Views on Qualcomm’s
17 Abuse of Dominance”, and refers to that presentation for its contents.

18 181. Qualcomm denies the allegations in Paragraph 181, except states that
19 Qualcomm and Apple corresponded regarding the Cooperation Agreement after
20 the second quarter of 2016, and refers to such correspondence for its contents.

21 Qualcomm states that it is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations regarding Apple’s intentions, and therefore
23 Qualcomm denies the allegations regarding Apple’s intentions.

24 182. Qualcomm denies the allegations in Paragraph 182, except states that
25 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
26 second quarter of 2016, and refers to such correspondence for its contents.

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1 183. Qualcomm denies the allegations in Paragraph 183, except states that
2 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
3 second quarter of 2016, and refers to such correspondence for its contents.

4 184. Qualcomm denies the allegations in Paragraph 184, except states that
5 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
6 second quarter of 2016, and refers to such correspondence for its contents.

7 185. Qualcomm denies the allegations in Paragraph 185, except states that
8 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
9 second quarter of 2016, and refers to such correspondence for its contents.

10 186. Qualcomm denies the allegations in Paragraph 186, except states that it
11 is without knowledge or information sufficient to form a belief as to the truth of the
12 allegations regarding each of Apple’s interactions with government agencies, and
13 therefore Qualcomm denies the allegations regarding each of Apple’s interactions
14 with government agencies.

15 187. Qualcomm denies the allegations in Paragraph 187, except states that
16 Qualcomm and Apple entered into the Cooperation Agreement, and refers to that
17 Agreement for its contents.

18 188. Qualcomm denies the allegations in Paragraph 188, except states that
19 Qualcomm and Apple entered into the Cooperation Agreement, and refers to that
20 Agreement for its contents.

21 189. Qualcomm denies the allegations in Paragraph 189, except states that
22 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
23 second quarter of 2016, and refers to such correspondence for its contents.

24 190. Qualcomm denies the allegations in Paragraph 190, except states that
25 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
26 second quarter of 2016, and refers to such correspondence for its contents.

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1 191. Qualcomm denies the allegations in Paragraph 191, except states that
2 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
3 second quarter of 2016, and refers to such correspondence for its contents.

4 192. Qualcomm denies the allegations in Paragraph 192, except states that
5 Qualcomm and Apple corresponded regarding the Cooperation Agreement after the
6 second quarter of 2016, and refers to such correspondence for its contents.

7 193. Qualcomm denies the allegations in Paragraph 193 and footnote 6,
8 except states that Qualcomm sent Apple a letter regarding the Cooperation
9 Agreement on December 2, 2016, and refers to that letter for its contents.
10 Qualcomm further states that it filed *ex parte* applications pursuant to 28 U.S.C.
11 § 1782 in the Northern District of California, and refers to those applications for
12 their contents. Qualcomm refers to the opinion in *In re Ex Parte Application of*
13 *Qualcomm Inc.*, Nos. 5:16-mc-80002-PSG to -80008-PSG (N.D. Cal.), for its
14 contents.

15 194. Qualcomm denies the allegations in Paragraph 194.

16 195. Qualcomm denies the allegations in Paragraph 195.

17 196. Qualcomm denies the allegations in Paragraph 196, except refers to the
18 cited materials for their contents.

19 197. Qualcomm denies the allegations in Paragraph 197, except states that
20 (i) the FTC, the EC, and the TFTC are members of the International Competition
21 Network (“ICN”); and (ii) the ICN has published Guidance on Investigative
22 Process, and refers to that publication for its contents.

23 198. Qualcomm denies the allegations in Paragraph 198, except refers to the
24 cited opinions for their contents.

25 199. Qualcomm denies the allegations in Paragraph 199, except refers to the
26 opinion in *In re Ex Parte Application of Qualcomm Inc.*, Nos. 5:16-mc-80002-PSG
27 to -80008-PSG (N.D. Cal.), for its contents.
28

1 200. Qualcomm denies the allegations in Paragraph 200, except refers to the
2 Korean Monopoly Regulation and Fair Trade Act for its contents.

3 201. Qualcomm denies the allegations in Paragraph 201, except refers to the
4 cited opinions for their contents.

5 202. Qualcomm denies the allegations in Paragraph 202.

6 203. Qualcomm denies the allegations in Paragraph 203, except states that it
7 is without knowledge or information sufficient to form a belief as to the truth of the
8 allegations regarding Apple's expectations and estimates, and therefore Qualcomm
9 denies the allegations regarding Apple's expectations and estimates.

10 204. Qualcomm denies the allegations in Paragraph 204.

11 205. Qualcomm denies the allegations in Paragraph 205.

12 206. Qualcomm repeats and realleges its responses to the preceding
13 Paragraphs with the same force and effect as if fully restated herein.

14 207. Qualcomm denies the allegations in Paragraph 207, except states that
15 Qualcomm and Apple have entered certain agreements, including the Cooperation
16 Agreement.

17 208. Qualcomm denies the allegations in Paragraph 208, except states that
18 Qualcomm and Apple entered into the Cooperation Agreement, and refers to that
19 Agreement for its contents.

20 209. Qualcomm denies the allegations in Paragraph 209.

21 210. Qualcomm denies the allegations in Paragraph 210.

22 211. Qualcomm denies the allegations in Paragraph 211.

23 212. Qualcomm denies the allegations in Paragraph 212.

24 213. Qualcomm denies the allegations in Paragraph 213, except states that
25 pursuant to the terms of the Cooperation Agreement, Qualcomm was not required
26 to and did not make any payment to Apple under that Agreement for the fourth
27 quarter of 2016.

28 214. Qualcomm denies the allegations in Paragraph 214.

1 215. Qualcomm denies the allegations in Paragraph 215.

2 216. Qualcomm denies the allegations in Paragraph 216.

3 217. Qualcomm denies the allegations in Paragraph 217.

4 218. Qualcomm denies the allegations in Paragraph 218, except states that
5 Apple and Qualcomm engaged in certain communications regarding the
6 Cooperation Agreement during two 30-day periods and did not resolve their dispute
7 regarding the Cooperation Agreement.

8 219. Qualcomm denies the allegations in Paragraph 219.

9 220. Qualcomm denies the allegations in Paragraph 220, except states that

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 221. Qualcomm denies the allegations in Paragraph 221, except states that
14 the FTC filed the FTC Complaint on January 17, 2017, and refers to that complaint
15 for its contents. Qualcomm states that it is without knowledge or information
16 sufficient to form a belief as to the truth of the allegations regarding Apple's
17 intentions, and therefore Qualcomm denies the allegations regarding Apple's
18 intentions.

19 222. Qualcomm repeats and realleges its responses to the preceding
20 Paragraphs with the same force and effect as if fully restated herein.

21 223. Qualcomm denies the allegations in Paragraph 223, except states that
22 Apple and Qualcomm each had an obligation to act fairly and in good faith with
23 respect to their obligations under the Cooperation Agreement.

24 224. Qualcomm denies the allegations in Paragraph 224.

25 225. Qualcomm denies the allegations in Paragraph 225.

26 226. Qualcomm denies the allegations in Paragraph 226.

27 227. Qualcomm denies the allegations in Paragraph 227.

28 228. Qualcomm denies the allegations in Paragraph 228.

1 229. Qualcomm repeats and realleges its responses to the preceding
2 Paragraphs with the same force and effect as if fully restated herein.

3 230. Qualcomm denies the allegations in Paragraph 230, except refers to
4 California Civil Code § 1671(b) for its contents.

5 231. Qualcomm denies the allegations in Paragraph 231.

6 232. Qualcomm denies the allegations in Paragraph 232.

7 233. Qualcomm denies the allegations in Paragraph 233.

8 234. Qualcomm denies the allegations in Paragraph 234.

9 235. Qualcomm denies the allegations in Paragraph 235.

10 236. Qualcomm denies the allegations in Paragraph 236.

11 237. Qualcomm repeats and realleges its responses to the preceding
12 Paragraphs with the same force and effect as if fully restated herein.

13 238. Qualcomm denies the allegations in Paragraph 238, except refers to
14 California Code of Civil Procedure § 1060 for its contents.

15 239. Qualcomm denies the allegations in Paragraph 239 and denies that the
16 declaratory relief sought by Apple is appropriate, except states that certain rights
17 and obligations under the Cooperation Agreement are at issue.

18 240. Qualcomm denies the allegations in Paragraph 240.

19 241. Qualcomm denies the allegations in Paragraph 241, except states that
20 Apple purports to seek declaratory relief in its Complaint.

21 242. Qualcomm denies the allegations in Paragraph 242 and denies that the
22 declaratory relief sought by Apple is appropriate, except states that certain rights
23 and obligations under the Cooperation Agreement are at issue.

24 243. Qualcomm repeats and realleges its responses to the preceding
25 Paragraphs with the same force and effect as if fully restated herein.

26 244. Qualcomm denies the allegations in Paragraph 244, except refers to the
27 '242 patent for its contents.

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1 245. Qualcomm states that the allegations in Paragraph 245 state a legal
2 conclusion to which no response is required. To the extent a response is required,
3 Qualcomm denies the allegations in Paragraph 245.

4 246. Qualcomm states that the allegations in Paragraph 246 state a legal
5 conclusion to which no response is required. To the extent a response is required,
6 Qualcomm denies the allegations in Paragraph 246.

7 247. Qualcomm states that the allegations in Paragraph 247 state a legal
8 conclusion to which no response is required. To the extent a response is required,
9 Qualcomm denies the allegations in Paragraph 247.

10 248. Qualcomm states that the allegations in Paragraph 248 state a legal
11 conclusion to which no response is required. To the extent a response is required,
12 Qualcomm denies the allegations in Paragraph 248, except states that Apple
13 purports to seek declaratory relief in its Complaint.

14 249. Qualcomm repeats and realleges its responses to the preceding
15 Paragraphs with the same force and effect as if fully restated herein.

16 250. Qualcomm denies the allegations in Paragraph 250.

17 251. Qualcomm denies the allegations in Paragraph 251.

18 252. Qualcomm denies the allegations in Paragraph 252, except refers to the
19 cited opinions for their contents.

20 253. Qualcomm repeats and realleges its responses to the preceding
21 Paragraphs with the same force and effect as if fully restated herein.

22 254. Qualcomm denies the allegations in Paragraph 254, except refers to the
23 '549 patent for its contents.

24 255. Qualcomm states that the allegations in Paragraph 255 state a legal
25 conclusion to which no response is required. To the extent a response is required,
26 Qualcomm denies the allegations in Paragraph 255.

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1 256. Qualcomm states that the allegations in Paragraph 256 state a legal
2 conclusion to which no response is required. To the extent a response is required,
3 Qualcomm denies the allegations in Paragraph 256.

4 257. Qualcomm states that the allegations in Paragraph 257 state a legal
5 conclusion to which no response is required. To the extent a response is required,
6 Qualcomm denies the allegations in Paragraph 257.

7 258. Qualcomm states that the allegations in Paragraph 258 state a legal
8 conclusion to which no response is required. To the extent a response is required,
9 Qualcomm denies the allegations in Paragraph 258, except states that Apple
10 purports to seek declaratory relief in its Complaint.

11 259. Qualcomm repeats and realleges its responses to the preceding
12 Paragraphs with the same force and effect as if fully restated herein.

13 260. Qualcomm denies the allegations in Paragraph 260.

14 261. Qualcomm denies the allegations in Paragraph 261.

15 262. Qualcomm denies the allegations in Paragraph 262, except refers to the
16 cited opinions for their contents.

17 263. Qualcomm repeats and realleges its responses to the preceding
18 Paragraphs with the same force and effect as if fully restated herein.

19 264. Qualcomm denies the allegations in Paragraph 264, except refers to the
20 '822 patent for its contents.

21 265. Qualcomm states that the allegations in Paragraph 265 state a legal
22 conclusion to which no response is required. To the extent a response is required,
23 Qualcomm denies the allegations in Paragraph 265.

24 266. Qualcomm states that the allegations in Paragraph 266 state a legal
25 conclusion to which no response is required. To the extent a response is required,
26 Qualcomm denies the allegations in Paragraph 266.

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1 267. Qualcomm states that the allegations in Paragraph 267 state a legal
2 conclusion to which no response is required. To the extent a response is required,
3 Qualcomm denies the allegations in Paragraph 267.

4 268. Qualcomm states that the allegations in Paragraph 268 state a legal
5 conclusion to which no response is required. To the extent a response is required,
6 Qualcomm denies the allegations in Paragraph 268, except states that Apple
7 purports to seek declaratory relief in its Complaint.

8 269. Qualcomm repeats and realleges its responses to the preceding
9 Paragraphs with the same force and effect as if fully restated herein.

10 270. Qualcomm denies the allegations in Paragraph 270.

11 271. Qualcomm denies the allegations in Paragraph 271.

12 272. Qualcomm denies the allegations in Paragraph 272, except refers to the
13 cited opinions for their contents.

14 273. Qualcomm repeats and realleges its responses to the preceding
15 Paragraphs with the same force and effect as if fully restated herein.

16 274. Qualcomm denies the allegations in Paragraph 274, except refers to the
17 '630 patent for its contents.

18 275. Qualcomm states that the allegations in Paragraph 275 state a legal
19 conclusion to which no response is required. To the extent a response is required,
20 Qualcomm denies the allegations in Paragraph 275.

21 276. Qualcomm states that the allegations in Paragraph 276 state a legal
22 conclusion to which no response is required. To the extent a response is required,
23 Qualcomm denies the allegations in Paragraph 276.

24 277. Qualcomm states that the allegations in Paragraph 277 state a legal
25 conclusion to which no response is required. To the extent a response is required,
26 Qualcomm denies the allegations in Paragraph 277.

27 278. Qualcomm states that the allegations in Paragraph 278 state a legal
28 conclusion to which no response is required. To the extent a response is required,

1 Qualcomm denies the allegations in Paragraph 278, except states that Apple
2 purports to seek declaratory relief in its Complaint.

3 279. Qualcomm repeats and realleges its responses to the preceding
4 Paragraphs with the same force and effect as if fully restated herein.

5 280. Qualcomm denies the allegations in Paragraph 280.

6 281. Qualcomm denies the allegations in Paragraph 281.

7 282. Qualcomm denies the allegations in Paragraph 282, except refers to the
8 cited opinions for their contents.

9 283. Qualcomm repeats and realleges its responses to the preceding
10 Paragraphs with the same force and effect as if fully restated herein.

11 284. Qualcomm denies the allegations in Paragraph 284, except refers to the
12 '494 patent for its contents.

13 285. Qualcomm states that the allegations in Paragraph 285 state a legal
14 conclusion to which no response is required. To the extent a response is required,
15 Qualcomm denies the allegations in Paragraph 285.

16 286. Qualcomm states that the allegations in Paragraph 286 state a legal
17 conclusion to which no response is required. To the extent a response is required,
18 Qualcomm denies the allegations in Paragraph 286.

19 287. Qualcomm states that the allegations in Paragraph 287 state a legal
20 conclusion to which no response is required. To the extent a response is required,
21 Qualcomm denies the allegations in Paragraph 287.

22 288. Qualcomm states that the allegations in Paragraph 288 state a legal
23 conclusion to which no response is required. To the extent a response is required,
24 Qualcomm denies the allegations in Paragraph 288, except states that Apple
25 purports to seek declaratory relief in its Complaint.

26 289. Qualcomm repeats and realleges its responses to the preceding
27 Paragraphs with the same force and effect as if fully restated herein.

28 290. Qualcomm denies the allegations in Paragraph 290.

1 291. Qualcomm denies the allegations in Paragraph 291.

2 292. Qualcomm denies the allegations in Paragraph 292, except refers to the
3 cited opinions for their contents.

4 293. Qualcomm repeats and realleges its responses to the preceding
5 Paragraphs with the same force and effect as if fully restated herein.

6 294. Qualcomm denies the allegations in Paragraph 294, except refers to the
7 '725 patent for its contents.

8 295. Qualcomm states that the allegations in Paragraph 295 state a legal
9 conclusion to which no response is required. To the extent a response is required,
10 Qualcomm denies the allegations in Paragraph 295.

11 296. Qualcomm states that the allegations in Paragraph 296 state a legal
12 conclusion to which no response is required. To the extent a response is required,
13 Qualcomm denies the allegations in Paragraph 296.

14 297. Qualcomm states that the allegations in Paragraph 297 state a legal
15 conclusion to which no response is required. To the extent a response is required,
16 Qualcomm denies the allegations in Paragraph 297.

17 298. Qualcomm states that the allegations in Paragraph 298 state a legal
18 conclusion to which no response is required. To the extent a response is required,
19 Qualcomm denies the allegations in Paragraph 298, except states that Apple
20 purports to seek declaratory relief in its Complaint.

21 299. Qualcomm repeats and realleges its responses to the preceding
22 Paragraphs with the same force and effect as if fully restated herein.

23 300. Qualcomm denies the allegations in Paragraph 300.

24 301. Qualcomm denies the allegations in Paragraph 301.

25 302. Qualcomm denies the allegations in Paragraph 302, except refers to the
26 cited opinions for their contents.

27 303. Qualcomm repeats and realleges its responses to the preceding
28 Paragraphs with the same force and effect as if fully restated herein.

1 304. Qualcomm denies the allegations in Paragraph 304, except refers to the
2 '469 patent for its contents.

3 305. Qualcomm states that the allegations in Paragraph 305 state a legal
4 conclusion to which no response is required. To the extent a response is required,
5 Qualcomm denies the allegations in Paragraph 305.

6 306. Qualcomm states that the allegations in Paragraph 306 state a legal
7 conclusion to which no response is required. To the extent a response is required,
8 Qualcomm denies the allegations in Paragraph 306.

9 307. Qualcomm states that the allegations in Paragraph 307 state a legal
10 conclusion to which no response is required. To the extent a response is required,
11 Qualcomm denies the allegations in Paragraph 307.

12 308. Qualcomm states that the allegations in Paragraph 308 state a legal
13 conclusion to which no response is required. To the extent a response is required,
14 Qualcomm denies the allegations in Paragraph 308, except states that Apple
15 purports to seek declaratory relief in its Complaint.

16 309. Qualcomm repeats and realleges its responses to the preceding
17 Paragraphs with the same force and effect as if fully restated herein.

18 310. Qualcomm denies the allegations in Paragraph 310.

19 311. Qualcomm denies the allegations in Paragraph 311.

20 312. Qualcomm denies the allegations in Paragraph 312, except refers to the
21 cited opinions for their contents.

22 313. Qualcomm repeats and realleges its responses to the preceding
23 Paragraphs with the same force and effect as if fully restated herein.

24 314. Qualcomm denies the allegations in Paragraph 314, except refers to the
25 '819 patent for its contents.

26 315. Qualcomm states that the allegations in Paragraph 315 state a legal
27 conclusion to which no response is required. To the extent a response is required,
28 Qualcomm denies the allegations in Paragraph 315.

1 316. Qualcomm states that the allegations in Paragraph 316 state a legal
2 conclusion to which no response is required. To the extent a response is required,
3 Qualcomm denies the allegations in Paragraph 316.

4 317. Qualcomm states that the allegations in Paragraph 317 state a legal
5 conclusion to which no response is required. To the extent a response is required,
6 Qualcomm denies the allegations in Paragraph 317.

7 318. Qualcomm states that the allegations in Paragraph 318 state a legal
8 conclusion to which no response is required. To the extent a response is required,
9 Qualcomm denies the allegations in Paragraph 318, except states that Apple
10 purports to seek declaratory relief in its Complaint.

11 319. Qualcomm repeats and realleges its responses to the preceding
12 Paragraphs with the same force and effect as if fully restated herein.

13 320. Qualcomm denies the allegations in Paragraph 320.

14 321. Qualcomm denies the allegations in Paragraph 321.

15 322. Qualcomm denies the allegations in Paragraph 322, except refers to the
16 cited opinions for their contents.

17 323. Qualcomm repeats and realleges its responses to the preceding
18 Paragraphs with the same force and effect as if fully restated herein.

19 324. Qualcomm denies the allegations in Paragraph 324, except refers to the
20 '021 patent for its contents.

21 325. Qualcomm states that the allegations in Paragraph 325 state a legal
22 conclusion to which no response is required. To the extent a response is required,
23 Qualcomm denies the allegations in Paragraph 325.

24 326. Qualcomm states that the allegations in Paragraph 326 state a legal
25 conclusion to which no response is required. To the extent a response is required,
26 Qualcomm denies the allegations in Paragraph 326.

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1 327. Qualcomm states that the allegations in Paragraph 327 state a legal
2 conclusion to which no response is required. To the extent a response is required,
3 Qualcomm denies the allegations in Paragraph 327.

4 328. Qualcomm states that the allegations in Paragraph 328 state a legal
5 conclusion to which no response is required. To the extent a response is required,
6 Qualcomm denies the allegations in Paragraph 328, except states that Apple
7 purports to seek declaratory relief in its Complaint.

8 329. Qualcomm repeats and realleges its responses to the preceding
9 Paragraphs with the same force and effect as if fully restated herein.

10 330. Qualcomm denies the allegations in Paragraph 330.

11 331. Qualcomm denies the allegations in Paragraph 331.

12 332. Qualcomm denies the allegations in Paragraph 332, except refers to the
13 cited opinions for their contents.

14 333. Qualcomm repeats and realleges its responses to the preceding
15 Paragraphs with the same force and effect as if fully restated herein.

16 334. Qualcomm denies the allegations in Paragraph 334.

17 335. Qualcomm denies the allegations in Paragraph 335.

18 336. Qualcomm denies the allegations in Paragraph 336, except refers to the
19 U.S. Supreme Court's opinion in *Quanta Computer, Inc. v. LG Elecs., Inc.*, No. 06-
20 937, for its contents.

21 337. Qualcomm denies the allegations in Paragraph 337.

22 338. Qualcomm denies the allegations in Paragraph 338, except states that
23 Qualcomm and Apple have entered certain agreements, and refers to those
24 agreements for their contents.

25 339. Qualcomm denies the allegations in Paragraph 339.

26 340. Qualcomm denies the allegations in Paragraph 340.

27 341. Qualcomm denies the allegations in Paragraph 341.

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1 342. Qualcomm denies the allegations in Paragraph 342, except states that
2 Apple purports to seek declaratory relief in its Complaint.

3 343. Qualcomm denies the allegations in Paragraph 343.

4 344. Qualcomm denies the allegations in Paragraph 344.

5 345. Qualcomm denies the allegations in Paragraph 345.

6 346. Qualcomm denies the allegations in Paragraph 346.

7 347. Qualcomm denies the allegations in Paragraph 347.

8 348. Qualcomm denies the allegations in Paragraph 348.

9 349. Qualcomm denies the allegations in Paragraph 349.

10 350. Qualcomm denies the allegations in Paragraph 350.

11 351. Qualcomm denies the allegations in Paragraph 351.

12 352. Qualcomm denies the allegations in Paragraph 352.

13 353. Qualcomm denies the allegations in Paragraph 353.

14 354. Qualcomm denies the allegations in Paragraph 354.

15 355. Qualcomm denies the allegations in Paragraph 355.

16 356. Qualcomm denies the allegations in Paragraph 356.

17 357. Qualcomm denies the allegations in Paragraph 357, except refers to the
18 U.S. Supreme Court’s opinion in *FTC v. Actavis, Inc.*, No. 12-416, for its contents.

19 358. Qualcomm denies the allegations in Paragraph 358.

20 359. Qualcomm denies the allegations in Paragraph 359.

21 360. Qualcomm denies the allegations in Paragraph 360, except states that it
22 is without knowledge or information sufficient to form a belief as to the truth of the
23 allegations regarding Apple’s purported track record, and therefore Qualcomm
24 denies the allegations regarding Apple’s purported track record.

25 361. Qualcomm denies the allegations in Paragraph 361, except states that it
26 is without knowledge or information sufficient to form a belief as to the truth of the
27 allegations regarding Apple’s incentives, and therefore Qualcomm denies the
28 allegations regarding Apple’s incentives.

1 362. Qualcomm denies the allegations in Paragraph 362, except states that it
2 is without knowledge or information sufficient to form a belief as to the truth of the
3 allegations regarding Apple's incentives, and therefore Qualcomm denies the
4 allegations regarding Apple's incentives.

5 363. Qualcomm denies the allegations in Paragraph 363, except states that it
6 is without knowledge or information sufficient to form a belief as to the truth of the
7 allegations regarding Apple's incentives, and therefore Qualcomm denies the
8 allegations regarding Apple's incentives.

9 364. Qualcomm denies the allegations in Paragraph 364, except refers to the
10 opinion in *Bendix Corp. v. Belax, Inc.*, Nos. 17343, 17344 (7th Cir.), for its
11 contents.

12 365. Qualcomm denies the allegations in Paragraph 365, except states
13 that (i) China's NDRC issued an Administrative Sanction Decision in connection
14 with its investigation of Qualcomm on February 9, 2015; (ii) Qualcomm
15 implemented a Rectification Plan, dated February 9, 2015, in connection with the
16 NDRC's Administrative Sanction Decision; (iii) the NDRC published a press
17 release on February 10, 2015, stating that Qualcomm's Rectification Plan satisfied
18 its Administrative Sanction Decision; and (iv) the FTC filed the FTC Complaint on
19 January 17, 2017. Qualcomm refers to the foregoing documents for their contents.
20 Qualcomm states that it is without knowledge or information sufficient to form a
21 belief as to the truth of the allegations regarding the European Commission's
22 findings, and therefore Qualcomm denies the allegations regarding the European
23 Commission's findings.

24 366. Qualcomm denies the allegations in Paragraph 366.

25 367. Qualcomm denies the allegations in Paragraph 367.

26 368. Qualcomm denies the allegations in Paragraph 368.

27 369. Qualcomm denies the allegations in Paragraph 369.

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1 370. Qualcomm denies the allegations in Paragraph 370, except states that it
2 is without knowledge or information sufficient to form a belief as to the truth of the
3 allegations regarding device manufacturers’ purported preferences, and therefore
4 Qualcomm denies the allegations regarding device manufacturers’ purported
5 preferences.

6 371. Qualcomm denies the allegations in Paragraph 371.

7 372. Qualcomm denies the allegations in Paragraph 372, except states that it
8 is without knowledge or information sufficient to form a belief as to the truth of the
9 allegations regarding non-Qualcomm suppliers’ conveyance of intellectual property
10 rights, and therefore Qualcomm denies the allegations regarding non-Qualcomm
11 suppliers’ conveyance of intellectual property rights.

12 373. Qualcomm denies the allegations in Paragraph 373.

13 374. Qualcomm denies the allegations in Paragraph 374.

14 375. Qualcomm denies the allegations in Paragraph 375.

15 376. Qualcomm denies the allegations in Paragraph 376.

16 377. Qualcomm denies the allegations in Paragraph 377.

17 378. Qualcomm denies the allegations in Paragraph 378.

18 379. Qualcomm denies the allegations in Paragraph 379, except states that
19 Apple is a high-volume purchaser of cellular chipsets, and that certain benefits may
20 come from being a component supplier to Apple.

21 380. Qualcomm denies the allegations in Paragraph 380.

22 381. Qualcomm repeats and realleges its responses to the preceding
23 Paragraphs with the same force and effect as if fully restated herein.

24 382. Qualcomm denies the allegations in Paragraph 382, except refers to
25 California Business & Civil Code § 17200, *et seq.* (the “UCL”) for its contents.

26 383. Qualcomm denies the allegations in Paragraph 383, except refers to
27 the opinion in *Columbia Metal Culvert Co. v. Kaiser Aluminum & Chem. Corp.*,
28 No. 77-1846 (3d Cir.), for its contents.

1 384. Qualcomm denies the allegations in Paragraph 384.

2 385. Qualcomm denies the allegations in Paragraph 385, except refers to the
3 opinion in *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, No. S066735 (Cal.),
4 for its contents.

5 386. Qualcomm denies the allegations in Paragraph 386.

6 387. Qualcomm denies the allegations in Paragraph 387.

7 388. Qualcomm denies the allegations in Paragraph 388.

8 389. Qualcomm denies the allegations in Paragraph 389, except states that
9 Apple purports to seek certain relief in its Complaint.

10 Qualcomm denies the allegations in Paragraphs A-U of Apple's "Prayer for
11 Relief", except states that Apple purports to seek certain relief in its Complaint.

12 **DEFENSES**

13 Qualcomm asserts the following defenses. Apple's claims also are barred in
14 whole or in part for the reasons set forth in Qualcomm's counterclaims filed
15 herewith, and the defenses set forth below incorporate the factual allegations of
16 Qualcomm's counterclaims by reference. In asserting these defenses, Qualcomm
17 does not assume the burden of proof with respect to any issue as to which
18 applicable law places the burden of proof on the Plaintiff.

19 Qualcomm reserves the right to assert additional defenses, as warranted by
20 facts learned through investigation and discovery, and expressly reserves the right
21 to amend its answer to assert such additional defenses.

22 **First Defense**

23 Apple's complaint, and each and every claim stated therein, fails to state a
24 claim on which relief can be granted.

25 **Second Defense**

26 Apple's claims are barred in whole or in part by the applicable statutes of
27 limitations, including, but not limited to, California Business and Professions Code
28 § 17208 and 15 U.S.C. § 15b.

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Third Defense

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

Fourth Defense

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

Fifth Defense

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

Sixth Defense

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

Seventh Defense

Apple’s claim for breach of contract is barred in whole or in part because Apple breached the Cooperation Agreement, and therefore excused Qualcomm from its obligations.

Eighth Defense

Apple’s claim for breach of contract is barred in whole or in part because of its claims filed in this and other lawsuits around the world.

Ninth Defense

Apple’s claim for breach of contract is barred because Apple breached the covenant of good faith and fair dealing implied in every contract governed by California law, and therefore excused Qualcomm from its obligations.

Tenth Defense

Apple’s claim for breach of contract is barred because Apple has not suffered any damages from any such alleged breach.

Eleventh Defense

Apple’s claim for breach of contract is barred by the doctrine of misunderstanding to the extent there was no meeting of the minds on the meaning of Section 7 of the Cooperation Agreement.

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Twelfth Defense

Apple’s claims are barred in whole or in part because Qualcomm’s interpretation of Section 7 of the Cooperation Agreement does not constitute a liquidated damages provision under California Civil Code § 1671(b).

Thirteenth Defense

Apple’s claims are barred in whole or in part because they are non-justiciable.

Fourteenth Defense

Apple’s claims for declaratory relief are barred in whole or in part because there is no active case or controversy under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and Apple is seeking an advisory opinion.

Fifteenth Defense

Apple’s claims are barred in whole or in part because Qualcomm’s alleged conduct did not unreasonably restrain trade and was lawful, pro-competitive, and based on legitimate business and economic justifications.

Sixteenth Defense

Apple’s claims are barred in whole or in part by the *Illinois Brick* doctrine, which prohibits antitrust recovery by indirect purchasers.

Seventeenth Defense

Apple’s claims are barred in whole or in part because Apple has not suffered antitrust injury or any injury of the type the antitrust laws were intended to prevent.

Eighteenth Defense

Apple’s claims are barred in whole or in part because it has sustained no injury in fact or damages proximately caused by any act or omission of Qualcomm.

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Nineteenth Defense

Apple’s claims are barred in whole or in part because any damages that Apple purports to have suffered are too remote or speculative to allow recovery, and it is impossible to ascertain and allocate such alleged damages with reasonable certainty.

Twentieth Defense

Apple’s claims are barred in whole or in part because of ratification, agreement, acquiescence or consent to Qualcomm’s alleged conduct.

Twenty-First Defense

Apple’s claim under California’s Unfair Competition Law is barred in whole or in part because the alleged business practices are not unlawful, unfair, or fraudulent, within the meaning of California Business & Professions Code § 17200 or otherwise.

Twenty-Second Defense

Any monetary damages under California Business and Professions Code §17200, *et seq.*, are barred in their entirety by those statutes and other applicable legal authority.

Twenty-Third Defense

Apple’s claims are barred in whole or in part because it lacks standing.

Twenty-Fourth Defense

Apple’s claims seeking to disgorge royalties paid through the contract manufacturers are barred in whole or in part because Apple lacks standing.

Twenty-Fifth Defense

To the extent that Apple has suffered damages, if at all, it has failed to take reasonable measures to mitigate its damages in whole or in part, and is barred from recovering damages that it could have reasonably avoided.

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Twenty-Sixth Defense

To the extent that Apple has suffered damages, if at all, all damages were caused by Apple’s own actions.

Twenty-Seventh Defense

To the extent that Apple has suffered damages, if at all, its damages are subject to offset in the amount of any obligations Apple owes Qualcomm.

Twenty-Eighth Defense

Apple is not entitled to injunctive relief because any alleged injury to Apple is not immediate or irreparable and Apple has an adequate remedy at law.

Twenty-Ninth Defense

Apple’s claims are barred in whole or in part because it is not entitled to restitution or disgorgement of profits.

Thirtieth Defense

Apple’s claims are barred in whole or in part because any recovery would result in unjust enrichment to Apple.

Thirty-First Defense

Apple’s claims are barred in whole or in part because Qualcomm has satisfied its FRAND commitments.

Thirty-Second Defense

Apple’s claims are barred in whole or in part because Apple is an unwilling licensee.

Thirty-Third Defense

Apple’s claims are barred in whole or in part because Qualcomm has not violated competition law.

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Thirty-Fourth Defense

Apple’s claims are barred in whole or in part because, at all relevant times, Qualcomm complied with all applicable federal and state laws and regulations.

Thirty-Fifth Defense

Apple is not entitled to interest, attorney’s fees or costs in connection with this action.

COUNTERCLAIMS

Counterclaim-Plaintiff Qualcomm Incorporated (“Qualcomm”),² by its undersigned counsel, alleges, with knowledge with respect to its own acts and on information and belief as to other matters, as follows:

NATURE OF THE ACTION

1. Qualcomm is the world’s leading innovator of cellular technology. Its inventions form the very core of modern cellular communications. No company has done more to develop the technology that enables cellular networks and systems; no company does more today to create and improve that technology for the next generation; and no company can match the breadth, quality, or value of Qualcomm’s cellular patent portfolio. Hundreds of cellular device suppliers around the world have taken licenses from Qualcomm—or have sourced their products from a manufacturer that has a license with Qualcomm—all on terms that reflect the established market value of Qualcomm’s patent portfolio.

2. Apple is the world’s most profitable seller of cellular devices. But as a late-comer to the cellular industry, Apple contributed virtually nothing to the development of core cellular technology. Instead, Apple’s products rely heavily on the cellular inventions of Qualcomm and others. Apple’s iPhones and other products enjoy enormous commercial success, but without lightning-fast cellular connectivity—enabled in large part by Qualcomm’s inventions—Apple’s iPhones would lose much of their consumer appeal. Apple has built the most

² Qualcomm Incorporated is the parent company. One division of Qualcomm Incorporated is Qualcomm Technology Licensing (“QTL”), which grants licenses or otherwise provides rights to use portions of Qualcomm Incorporated’s intellectual property portfolio. Qualcomm Incorporated’s separate subsidiary, Qualcomm Technologies, Inc. (“QTI”), operates substantially all of the products and services businesses owned by Qualcomm Incorporated, including Qualcomm CDMA Technologies (“QCT”), and substantially all of its engineering, research, and development functions. For ease of reference only, in these Counterclaims, QTL, QTI, and QCT will be referred to herein as “Qualcomm”.

1 successful consumer products in history by relying significantly on cellular
2 technologies pioneered by Qualcomm.

3 3. Now, Apple wants to pay far less than fair value for a license to
4 Qualcomm's patents.

5 4. Apple cannot credibly contest the value of Qualcomm's patent
6 portfolio, as hundreds of licensees—including the companies that manufacture
7 Apple's cellular devices—have consistently paid royalties reflecting that value to
8 Qualcomm for years. So Apple has attempted to force Qualcomm to accept less
9 than fair value for the use of its intellectual property by wielding its immense power
10 over Qualcomm and by engaging in a host of unlawful acts, including at least the
11 following:

- 12 • Apple failed to uphold its end of the bargain in the parties' Business
13 Cooperation and Patent Agreement (the "Cooperation Agreement"),
14 by, among other things, intentionally giving government agencies false
15 and misleading information and testimony about Qualcomm;
- 16 • Apple interfered, and continues to interfere, with Qualcomm's long-
17 standing contracts with the manufacturers of Apple's cellular devices,
18 causing them to withhold nearly ██████████ in royalties owed to
19 Qualcomm;
- 20 • Apple has withheld approximately ██████████ owed to Qualcomm
21 under another contract relating to a high-speed feature of Qualcomm's
22 chipset;
- 23 • Apple chose not to utilize certain high-performance features of the
24 Qualcomm chipsets for the iPhone 7 (preventing consumers from
25 enjoying the full extent of Qualcomm's innovation); and then, when
26 the Qualcomm-based iPhones still outperformed the Intel-based
27 iPhones, Apple (i) falsely claimed that there was "no discernible
28 difference" between iPhones with Qualcomm's chipsets and iPhones

1 with Intel's chipsets, and (ii) acted to prevent Qualcomm from
2 revealing to consumers the extent to which iPhones with Qualcomm's
3 chipsets outperformed iPhones with Intel's chipsets; and

- 4 • Apple materially breached the parties' Master Software Agreement by

5 [REDACTED]

6 [REDACTED]

7 5. Apple's goal is clear—to leverage its immense power to force
8 Qualcomm into accepting less than fair value for the patented technologies that
9 have led innovation in cellular technology and helped Apple generate more than
10 \$760 billion in iPhone sales.

11 6. Qualcomm asserts these counterclaims to enforce its contractual rights,
12 to receive fair value for its intellectual property, and to stop Apple's unlawful
13 attacks.

14 7. ***Qualcomm Pioneered the Development of Core Cellular***
15 ***Technologies.*** Since its founding in 1985, Qualcomm has been designing,
16 developing, and improving cellular communication systems, networks, and
17 products—successfully inventing numerous core technologies that have
18 transformed how the world communicates. Qualcomm invented fundamental
19 technologies at the heart of 2G, 3G, and 4G cellular communications, is leading
20 the industry to 5G, and has contributed innumerable additional innovations used in
21 virtually every modern cell phone. Over the past three decades, Qualcomm has
22 invested more than \$40 billion in research and development. From 2010 to 2016,
23 Qualcomm typically spent more than 20% of its revenue per year on R&D.
24 Qualcomm's nearly 20,000 engineers continue to push the boundaries of cellular
25 and other mobile technology through groundbreaking innovation. Qualcomm's
26 patent portfolio currently includes more than 130,000 issued patents and patent
27 applications worldwide.

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1 8. Qualcomm’s technologies enable the cellular ecosystem that allows
2 smartphones to send and receive vast amounts of data and voice communications at
3 rapid speeds, seamlessly and reliably, from anywhere within reach of a cellular
4 network. Qualcomm’s inventions are necessary for *the entire cellular network* to
5 function—they are not limited to technologies in modem chipsets or even cell
6 phones. For example, Qualcomm’s technological contributions enable popular
7 smartphone apps such as Uber, Snapchat, Spotify, Apple Music, Skype, Google
8 Maps, and Pokémon GO, among others.

9 9. Rather than keep its core inventions to itself, Qualcomm chose to
10 patent its inventions, contribute them to standards bodies, and voluntarily license
11 them to cellular device manufacturers. As a result, companies have been able to
12 use Qualcomm’s technology to create the products and experiences that consumers
13 enjoy today. Qualcomm, through its licensing division, QTL, now has license
14 agreements with hundreds of companies covering 3G and 4G cellular technologies
15 and products.

16 10. Separate from its licensing business, Qualcomm’s subsidiary,
17 Qualcomm Technologies, Inc., QTI, designs industry-leading components, such as
18 chipsets and associated software. QTI’s cellular components are sold (and the
19 associated software is licensed) for use in the manufacture and operation of cellular
20 devices. QTI has consistently been the leader in bringing to market cutting-edge
21 chipsets—sometimes years ahead of the competition.

22 11. Qualcomm’s patent portfolio is priced and licensed separately from the
23 pricing and sale of QTI’s components. A Qualcomm licensee pays the same
24 royalty to Qualcomm for a license to Qualcomm’s patent portfolio regardless of
25 whether its licensed cellular devices use components supplied by QTI’s subsidiary,
26 the licensee itself, or another QTI competitor.

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1 12. ***Apple Has Built the Most Profitable Company in the World, Relying***
2 ***Heavily on Qualcomm’s Patented Technologies.*** With a market capitalization of
3 more than \$700 billion, \$246 billion in cash reserves, and a global sphere of
4 influence, Apple has more money and influence than many countries. Relying
5 heavily on Qualcomm technology, Apple has become the dominant player in cell
6 phone sales. Apple’s dominance has grown every year since the iPhone’s launch in
7 2007. In recent years, Apple has captured upwards of *90 percent of all profits* in
8 the smartphone industry.

9 13. But Apple achieved its success without contributing much, if anything,
10 to the innovations at the heart of cellular communications. Apple has long
11 recognized that Qualcomm and others developed the essential cellular technologies
12 used by its products today. In fact, Apple has publicly admitted that the full value
13 of its products is realized *only* when the underlying cellular technology—such as
14 4G LTE—adequately enables their capabilities. Qualcomm was hard at work
15 developing LTE before Apple introduced the first 2G iPhone.

16 14. ***Apple Has Voluntarily Chosen To Operate Through Long-standing,***
17 ***Independent License Agreements Between Qualcomm and the Contract***
18 ***Manufacturers.*** When Apple sought to commercialize the iPhone in the mid-
19 2000s, it needed to ensure that the phones would be licensed to practice
20 Qualcomm’s technologies. Apple, for its own commercial reasons, chose not to
21 take a *direct* license from Qualcomm, though Qualcomm has always been willing
22 to negotiate a direct license with Apple.

23 15. Instead of entering into a direct license agreement with Qualcomm,
24 Apple decided (i) to outsource manufacturing of its iPhones and iPads to other
25 companies (the “Contract Manufacturers”); and (ii) to rely on those Contract
26 Manufacturers’ existing license agreements with Qualcomm. At the time Apple
27 made the decision not to take a direct license, Apple’s iPhones did not use any
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1 chipsets or other products purchased from Qualcomm. Thus, chipset supply could
2 not have played any role in Apple's decision.

3 16. Apple claims that Qualcomm has used its alleged power with respect
4 to certain chipsets to force unfair licensing terms on Apple. But the facts tell a
5 different story. Each of Qualcomm's license agreements with the Contract
6 Manufacturers was signed *before* Apple used any Qualcomm chipset in its
7 products. Some were signed before Apple had sold even a single iPhone. And
8 the relevant licensing terms stayed the same when Apple began using Qualcomm
9 chipsets in iPhones in 2011.

10 17. The terms of the Contract Manufacturers' license agreements with
11 Qualcomm and the royalties they pay were negotiated regardless of which chipset
12 supplier the Contract Manufacturers were using. The agreements have always been
13 wholly independent of which suppliers' chipsets the Contract Manufacturers use in
14 the phones they manufacture for Apple (or for any of their other customers).

15 18. The Contract Manufacturers' license agreements are generally similar
16 to the license agreements Qualcomm has entered into with hundreds of other
17 cellular device manufacturers. The terms of such licenses are customary in the
18 cellular industry. Indeed, virtually every significant cellular device manufacturer in
19 the cellular industry has recognized the value of Qualcomm's technology and
20 entered into a license agreement with Qualcomm—taking a license to Qualcomm's
21 portfolio of patents and calculating royalties as a percentage of the net selling price
22 of the device, generally subject to per unit running royalty caps. The royalties
23 payable to Qualcomm by the Contract Manufacturers are a mere fraction of the
24 price that Apple charges consumers for its iPhones. Indeed, Qualcomm's per-
25 device royalties for its portfolio of tens of thousands of patents are far less than
26 what Apple charges consumers for a basic plastic phone case.

27 19. Since the release of the first 3G iPhone nearly a decade ago, the
28 Contract Manufacturers have been consistently paying Qualcomm royalties under

1 their license agreements, based on their sales to Apple of the cellular devices they
2 manufacture.

3 20. *Apple Rejected Qualcomm’s FRAND Offer for a Direct License.*

4 Although Apple benefits from the Contract Manufacturers’ license agreements,
5 Qualcomm and Apple have had on-and-off negotiations about a potential direct
6 license agreement for years. Most recently, Qualcomm and Apple engaged in
7 negotiations regarding a direct license agreement from 2015 until Apple filed this
8 lawsuit. At Apple’s request, in July 2016, Qualcomm extended a written, fair,
9 reasonable, and nondiscriminatory (“FRAND”) licensing offer to Apple for
10 Qualcomm’s 3G and 4G standard-essential patents (“SEPs”).

11 21. Apple rejected Qualcomm’s offer and indicated that it was unwilling
12 to negotiate a license only for Qualcomm’s cellular SEPs. Apple then requested a
13 license to far more patents than the license Apple had initially requested from
14 Qualcomm and claimed that the value of Qualcomm’s patents was substantially less
15 than their fair-market value. Apple sought a license to all patents that Qualcomm
16 disclosed as potentially essential to 3G and 4G standards, and even swept in patents
17 and applications that may apply to future 5G standards that are still under
18 development. For all this, Apple offered to pay Qualcomm royalties
19 of approximately ██████ per phone, a small fraction of the royalty that other
20 smartphone vendors would pay for a comparably priced phone.

21 22. To appreciate the unreasonableness of Apple’s offer, one need only
22 compare it to the royalties that Apple demands for its own patents. In Apple’s
23 recent litigation with Samsung, Apple argued that just three Apple patents on
24 touch-screen features (“pinch-to-zoom”, “tap-to-zoom”, and “bounce-back”) were
25 worth a reasonable royalty of \$7.14 per phone. That is, Apple claims that only
26 *three* of its patents on these features are worth ████████████████████ what Apple is
27 willing to pay for Qualcomm’s thousands of patents, taken together, on
28 fundamental technologies that are essential to cellular communication. It is neither

1 fair nor reasonable to contend, as Apple does, that the cumulative value of years of
2 Qualcomm innovation driving core cellular technology pales in comparison to the
3 value of just three Apple user-interface patents.

4 23. *Apple Has Engaged in Unlawful Tactics To Avoid Paying Fair*
5 *Value for Qualcomm’s Technology.* In an effort to obtain a below-market price
6 for Qualcomm’s technology, Apple has launched an unlawful attack on
7 Qualcomm’s business. Apple’s various lawsuits against Qualcomm are simply
8 another step in its aggressive strategy of constructing commercial disputes and then
9 claiming it has been victimized. After bringing this lawsuit in January, Apple filed
10 other lawsuits against Qualcomm in China, the United Kingdom, and Japan. This
11 tactic is familiar to those in the industry; Apple has previously accused its suppliers
12 and rivals alike (such as Nokia and Samsung) of unlawful monopolization when
13 they have sought compensation for the use of their patents. In an effort to reduce
14 its supply costs, Apple—the wealthiest company in the world—repeatedly has cast
15 itself as an antitrust “victim”. But the facts refute any such notion. In reality, these
16 lawsuits are designed to enhance Apple’s already formidable negotiating leverage.

17 24. Apple’s global attack against Qualcomm has included the following
18 unlawful acts:

19 25. *First, Apple wrongfully induced regulatory action against Qualcomm*
20 *and then falsely accused Qualcomm of extortion.* In doing so, Apple failed to
21 uphold its end of the bargain under the parties’ Cooperation Agreement.

22 26. In early 2013, Qualcomm and Apple entered into the aptly named
23 Business Cooperation and Patent Agreement. The contract was clear: Qualcomm
24 would make substantial payments to Apple for a variety of consideration, but *only*
25 *so long as* Apple satisfied its own obligations under the Agreement.

26 27. In its Complaint, Apple misrepresents the nature of the Cooperation
27 Agreement, stating that the “sole purpose” of Qualcomm’s payments under the
28 Agreement was “to reduce Apple’s royalty burden”. That is not true. Each party to

1 the Cooperation Agreement provided meaningful value to the other. In particular,
2 Qualcomm's payments under the Cooperation Agreement were in exchange for,
3 among other things, promises from Apple that it (i) would cooperate with
4 Qualcomm in the development and deployment of certain technologies, (ii) would
5 not launch various patent attacks against Qualcomm or its customers, and
6 (iii) would not actively induce or initiate litigation—including investigations by
7 government agencies—against Qualcomm. These contractual provisions reflect
8 Qualcomm's attempt to limit Apple's ability to abuse its leverage over Qualcomm.
9 Although Apple now characterizes the Cooperation Agreement differently for
10 litigation purposes, Qualcomm expected to receive significant value from Apple for
11 the payments it agreed to make under the Agreement.

12 28. Qualcomm has been relieved of its obligation to make Cooperation
13 Agreement payments to Apple because, among other reasons, Apple has misled
14 government agencies around the world about Qualcomm's business practices in
15 order to induce regulatory proceedings against Qualcomm. As merely one
16 example, on August 17, 2016, Apple told the Korea Fair Trade Commission
17 ("KFTC") that "Apple has yet to add a [second chipset] supplier because of
18 Qualcomm's exclusionary conduct". But when Apple made that statement to the
19 KFTC, it already had added Intel as a second baseband chip supplier and had
20 purchased Intel chips to incorporate in the iPhone 7, which was only a few weeks
21 away from its September release. Apple already knew that every iPhone 7 offered
22 for sale in Korea would incorporate an Intel chip, not a Qualcomm chip. Apple's
23 statement to the KFTC was false.

24 29. Following Apple's misstatements, as the parties were attempting to
25 resolve the Cooperation Agreement dispute in late 2016, *Apple asked* Qualcomm to
26 propose ways in which Apple could address Qualcomm's concerns about Apple's
27 misstatements. In response, Qualcomm suggested corrections that Apple could
28 provide to the KFTC to help mitigate some of the damage its misstatements had

1 caused. What Apple now repeatedly portrays as “extortion” in its Complaint was,
2 in reality, merely Qualcomm responding to Apple’s request.

3 30. At the time, Apple presented its request for clarifying statements it
4 could provide to the KFTC as a peace offering to Qualcomm. Qualcomm
5 responded with good-faith suggestions on how Apple could clarify and correct the
6 record before the KFTC. Apple now claims that Qualcomm’s suggestions were
7 “extortion”. Not only is that a false accusation, but it mischaracterizes Qualcomm’s
8 good-faith effort to resolve a dispute *by responding to Apple’s request*.

9 31. Second, to apply even more pressure on Qualcomm, Apple has directly
10 interfered with Qualcomm’s long-standing license agreements with the Contract
11 Manufacturers. Apple’s tortious interference has violated both the parties’
12 Cooperation Agreement (thereby extinguishing Qualcomm’s payment obligations)
13 and California law.

14 32. As explained above, the Contract Manufacturers voluntarily entered
15 into their license agreements with Qualcomm, and they have consistently paid
16 Qualcomm royalties on both Apple products and non-Apple products for years.
17 But in another example of Apple wielding its enormous commercial leverage over
18 its suppliers, Apple has intentionally caused at least some of the Contract
19 Manufacturers to withhold payments from Qualcomm. Due to Apple’s direct
20 interference, certain Contract Manufacturers have failed to pay Qualcomm nearly
21 ██████ in royalties, and the prospect of Apple’s continued interference threatens
22 significant additional injury to Qualcomm.

23 33. Separately, for years, Apple has pressured the Contract Manufacturers
24 not to cooperate with audits that Qualcomm—through independent royalty
25 auditors—has the right to conduct under the Contract Manufacturers’ license
26 agreements. As a result, Qualcomm has been unable to verify the accuracy of the
27 Contract Manufacturers’ royalty reports.

28

1 34. Third, Apple misrepresented the performance of iPhones with
2 Qualcomm chips and prevented Qualcomm from telling consumers about the
3 superiority of its chips. Some versions of Apple’s latest iPhone (iPhone 7)
4 incorporate Qualcomm chipsets, while others incorporate Intel chipsets. Apple
5 effectively chose to limit the performance of the Qualcomm-based iPhones by not
6 taking advantage of the full potential speed of which Qualcomm’s modems are
7 capable. Apple’s actions were intended to prevent consumers from realizing that
8 iPhones containing Qualcomm chipsets performed far better than iPhones
9 containing chipsets supplied by Intel.

10 35. Apple not only deprived Qualcomm of the opportunity to have
11 consumers appreciate Qualcomm’s best technology, but Apple also attempted to
12 prevent Qualcomm from disclosing the superior performance of its chipsets to the
13 public. Even after Apple chose not to utilize speed-increasing features for the
14 Qualcomm-based iPhones, independent studies revealed that Qualcomm chipsets
15 continued to outperform Intel chipsets. To try to prevent disclosure of the
16 performance disparity between the Qualcomm chipset and the Intel chipset, Apple
17 told Qualcomm that it would be “unacceptable” for Qualcomm to make or sponsor
18 any public comparisons between the Qualcomm-based iPhone and the Intel-based
19 iPhone. Apple warned that if Qualcomm engaged in or sponsored such
20 comparisons, Apple would use the marketing resources at its disposal to “retaliate”
21 against Qualcomm and that Qualcomm’s standing as an Apple chipset supplier
22 would be jeopardized. But Apple stated publicly—and falsely—that there was
23 “no discernible difference” between iPhones using Intel chipsets and iPhones using
24 Qualcomm chipsets. Apple’s conduct violates California unfair competition law.

25 36. Fourth, Apple is improperly withholding approximately [REDACTED]
26 in payments that it owes Qualcomm under a contract for a high-speed chipset
27 feature called “carrier aggregation”. Apple owes approximately [REDACTED]
28 under the parties’ contract known as the Statement of Work, dated February 28,

1 breach of the parties' Cooperation Agreement (and its implied covenant of good
2 faith and fair dealing), unjust enrichment, unfair business practices, and material
3 breach of the parties' Master Software Agreement. Qualcomm seeks declaratory
4 relief, injunctive relief, compensatory damages, punitive damages, restitution, and
5 attorneys' fees.

6 **PARTIES**

7 41. Qualcomm is a Delaware corporation with its principal place of
8 business at 5775 Morehouse Drive, San Diego, California. Qualcomm is
9 recognized as an industry leader and innovator in the field of wireless technologies.
10 Qualcomm has more than 130,000 patents and patent applications around the world
11 relating to cellular technologies and other cutting-edge technologies. Qualcomm
12 derives a substantial portion of its revenues and profits from licensing its
13 intellectual property. QTI's subsidiary sells chipsets, and associated software, for
14 cell phones and other cellular devices. Qualcomm has developed technologies
15 enabling the 2G, 3G, and 4G families of cellular standards for cellular devices, and
16 is a leader in developing forthcoming 5G technologies.

17 42. Apple is a California corporation with its principal place of business at
18 1 Infinite Loop, Cupertino, California. Apple designs, markets, and sells
19 throughout the world cellular devices that implement the 2G, 3G, and 4G families
20 of cellular standards.

21 **JURISDICTION AND VENUE**

22 43. This court has jurisdiction over the subject matter of this action
23 pursuant to 28 U.S.C. § 1367, and Qualcomm seeks declaratory relief pursuant to
24 28 U.S.C. §§ 2201(a) and 2202.

25 44. This Court has personal jurisdiction over Apple because it is organized
26 and exists under the laws of California.

27 45. Venue is proper in this District because Apple brought this action and
28 thereby consented to venue. Alternately, venue is proper in this District pursuant to

1 28 U.S.C. § 1391(b)-(d). Additionally, venue is proper in this District pursuant to
2 the forum-selection clauses in the parties' Cooperation Agreement and the parties'
3 Master Software Agreement.

4 **FACTUAL ALLEGATIONS**

5 **I. Qualcomm's Role in the Development of Cellular Technology.**

6 46. Qualcomm has played the leading role in the creation and
7 advancement of modern cellular communication technologies.

8 47. When Qualcomm was founded in 1985, cell phones were cumbersome,
9 heavy devices. They supplied only voice communications, with inconsistent
10 quality, to limited numbers of mostly wealthy consumers who could afford the
11 devices and the expensive per-minute charges for using them. Early networks were
12 very limited and inefficient—audio quality was poor, users sometimes heard
13 portions of others calls, handoffs were noisy, and calls frequently dropped.

14 48. Today, cell phones are remarkably powerful devices delivering reliable
15 voice service and lightning-speed data and mobile computing to billions of
16 consumers around the world at affordable prices.

17 49. Achieving this level of performance was the result of the efforts of
18 Qualcomm and a handful of other industry pioneers that developed new and
19 radically more efficient technologies enabling cellular systems, networks, and
20 products. Qualcomm's innovative technological contributions—repeatedly
21 recognized as best in class—have driven growth in the cellular communications
22 industry and lowered costs for device manufacturers, carriers, and consumers.

23 50. Apple, on the other hand, has played little to no role in developing
24 cellular communication technologies.

25 **A. The Fundamental Technology That Enables Cellular** 26 **Communications.**

27 51. Cellular communications are constrained by the radio spectrum over
28 which voice and data travel. Like real estate, radio spectrum is a limited, albeit

1 invisible, physical resource, and the steadily increasing use of wireless
2 communications means steadily increasing demand for the same limited supply of
3 bandwidth. Radio spectrum is considered so valuable that in 2015, when the U.S.
4 Federal Communications Commission (“FTC”) held an auction for the rights to use
5 very limited portions of spectrum in the United States, the successful carriers,
6 Verizon and AT&T, collectively paid close to \$45 billion for the rights to use the
7 auctioned spectrum.

8 52. Cellular communications are also constrained by performance
9 requirements, such as voice quality, call drop rate, average downlink and uplink
10 data rates, maximum downlink and uplink data rates, coverage, battery life, and
11 the need to deliver quality services to as many users as possible at the same time.

12 53. Thus, cellular communications pose a number of fundamental system-
13 engineering challenges—namely, designing communication systems and
14 methodologies that allow both user equipment (such as cell phones) and network
15 equipment (such as base stations—the cell towers that detect signals and connect
16 them to the cellular network) to share efficiently the capacity of the available radio
17 spectrum, while still meeting performance requirements.

18 54. To satisfy the ever-growing demand for more users, more data, and
19 higher speeds, engineers must develop systems that allow more information to
20 travel over the limited available spectrum. Specifically, engineers must address
21 how cellular devices interact with the network, and vice versa, including developing
22 efficient and reliable methods to encode and transmit data through the spectrum,
23 “multiple access” technology that allows multiple devices to use the same slice of
24 spectrum at the same time, and protocols that coordinate communications between
25 base stations at the cell towers and cellular devices.

26 55. This technology endeavors to accomplish several important (and
27 sometimes competing) goals: (i) make the most efficient use of the scarce spectrum
28 available; (ii) work within the size and power constraints of handheld devices,

1 which need to be small, lightweight, and power-efficient; and (iii) enable efficient
2 networks and ongoing compatibility from generation to generation of cellular
3 standards. The utility of any cellular device, including Apple's iPhone, depends
4 critically on this enabling technology.

5 56. Qualcomm has been pioneering such enabling technology for more
6 than 30 years.

7 **B. Qualcomm Has Been, and Continues To Be, the Leader in**
8 **Cellular R&D.**

9 57. To conduct its R&D and other business activities, Qualcomm employs
10 approximately 20,000 engineers in more than 40 countries. Qualcomm also has
11 invested tens of billions of dollars in R&D focused on cellular and wireless
12 communications technology. For example, between 2014 and 2016 alone,
13 Qualcomm invested at least \$5 billion in R&D every year—an average of more
14 than 20% of its revenue each year. Those investments, which place Qualcomm at
15 the forefront of the cellular communications industry, have produced numerous
16 industry-changing innovations in wireless and other technologies.

17 58. Qualcomm's unparalleled commitment to R&D has allowed it to
18 continue offering pioneering innovations to the cellular industry. Qualcomm has
19 driven the development and commercialization of successive generations of cellular
20 technology and, today, is one of only a handful of companies driving the next-
21 generation 5G standard.

22 **C. The Standardization of Cellular Communications**
23 **Technology.**

24 59. To put Qualcomm's significance to the cellular industry in context,
25 it is important to understand how cellular standards have developed since cell
26 phones were introduced in the 1980s.

27 60. Standardization endeavors to bring together the best engineering
28 resources to develop and identify the optimal solution to enormously complex

1 engineering challenges. Standard-development organizations (“SDOs”) are at the
2 center of this process. The main SDOs in the wireless telecommunications industry
3 have set up a partnership, called 3GPP, where hundreds of companies work
4 together to identify technical problems and create solutions called “standards”.
5 3GPP sets requirements, including performance requirements, for successive
6 generations of cellular technology and then develops technical specifications that
7 provide the functionality, reliability, and spectral capacity needed to meet those
8 requirements. The SDOs that formed the 3GPP partnership then convert these
9 specifications to standards that are used worldwide.

10 61. These SDOs work through 3GPP to foster technological
11 advancement by focusing development in areas most beneficial to the cellular
12 industry at large—carriers, infrastructure manufacturers, cellular device
13 manufacturers, and others—and to the general public. One of the key roles of these
14 SDOs is to develop, approve, and promulgate thousands of detailed, complex
15 technical specifications that enable cellular communications to function. Each new
16 generation of cellular technology has depended on numerous inventions from a
17 small number of innovators around the globe. The most significant of these
18 innovators is Qualcomm.

19 62. Cell phones, by definition, are useful only if they can communicate
20 with a network. Yet today, cell phones are manufactured or supplied by hundreds
21 of different companies around the world, while multiple companies also design and
22 manufacture cellular infrastructure such as base stations. Thus, one important
23 function of standardization is to ensure compatibility, allowing devices from any
24 manufacturer to operate on a given network, and on networks around the world.

25 63. But the cellular standards-development process is not just a selection
26 among a variety of available and equally viable options, such as picking a standard
27 shape for electrical outlets and plugs. Instead, SDOs consistently set goals for next-
28 generation cellular standards that demand capabilities and performance levels that

1 the existing generation of technology has not yet achieved, while maintaining
2 flawless compatibility with existing networks. SDOs thus set the agenda for
3 innovators' R&D efforts, and vice versa, in an iterative process that drives
4 innovators to invent important new technologies. Innovators propose their
5 technology approaches, along with considerable justification, as a part of the
6 standardization process for the next generation. The engineers participating in the
7 standard setting process (some of whom represent implementers that make no
8 contributions to the standard) evaluate the technology approaches and develop the
9 standard by choosing those technologies that meet the standard's requirements and
10 will be optimal for the operation and success of the standard as a whole.

11 **D. The Evolution of Cellular Standards.**

12 64. The first commercial cell phone networks in the United States were
13 deployed in 1983. These first generation (1G) networks relied on analog radio
14 technology that had barely changed since World War II. Call quality was poor, and
15 signals often crossed into neighboring frequencies, causing interference and
16 dropped calls.

17 65. Demand for cellular communications nonetheless grew rapidly,
18 increasing from approximately 200,000 users in 1985 to more than 1.5 million users
19 in 1988. As a result, network operators grew increasingly desperate for new
20 technology that could accommodate the user surge.

21 66. By the mid-to-late 1980s, a possible solution emerged: digital
22 technology called Time Division Multiple Access ("TDMA"). TDMA compressed
23 the data representing voice calls and then transmitted those data in alternating time
24 slots, enabling multiple users and conversations to share the same frequency.
25 TDMA could accommodate roughly three times as many phone calls within a given
26 amount of spectrum as could an analog system. TDMA was not without problems,
27 including poor voice quality and dropped calls. Yet, by the late 1980s, the
28

1 European Union (which had become the *de facto* arbiter of cellular standards)
2 decided that its 2G wireless networks would use a TDMA standard known as the
3 Global System for Mobile communications (“GSM”), and TDMA appeared primed
4 to become the 2G standard of choice worldwide.

5 67. That changed in 1989 when Qualcomm, then a small start-up
6 company, transformed the cellular industry by introducing Code Division
7 Multiple Access (“CDMA”). CDMA was initially introduced as a groundbreaking
8 2G cellular technology that vastly improved the capacity of cellular networks and
9 the quality of cellular service. A CDMA system uses codes to allow a large number
10 of users to communicate at the same time, sharing the same frequency channel.
11 CDMA offered far better call clarity than TDMA and could accommodate more
12 than three times the number of calls than TDMA for the same spectrum.

13 68. Despite CDMA’s advantages over TDMA, the commercialization of
14 CDMA technology proved to be a risky and difficult endeavor. Qualcomm devoted
15 substantial time and resources demonstrating that CDMA was not only technically
16 superior but also commercially feasible. Ultimately, Qualcomm’s efforts resulted
17 in the adoption of the IS-95 standard by the Telecommunications Industry
18 Association, and the successful deployment of CDMA wireless networks in the
19 United States and elsewhere.

20 69. By the late 1990s, the cellular industry was thriving. However,
21 2G technologies proved unable to achieve the industry goals of increased speed,
22 reliability, and efficiency driven by consumer demand. The focus therefore shifted
23 to 3G technologies.

24 70. Qualcomm’s innovative solutions formed the basis of 3G. Indeed,
25 all three of the 3G variations that achieved commercial importance worldwide
26 were based on Qualcomm’s CDMA innovation: (i) the “CDMA2000” standard;
27 (ii) the Wideband Code Division Multiple Access (“WCDMA”) standard;
28 and (iii) the hybrid Time Division Synchronous Code Division Multiple Access

1 (“TD-SCDMA”) standard (developed primarily for use in China). Although these
2 3G standards differ in some respects and compete in some geographies, all three are
3 based on Qualcomm’s breakthrough CDMA technology.

4 71. The high data rates provided by CDMA, along with new cell phone
5 features, changed the ways people used their devices, in that data—not just phone
6 calls—became a core part of the user experience. Available radio spectrum once
7 again became overwhelmed by heavy traffic. The industry needed to take another
8 step forward.

9 72. Led by Qualcomm’s efforts, 3G technology became significantly more
10 advanced with the releases of major enhancements. This led to the adoption of
11 “3.5G” and “3.75G” standards, such as High Speed Downlink Packet Access
12 (“HSDPA”), High Speed Packet Access (“HSPA”), and Evolved High Speed
13 Packet Access (“HSPA+”). Those technologies increased data speeds
14 exponentially.

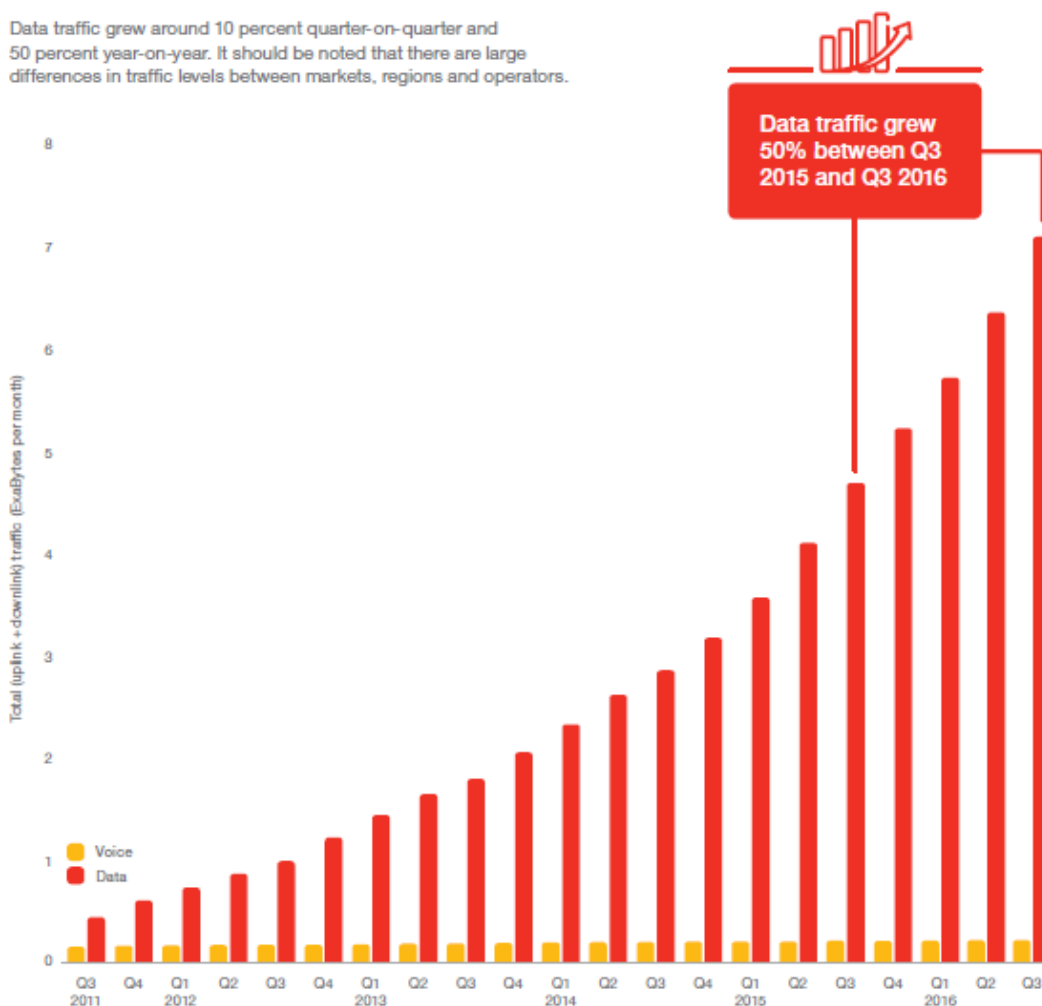
15 73. Qualcomm did not stop with 3.75G. In fact, Qualcomm began
16 researching 4G technologies years before those technologies were standardized, and
17 a decade before their significant commercial rollout. As various industry players
18 worked on 4G technologies, Qualcomm made fundamental technological
19 contributions that propelled the industry’s smartphone revolution forward. In 2006,
20 Qualcomm acquired another OFDMA innovator, Flarion Technologies, and
21 combined its innovations and research teams and efforts with Qualcomm’s own.
22 Together with Flarion, Qualcomm pioneered the application of Orthogonal
23 Frequency Division Multiple Access (“OFDMA”) and Single-Carrier Frequency
24 Division Multiple Access (“SC-FDMA”) to cellular systems.

25 74. OFDMA and SC-FDMA became the basis for the 4G standards,
26 known broadly as Long-Term Evolution (“LTE”). These innovations once again
27 expanded network capacity and vastly boosted data rates to speeds well beyond
28 those of 3G, 3.5G, and 3.75G systems.

75. Finding ways to substantially increase data transfer on a limited amount of spectrum was the true impetus behind the smartphone revolution. By 2010, the cellular world had changed so dramatically that, for the first time, the majority of cellular transmissions consisted of data, not voice calls. Today, cellular systems are primarily occupied by transmission of enormous quantities of data (such as email, files, pictures, streaming video, and music), with voice traffic constituting only a tiny fraction of cellular transmissions, as illustrated in Figure 1 below.

Fig. 1: Worldwide Mobile Voice and Data Traffic, 2011-2016

Data traffic grew around 10 percent quarter-on-quarter and 50 percent year-on-year. It should be noted that there are large differences in traffic levels between markets, regions and operators.



Source: Ericsson Mobility Report, November 2016.

1 76. Even now, with Qualcomm still leading the way, new iterations of
2 LTE technologies are being introduced, allowing gigabit per second data speeds for
3 networks that have upgraded to the most recent releases of LTE standards. Thanks
4 to Qualcomm’s continuing innovations, 4G LTE networks offer data speeds
5 *thousands of times* faster than the cellular technology that existed when Qualcomm
6 brought its first major CDMA breakthrough to the world.

7 77. It is 3G and 4G technology—enabled in large part by Qualcomm—that
8 allows today’s smartphones to send and receive vast amounts of data at previously
9 unimagined speed. The fast and reliable transfer of data facilitates other innovative
10 technologies, like precise positioning used for many apps, and has propelled
11 smartphones to be the fastest-selling consumer electronic devices in history. In
12 fact, by 2015, smartphones were outselling personal computers four to one.

13 78. While Qualcomm has been—and continues to be—a leading
14 contributor to every cellular standard, up to and including LTE and the emerging
15 5G technologies, Apple has played virtually no role in their development. But
16 Apple itself has recognized how critical modern cellular networks are to
17 smartphones used around the world today and to Apple’s iPhone in particular. As
18 Apple CEO Tim Cook stated, advanced LTE technology can “unleash the power
19 and capability of the iPhone in a way that an older network . . . would not.”

20 79. Qualcomm’s innovations are set to form the core of the next-
21 generation 5G standard. Once again, Qualcomm’s technologies promise to vastly
22 improve the capabilities of cellular devices, networks, and systems—by, among
23 other things, multiplying data speeds, increasing reliability, and reducing the
24 latency of communications.

25 **II. Qualcomm’s Patent Portfolio, Standard-Essential Patents, and the**
26 **Meaning of FRAND.**

27 80. As a result of its massive investments in R&D, Qualcomm owns the
28 cellular industry’s leading patent portfolio. Qualcomm makes licenses to its patent

1 portfolio broadly available to manufacturers and suppliers of cell phones and other
2 cellular devices.

3 81. Qualcomm’s portfolio—which consists of more than 130,000 patents
4 and patent applications—includes patents that are “essential” to cellular standards,
5 patents that are “essential” to other standards, and patents that are not essential to
6 any industry standard but reflect valuable non-standardized technologies.

7 82. A patent is considered “essential” to a cellular standard when an aspect
8 of the standard cannot, as a technical matter, be implemented without practicing at
9 least one claim in the patent. Such patents are called standard-essential patents, or
10 SEPs, at the time of standardization. Qualcomm’s broad portfolio of cellular SEPs
11 includes inventions that are practiced by modem chips, inventions that are practiced
12 by other components, inventions that are practiced by combinations of components,
13 inventions that are practiced only by complete cellular devices, and inventions
14 practiced only by cellular devices interacting with a network or even just the
15 network itself.

16 83. By contrast, a non-standard-essential patent (“NEP”) is not technically
17 necessary to practice any feature of a standard. But an NEP may cover an invention
18 that provides important functionality and value to cellular devices or systems and
19 may be highly desired by consumers or cellular device manufacturers or suppliers.
20 As a result of its decades-long commitment to cellular and other mobile R&D,
21 Qualcomm owns tens of thousands of cellular SEPs and NEPs.

22 **A. R&D Risks.**

23 84. There are significant risks associated with investing in R&D to try to
24 improve cellular systems and communications. Costly technology development
25 efforts often fail. Some efforts result in technologies that are innovative but not
26 commercially successful, often for reasons beyond the inventor’s control. Other
27 efforts are technologically and commercially successful, but may not lead to
28

1 revenue until far in the future. And, because intellectual property (*e.g.*, patented
2 innovations in the field of wireless communications) is intangible, it faces a
3 heightened risk of misappropriation by others (especially after it is disclosed to an
4 SDO) as compared to physical objects.

5 85. These basic risks inherent in R&D investments are compounded when
6 the technologies are developed for and contributed to an industry standard, such as
7 WCDMA or LTE. Innovators in industries in which technology is standardized,
8 like the wireless industry, bear the additional risks that—even if they succeed in
9 developing an effective technology—their innovations will not be included in the
10 standard, or the standard will not be commercially successful.

11 86. Finally, as part of the standard-development process, before an
12 innovator's technology is included in a standard, the innovator must make that
13 technology known to manufacturers—potentially including its own direct
14 competitors—several years before it can even hope to obtain payment in return in
15 the form of royalties. Generally, a major standard is finalized and approved years
16 before products that implement the standard come to market. By agreeing to
17 disclose proprietary technology so that it can be used in the implementation of a
18 standard, the innovator sacrifices a measure of the technological head-start its R&D
19 investments could earn, instead providing competitors ample time to learn and
20 develop products using that technology. Once standard-compliant products come
21 to market, manufacturers may postpone making fair payments to the innovators
22 who invested in the development of the standard—even while those manufacturers
23 reap profits only made possible by the patented innovations.

24 **B. The FRAND Commitment.**

25 87. Major SDOs have attempted to balance the need to encourage
26 innovators to contribute to standards, on the one hand, with the need for
27 implementers of standards to have access to the innovators' intellectual property to
28

1 make standard-compliant products, on the other hand. Patent licensing—and the
2 enforcement of patent rights when the patents are not licensed—are critical to this
3 balance.

4 88. The most important and influential SDO in the cellular
5 communications industry (and the SDO relevant to this action) is the European
6 Telecommunications Standards Institute (“ETSI”). ETSI has more than
7 800 members from 67 countries and five continents. ETSI’s Intellectual Property
8 Rights (“IPR”) policy expressly acknowledges the need to balance reward for
9 innovation and access to standardized technology:

10 “[T]he ETSI IPR POLICY seeks to reduce the risk to
11 ETSI, MEMBERS, and others applying ETSI
12 STANDARDS . . . , that investment in the preparation,
13 adoption and application of STANDARDS could be
14 wasted as a result of an ESSENTIAL IPR for a
15 STANDARD . . . being unavailable. In achieving this
16 objective, the ETSI IPR POLICY seeks a *balance*
17 *between the needs of standardization for public use in the*
18 *field of telecommunications and the rights of the owners*
19 *of IPRs.”* (ETSI IPR Policy ¶ 3.1 (emphasis added).)

20 89. To balance the need for adequate rewards for SEP holders and the
21 need for wide access to SEPs, ETSI requests that SEP holders agree to make
22 licenses available for certain specified rights under their SEPs on “fair, reasonable
23 and non-discriminatory”, or FRAND, terms and conditions. A patentee makes a
24 FRAND commitment to an SDO voluntarily, with the understanding that it will be
25 entitled to seek FRAND royalties from licensees of its SEPs in the future.

26 90. A FRAND commitment creates a contractual obligation between a
27 SEP holder and an SDO. Qualcomm’s FRAND commitments to ETSI govern its
28 licensing of its 3G and 4G SEPs, on which Apple’s iPhones and other cellular
devices depend.

91. What is considered “fair and reasonable” is intentionally given wide
latitude by ETSI’s IPR policy. When determining whether the terms and scope of a
proposed license are fair and reasonable, accepted industry terms and conditions, as

1 well as widely accepted terms for a particular portfolio of SEPs, are compelling
2 evidence. Certain industry practices have come to be accepted as FRAND.

3 92. For example, it has long been accepted in the cellular industry that the
4 common practice of calculating royalties as a percentage of the net selling price of
5 the entire device (*e.g.*, the iPhone) is consistent with a SEP holder's FRAND
6 commitment.

7 93. Similarly, it is common practice for a SEP holder with a large number
8 of patents to license those patents as a single portfolio, rather than to negotiate
9 single-patent licenses one by one. In March 2016, a German court found that where
10 the plaintiff-patentee had "consistently offered a worldwide portfolio license",
11 "[t]his does not give rise to any [FRAND] concerns", as it "corresponds to a well-
12 established licensing practice". *Saint Lawrence Commc'ns v. Vodafone*, docket
13 number 4a O 73/14, at 14, 19, Düsseldorf Regional Court (Mar. 31, 2016). Not
14 surprisingly given this background, Apple's request for an offer from Qualcomm,
15 as well as its own most recent counteroffer to take a license to Qualcomm's
16 technology, were for various kinds of portfolio licenses. The Contract
17 Manufacturers' agreements, on which Apple has depended for a decade, are not
18 patent-by-patent licenses.

19 94. In fact, consistent with ETSI's IPR policy and the long-standing
20 industry practice among major SEP holders, Qualcomm's license agreements with
21 cellular device manufacturers all include a portfolio of cellular SEPs for certain
22 standards. Many also include certain patents and applications that are essential to
23 non-cellular standards, as well as certain NEPs. Those agreements often grant
24 rights to practice Qualcomm's cellular SEPs for the specified standards at any time
25 during the term of the agreement, plus many other patents and applications owned
26 by Qualcomm as of an agreed-upon date. This type of broad license is what almost
27 all licensees have sought, as licensees recognize the impracticality of conducting a
28 separate license negotiation for each of Qualcomm's thousands of patents.

1 95. Apple recognized this industry practice and practical reality when it
2 sued Nokia-related entities in December 2016, exactly one month before it sued
3 Qualcomm. See Complaint ¶ 35, *Apple Inc. v. Acacia Research Corp., et al.*,
4 No. 16-cv-7266 (N.D. Cal., filed Dec. 20, 2016). In that action, Apple alleged that
5 the licensing practices of Nokia and its affiliated entities were not FRAND in part
6 because their conduct precluded Apple from obtaining a single license to their
7 collective portfolio of patents. Apple complained that Nokia deprived Apple of its
8 right to “a single licensing negotiation for a single royalty” for Nokia’s entire patent
9 portfolio. In this lawsuit against Qualcomm, Apple takes exactly the opposite
10 position, asserting that Qualcomm’s “[f]ail[ure] to offer an individual license on a
11 patent-by-patent basis (or a patent family-by-patent family basis) violates
12 Qualcomm’s FRAND obligation.”

13 96. FRAND’s “non-discrimination” principle is intended to prevent
14 licensors from offering similar packages of value to similarly situated parties on
15 materially different terms. As such, widespread industry acceptance of broadly
16 similar licensing terms is a strong indication that an offer including such terms is
17 consistent with FRAND. In its lawsuits against Qualcomm and other SEP owners,
18 Apple has sought discriminatory royalties that are far lower than those its
19 competitors have received and paid for many years, and far lower than the royalties
20 Apple’s Contract Manufacturers have paid.

21 **III. Qualcomm’s Long History with the Contract Manufacturers.**

22 97. Over the past two decades, Qualcomm entered into license agreements
23 with the Contract Manufacturers. The terms of the Contract Manufacturers’ license
24 agreements are entirely consistent with ETSI’s IPR policy. And those agreements
25 have been integral to the success of Apple’s cellular devices.

26 98. Time and again, Apple has chosen to continue relying on the Contract
27 Manufacturers’ license agreements, instead of entering a direct license agreement
28

1 with Qualcomm. But despite the enormous commercial success Apple has
2 achieved under this arrangement, Apple has now tortiously disrupted the Contract
3 Manufacturers' long-standing relationships with Qualcomm in an effort to pay less
4 than fair-market royalties for Qualcomm's intellectual property.

5 **A. Qualcomm Entered into License Agreements with the**
6 **Contract Manufacturers over the Past Two Decades.**

7 99. Apple does not manufacture iPhones and iPads itself. Instead, it pays
8 third-party manufacturers in China and Taiwan to construct its devices. The
9 Contract Manufacturers that manufacture Apple's iPhones and iPads are:
10 (i) Foxconn, (ii) Pegatron, (iii) Wistron, and (iv) Compal. Each of the Contract
11 Manufacturers also manufactures products for other cellular device suppliers. And
12 each has a longstanding business relationship with Qualcomm that is independent
13 of Apple.

14 100. Each Contract Manufacturer, like virtually every other major cellular
15 device manufacturer in the world, has each taken a royalty-bearing license to
16 Qualcomm's intellectual property.

17 101. Long before Apple sold its first cellular device in 2007, Qualcomm
18 began entering into license agreements ("Subscriber Unit License Agreements")
19 with the Contract Manufacturers:

- 20 • Qualcomm's license agreement with Compal became effective
21 on February 10, 2000;
 - 22 • Qualcomm's license agreement with Foxconn became effective
23 on October 18, 2005;
 - 24 • Qualcomm's license agreement with Wistron became effective
25 on May 23, 2007; and
 - 26 • Qualcomm's license agreement with Pegatron became effective
27 on April 29, 2010.
- 28

1 102. Under their license agreements, the Contract Manufacturers have been
2 able to use Qualcomm’s intellectual property to manufacture cellular devices,
3 including Apple’s iPhones and iPads, as well as other companies’ products.

4 **B. The Contract Manufacturers’ License Agreements Are**
5 **Consistent with ETSI’s IPR Policy.**

6 103. Contrary to Apple’s allegations, Qualcomm’s license agreements with
7 the Contract Manufacturers are fully consistent with ETSI’s IPR policy.

8 104. Each of the Contract Manufacturers negotiated with Qualcomm at
9 arm’s length and chose to sign an agreement with Qualcomm that grants it certain
10 rights, including a broad, portfolio-wide license to Qualcomm’s patents.

11 105. Each of the Contract Manufacturers’ license agreements provides
12 rights to practice Qualcomm’s cellular SEPs for the specified standards at any time
13 during the term of the agreement, plus many other patents and applications owned
14 by Qualcomm as of an agreed-upon date.

15 106. For example, in Foxconn’s agreement with Qualcomm, [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 107. The royalties for devices under each of the Contract Manufacturers’
20 license agreements are calculated as a percentage of the net selling price of the
21 entire device (*e.g.*, the iPhone).

22 108. Qualcomm’s license agreements with the Contract Manufacturers are
23 on terms broadly similar to the license agreements Qualcomm has entered with
24 many other companies, which have all recognized the enormous value that
25 Qualcomm’s intellectual property provides to their cellular devices.

26 109. The Contract Manufacturers’ license agreements with Qualcomm have
27 been integral to the success of Apple’s cellular devices.
28

1 **C. Qualcomm’s Intellectual Property Provides Tremendous**
2 **Value to Apple’s Products.**

3 110. Apple needs some form of access to Qualcomm’s patent portfolio
4 because Apple’s cellular devices could not function without the use of Qualcomm’s
5 intellectual property. Without such access, Apple would infringe Qualcomm’s
6 patents. Apple itself has acknowledged that Qualcomm’s intellectual property
7 enables cellular devices’ downstream function and value.

8 111. Qualcomm’s inventions are not limited to technologies in modem
9 chipsets or even cell phones. Qualcomm’s intellectual property reads on everything
10 from a single chip to the *entire mobile network*, and it is recognized for driving
11 value to the entire device.

12 112. Qualcomm’s contributions to the “system” level of cellular
13 communications have been game-changing: Qualcomm vastly improved data
14 transfer rates (both download and upload speeds) and significantly lowered the cost
15 of transferring that data; Qualcomm increased the capacity of the cellular spectrum
16 by making the use of that spectrum far more efficient, enabling carriers to
17 accommodate more consumers and demand on their networks; Qualcomm made it
18 easier for consumers to use data and make voice calls at the same time; Qualcomm
19 reduced the static and interference that once made many cell phone calls
20 unintelligible; Qualcomm enabled longer use time and battery life through more
21 efficient radio access techniques. The list goes on.

22 113. Qualcomm’s intellectual property also enables numerous important
23 features on the iPhone. To name a few examples, thanks to Qualcomm’s
24 innovations:

- 25 • The iPhone can be used as a WiFi hotspot and stream ultra-high-
26 definition (4K) videos.

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- 1 • The iPhone benefits from longer battery life, an auto-lock
2 feature, higher resolution, “Application Switching”, a dual antenna,
3 and “Airplane Mode”.
- 4 • The iPhone includes assisted GPS technology, which makes
5 possible location-based services such as Google Maps, turn-by-turn
6 navigation, finding nearby restaurants, and many other location-based
7 features and apps such as Uber.

8 114. Above all, the iPhone’s value to consumers is driven by its ability to
9 connect with and transfer voice and data over cellular networks at rapid speeds—a
10 capability heavily dependent on Qualcomm’s intellectual property. The iPhone’s
11 value to users depends largely on this capability, because many of the most popular
12 apps today—including Snapchat, Instagram, Spotify, Apple Music, Facebook,
13 YouTube, Uber, Google Maps—are centered around downloading or uploading
14 data-intensive images, maps, videos, or music wherever one is and whenever one
15 needs them.

16 115. As the respected author Thomas L. Friedman recently explained:
17 “Most people think that they can watch *Game of Thrones* on their cell phone
18 because Apple came out with a better phone. No, Apple gave you a larger screen
19 and better display, but the reason [the video streams smoothly] is because
20 Qualcomm and AT&T and others invested billions of dollars in making the wireless
21 network and phones more efficient.” *Thank You for Being Late* 80-81 (2016).

22 116. On an April 2016 earnings call, while explaining the weak sales of
23 iPhones in India, Apple CEO Tim Cook confirmed the iPhone’s dependence on
24 high-speed cellular connectivity for its success:

25 “The LTE roll-out with India just really begins this year.
26 That will unleash the power and capability of the iPhone
27 in a way that an older network, 2.5G or even some 3G
28 networks, would not do.”

1 117. Similarly, on an October 2016 earnings call, Tim Cook again
2 explained how 4G cellular technology drives the value and user experience on the
3 iPhone:

4 “[T]here are enormous investments going on in 4G, and
5 we couldn’t be more excited about that because *it really*
6 *takes a great network working with iPhones to produce*
7 *that great experience for people.*” (emphasis added)

8 118. Apple’s public statements show that Apple recognizes the immense
9 value of Qualcomm’s intellectual property. Nevertheless, each time Apple and
10 Qualcomm have discussed entering into a direct license agreement, Apple has
11 refused to agree to fair market terms.

12 **D. Apple Has Repeatedly Chosen To Rely on the Contract
13 Manufacturers’ License Agreements Instead of Taking a
14 Direct License from Qualcomm.**

15 119. Over the past decade, as an alternative to relying on Qualcomm’s
16 license agreements with the Contract Manufacturers, Qualcomm and Apple have
17 periodically discussed a direct license agreement. Those discussions began as early
18 as 2007, when Apple considered—but ultimately declined—to sign a license
19 agreement with Qualcomm. Importantly, at the time, Apple was not using any
20 Qualcomm components, and could therefore negotiate a direct license without
21 regard to chip supply. However, Apple chose not to enter into a direct license
22 agreement at that time—or since.

23 120. In 2010, Qualcomm and Apple revisited the possibility of a direct
24 license agreement, but Apple decided to continue to rely on the Contract
25 Manufacturers’ license agreements. In 2012, the parties again discussed entering a
26 direct license agreement to replace the Contract Manufacturers’ license agreements
27 (as to the devices they make for Apple), but did not reach a deal.

28 121. Most recently, from 2015 into 2017, Apple and Qualcomm engaged in
negotiations regarding a direct license agreement. But as before, those discussions
ended without Apple signing a license agreement.

1 122. As a result, Apple has continued to rely on the Contract
2 Manufacturers' license agreements—and, in the process, has become the most
3 successful cellular device company in history.

4 123. However, despite the unprecedented success Apple has achieved while
5 relying on the Contract Manufacturers' license agreements, Apple has tortiously
6 interfered (repeatedly) with the Contract Manufacturers' long-standing relationships
7 with Qualcomm.

8 **E. Apart from Apple's Interference, the Contract**
9 **Manufacturers Have Consistently Abided by the Terms of**
10 **Their License Agreements with Qualcomm.**

11 124. Until recently, for many years, the Contract Manufacturers
12 successfully operated under their license agreements and paid royalties to
13 Qualcomm on Apple and non-Apple products alike. In fact, each Contract
14 Manufacturer began paying royalties before Apple was its customer; thus, each
15 Contract Manufacturer paid Qualcomm royalties on non-Apple products before
16 paying royalties on Apple products.

17 125. Whether the products made by the Contract Manufacturers are Apple
18 or non-Apple, the royalty terms are the same, and the Contract Manufacturers have
19 consistently paid under their agreements.

20 126. It is only now—17 years after the first Contract Manufacturer entered
21 into a license agreement with Qualcomm—that the Contract Manufacturers have
22 collectively withheld nearly ██████████ in royalties due under their license
23 agreements. And by its own admission, Apple is responsible for this change of
24 course by the Contract Manufacturers.

25 127. Apple's interference in the Contract Manufacturers' license
26 agreements is part of its larger strategy to pay less than fair value for Qualcomm's
27 intellectual property. As part of that same campaign, Apple has alleged that
28 Qualcomm unlawfully uses its power as a supplier of chipsets and software to force

1 onerous licensing terms on Apple. But that is not and cannot be true. Apple's
2 theory ignores that each of Qualcomm's license agreements with the Contract
3 Manufacturers was entered into *before* Apple ever used a single Qualcomm chipset
4 in any Apple product—and further ignores that the terms of the Contract
5 Manufacturers' license agreements did not change when Apple began using
6 Qualcomm chipsets. The Contract Manufacturers' licensing terms were not
7 affected by whether Apple used a Qualcomm chipset or a competitor's chipset in its
8 iPhones.

9 **IV. Qualcomm's Chipset and Software Relationship with Apple.**

10 128. In addition to its patent licensing business, Qualcomm today is also a
11 major supplier of chips and related software used in cellular devices. Independent
12 of the patent licensing business, QTI's subsidiary supplies a variety of customized
13 integrated circuits for use in cellular devices (*e.g.*, phones, tablets, or other
14 computing devices). Qualcomm's core chip products that it provides to Apple for
15 cellular devices are: (i) the baseband modem chip, which processes received voice
16 and data information and prepares the same for transmission; (ii) radio frequency
17 chips, which transmit and receive radio signals utilizing one or more frequencies;
18 (iii) the power management chip, which optimizes power consumption across a
19 cellular device; and (iv) chipsets that include a combination of the above products
20 as well as other hardware elements to support the functionality of a cellular device.
21 Each class of chip described above is sold in competition with a number of other
22 suppliers. Qualcomm leads the industry in the development of new chipset
23 technology.

24 129. Qualcomm also separately licenses its cutting-edge software that runs
25 on, and controls, the operation of its chipsets. Qualcomm devotes massive
26 resources to the development of its software, which includes millions of lines of
27 code and is a critical part of the product solutions that Qualcomm offers.
28

1 Qualcomm makes its software available to its customers under a software license
2 (which is not a patent license) that is negotiated and executed by entities within
3 Qualcomm's chip business, rather than within the patent licensing business.

4 **A. Apple's Use of Qualcomm's Chipsets and Software.**

5 130. Apple currently uses Qualcomm's chipsets in many of its cellular
6 devices. But this was not the case for the generations of the iPhone launched
7 between 2007 and 2010. From 2007 to 2010, Apple relied exclusively on chipsets
8 made by Infineon (which was acquired by Intel in 2011).

9 131. As the iPhone's technological needs grew more sophisticated, Apple
10 began to look for a new chipset supplier capable of better meeting those needs.
11 Due to Qualcomm's ability and willingness to meet Apple's exacting technical and
12 schedule demands, as well as the superior quality of Qualcomm's chipsets, by
13 around 2010 Apple had decided that it would begin using Qualcomm cellular
14 chipsets in iPhones. From 2011 until the fall of 2016, Qualcomm was the only
15 cellular chipset supplier used by Apple for new (*i.e.*, non-legacy) iPhones. But that
16 changed in September 2016, when Apple released the iPhone 7 and 7 Plus. Some
17 iPhone 7 models still use Qualcomm chipsets; others now use Intel chipsets.

18 132. Apple does not purchase chipsets directly from Qualcomm. The
19 Contract Manufacturers purchase the chipsets and manufacture the iPhones and
20 other cellular devices, which they then sell to Apple for global distribution.

21 **B. Qualcomm Provides Technical Assistance That Is Critical**
22 **to the Success of the iPhone.**

23 133. Apple not only uses Qualcomm's superior chipsets, but also routinely
24 demands and receives specialized technical solutions from Qualcomm's world-class
25 engineers. Qualcomm goes to great lengths to serve Apple by providing any
26 assistance Apple demands, [REDACTED] For example:

- 27 • Qualcomm pioneered self-testing chipset technology and a
28 remote chipset testing method used by Apple, which has [REDACTED]

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- Qualcomm helped Apple transition to 4G/LTE by [REDACTED] [REDACTED] that was critical to the successful launch of the iPhone 5.
- Qualcomm offered Apple an “envelope tracking” solution, which helps the iPhone save power and reduces heat when transmitting at different signal strengths.
- Qualcomm assigns numerous engineers [REDACTED] [REDACTED]
- Qualcomm devised a [REDACTED] [REDACTED].
- Qualcomm helped [REDACTED] [REDACTED].
- Qualcomm developed a [REDACTED] [REDACTED]

134. All told, Qualcomm’s chipsets, software, and technical assistance have been critical to the continued success of Apple’s cellular devices.

V. The Complex Contractual Relationship Between Qualcomm and Apple.

135. Understanding Qualcomm and Apple’s business relationship requires an understanding of the key contracts between the parties. Although Apple attempts to characterize itself as powerless against Qualcomm, the opposite is true. As the terms of the parties’ agreements and negotiating history make clear, Apple has substantial leverage over Qualcomm and has used that leverage to impose onerous terms on Qualcomm.

136. *Marketing Incentive Agreement.* Although the first iPhone debuted with 2G technology, Apple recognized that it would need to use a more advanced

1 technology for future releases. During lengthy negotiations, Apple threatened to
2 use its reputation and influence to steer the cellular industry away from
3 Qualcomm's CDMA-based technology, and toward the inferior WiMAX
4 technology, unless Qualcomm agreed to make large marketing payments to Apple.
5 Apple's threat, if executed, would have deprived consumers of the benefits of
6 CDMA-based technology, and deprived Qualcomm of royalties for the use of its
7 superior CDMA-based technology.

8 137. Accordingly, on January 8, 2007, Qualcomm signed the Marketing
9 Incentive Agreement ("MIA") with Apple. The MIA required Qualcomm to make
10 payments to Apple in exchange for Apple announcing that it would use certain
11 technologies in its iPhones.

12 138. Strategic Terms Agreement. Apple launched the first iPhone in
13 June 2007. The second iPhone was launched in 2008 and implemented CDMA-
14 based 3G standards. While Apple's 3G-capable iPhones have relied extensively on
15 Qualcomm's patented technologies for nearly a decade, the early iPhones did not
16 use chipsets or software from Qualcomm. Instead, the first four generations of
17 iPhones launched from 2007 through 2010 used Infineon (now Intel) chipsets.

18 139. In 2008, Apple's iPhone sales grew significantly compared to the year
19 before, making it easily the fastest growing smartphone. In 2009, iPhone sales
20 continued to expand—more than doubling the total from 2008.

21 140. As the iPhone's technological needs evolved, Infineon's chipsets and
22 software could not provide the power, flexibility, and reach that Apple needed. As
23 a result, on December 16, 2009, while Apple was still exclusively using Infineon
24 chipsets in the iPhone, Apple and Qualcomm entered into the Strategic Terms
25 Agreement ("STA"). The STA specified terms related to Qualcomm's supply of
26 components to the Contract Manufacturers for Apple's products, should Apple
27 decide at some point in the future to use Qualcomm's chipsets in its products.
28

1 141. While Qualcomm was forced to give supply commitments and
2 assurances to Apple in the STA, Apple refused to commit to procure any
3 components from Qualcomm.

4 142. Master Software Agreement. The STA provided that Qualcomm
5 would deliver software used to operate chipsets pursuant to a separate software
6 agreement. On September 20, 2010, Qualcomm and Apple entered into the Master
7 Software Agreement (“MSA”).

8 143. The MSA grants Apple a limited license to Qualcomm’s copyrighted
9 software, governs Qualcomm’s provision of that software to Apple, and imposes a
10 number of restrictions on Apple’s use of that software and associated copyrights. It
11 is not a patent license. The MSA also contemplates that the parties will enter into
12 software addenda for specific software products, which they have done on a number
13 of occasions since 2010.

14 144. Transition Agreement. A few months prior to the launch of the
15 Qualcomm-based iPhone 4, Apple drafted a proposed Transition Agreement and
16 asked Qualcomm to sign it. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 145. Apple and Qualcomm signed the Transition Agreement on February
20 11, 2011. Under the terms of the Transition Agreement, Apple required Qualcomm
21 to commit to pay Apple up to [REDACTED] as an incentive for Apple to procure
22 Qualcomm’s chipsets for use in its devices. Qualcomm made that payment
23 commitment without any guarantee of how many Qualcomm chipsets would be
24 procured by Apple. This arrangement required Qualcomm to make substantial
25 investments (in addition to the [REDACTED] in incentive payments) in product
26 development just to secure Apple’s business—without any guarantee of a return on
27 that investment. The Transition Agreement provided that Apple would forego or
28 reimburse portions of the [REDACTED] only under certain conditions.

1 146. In its Complaint, Apple misstates the nature of the Transition
2 Agreement and the parties’ negotiating positions. Apple claims that Qualcomm
3 forced Apple “to deal exclusively with Qualcomm on the purchase of chipsets”.
4 But, in fact, it was *Apple’s* draft of the Transition Agreement that included the term
5 about which it now complains.

6 147. Further, the Transition Agreement does not in fact require Apple to
7 deal exclusively with Qualcomm, as Apple demonstrated when it began purchasing
8 approximately █████ of its chipsets from Intel while the amended Transition
9 Agreement was still in effect.

10 148. On January 1, 2013, Apple and Qualcomm entered into the First
11 Amendment to the Transition Agreement (“ATA”). The ATA retained the general
12 structure of the Transition Agreement, but required Qualcomm to pay yet additional
13 incentives to Apple.

14 149. *The Business Cooperation and Patent Agreement.* Around the same
15 time the parties were amending and extending the Transition Agreement, Apple
16 demanded a replacement agreement for the MIA, which was due to expire in late
17 2012. Apple and Qualcomm therefore entered into the Cooperation Agreement as
18 of January 1, 2013. The Cooperation Agreement required Qualcomm to pay Apple
19 hundreds of millions of dollars, but only if certain conditions were met.

20 150. Apple also misrepresents the nature and terms of the Cooperation
21 Agreement in its Complaint. Apple alleges that the “sole purpose” of Qualcomm’s
22 payments under the Cooperation Agreement was “to reduce Apple’s royalty burden
23 in exchange for exclusivity”. The terms of the contract make clear, however, that
24 Qualcomm’s payments under the Cooperation Agreement are in exchange for other
25 valuable consideration from Apple, including, among other things, Apple’s promise
26 (i) not to initiate, or actively induce a third party to initiate, litigation (including
27 regulatory investigations) against Qualcomm; and (ii) not to assert its patents
28 against Qualcomm. Apple’s patent standstill commitment provided

1 Qualcomm with assurance that Apple would not disrupt Qualcomm's ability to
2 provide its chipsets to other customers, and Apple agreed not to assert its patents
3 against Qualcomm for certain past sales even after expiration of the Cooperation
4 Agreement. In other words, the parties negotiated for complete peace. For that,
5 Qualcomm agreed to make large payments to Apple each quarter.

6 151. The parties also agreed to various other forms of business cooperation.
7 For example, the parties agreed that Apple would support CDMA in its iPhones and
8 certain iPads and that senior executives of Apple and Qualcomm should meet at
9 least semi-annually to review Qualcomm's products and industry trends and to
10 consider new technology opportunities that may be of mutual benefit. This was a
11 significant provision for Qualcomm given Apple's enormous buying power and its
12 ability to either reward or punish suppliers like Qualcomm.

13 152. The terms of the Cooperation Agreement reflect the parties' agreed-
14 upon goal of working together in good faith. As explained in more detail below,
15 Apple did not honor its contractual commitment and instead launched a global
16 attack against Qualcomm.

17 153. The 2013 Statement of Work. The STA provided the *general* terms for
18 Qualcomm's supply of components to the Contract Manufacturers for Apple's
19 products. Pursuant to the STA, Apple and Qualcomm subsequently entered into
20 various "statements of work" that provided the *specific* requirement that Qualcomm
21 supply the components at issue, and also dictated the supply terms for each new
22 model of Qualcomm chipset used in Apple's products. Apple and Qualcomm
23 entered into one such Statement of Work on February 28, 2013 (the "2013 SOW"),
24 to govern the supply of multiple models of Qualcomm's chipsets to the Contract
25 Manufacturers.

26 154. Qualcomm's MDM9625 chipset, which is governed by the 2013 SOW,
27 has a built-in feature related to "carrier aggregation" technology. Carrier
28 aggregation is a technology supported by advanced 4G networks that offers

1 increased bandwidth and faster data speeds. Qualcomm played a leading role in
2 developing carrier aggregation technology and making it mainstream. Apple's
3 MDM9625 chipset-based device was to be the first iPhone that supported this
4 technology.

5 155. In negotiating the terms of the 2013 SOW, [REDACTED]
6 [REDACTED]

7 Instead, Apple insisted that payment be made only upon the occurrence of certain
8 triggering events.

9 156. As discussed below, more than one of those conditions has since been
10 satisfied, triggering Apple's obligation to pay for the carrier aggregation feature in
11 MDM9625 chipsets. In total, Apple owes Qualcomm approximately [REDACTED]
12 in carrier aggregation payments under the 2013 SOW. Apple has admitted to
13 owing approximately [REDACTED] of that amount but, to date, Apple has paid
14 nothing.

15 157. The ASTA, the iPhone 7 Statement of Work and the STA Assignment
16 Agreement. The STA was first amended on February 28, 2013; the resulting
17 Amended and Restated Strategic Terms Agreement ("ASTA") contained largely the
18 same terms. In negotiations regarding the ASTA, [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED] The STA was further amended by the parties' Statement of
22 Work, dated December 7, 2015 (the "iPhone 7 Statement of Work"), and
23 accompanying STA Assignment Agreement.

24 158. In the iPhone 7 Statement of Work and STA Assignment Agreement,
25 Apple forced Qualcomm to agree to unprecedented supply commitments. For
26 example, even if Apple [REDACTED]
27 [REDACTED] Qualcomm must continue to supply chipsets for use in
28 Apple products [REDACTED] In

1 addition, Qualcomm must continue to supply chipsets for use in Apple products

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 159. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 160. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 161. [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 162. Each of these agreements shows that it is Apple that holds the power in
7 the parties' relationship.

8 **VI. Qualcomm Has Satisfied Its FRAND Commitments to ETSI with**
9 **Respect to Apple.**

10 163. From 2015 into 2017, Qualcomm and Apple engaged in negotiations
11 about Apple taking a direct license to Qualcomm's cellular SEP portfolio. During
12 that time, Qualcomm provided extensive information regarding the strength of its
13 cellular SEP portfolio (as well as NEPs) and the applicability of Qualcomm's
14 patents to Apple devices. Qualcomm also has made a complete, written license
15 offer to Apple for Qualcomm's cellular SEP portfolio on FRAND terms. In
16 response, Apple rejected Qualcomm's cellular SEP-only offer, accused Qualcomm
17 of breaching its FRAND commitment, and proposed instead a much broader license
18 to both Qualcomm's cellular SEPs *and* NEPs and offered to pay substantially less
19 than the royalties that Qualcomm currently receives from the Contract
20 Manufacturers. When Apple's offer is broken down to a per-device royalty using
21 Apple's 2015 iPhone sales figures, it translates to a royalty of approximately
22 [REDACTED] per device, while charging consumers as much as \$970 (for the iPhone 7
23 Plus, 256GB).

24 164. Qualcomm fully satisfied its FRAND commitments to ETSI; Apple
25 demonstrated that it is unwilling to negotiate in good faith for a license to
26 Qualcomm's cellular SEPs.

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1 **A. Qualcomm Provided Extensive Information About Its**
2 **Patent Portfolio.**

3 165. In February 2016, Apple requested that Qualcomm provide to Apple,
4 for each cellular SEP that Qualcomm believes is practiced by Apple products, (i) an
5 “explanation as to why [Qualcomm] think[s] Apple’s products infringe” that patent,
6 (ii) “a specific royalty demand”, and (iii) “the methodology [Qualcomm] used to
7 arrive at the royalty rate sought”.

8 166. Apple’s request for patent-by-patent information is inconsistent with
9 industry practice for negotiating portfolio licenses. Such information is also
10 impossible to provide as a practical matter, which Apple well knows. In
11 accordance with the ETSI IPR policy, Qualcomm has disclosed thousands of
12 patents as potentially essential to one or more cellular standards. Demanding that
13 Qualcomm provide detailed information for each and every patent practiced by
14 Apple’s products was, and is, entirely impractical. For those reasons, industry
15 practice for major patent holders is to negotiate and license for a portfolio of patents
16 while exchanging information concerning a representative set of the patents in the
17 portfolio.

18 167. Nevertheless, Qualcomm did provide Apple with a wealth of
19 information regarding Qualcomm’s cellular SEP portfolio and its applicability to
20 Apple devices. For example, Qualcomm provided nearly 2,000 pages of detail
21 regarding its portfolio of patents disclosed to ETSI as potentially essential to 3G
22 and 4G standards. Qualcomm also gave multiple presentations on the breadth,
23 importance, strength, and value of Qualcomm’s patent portfolio, both for cellular
24 SEPs and other patents practiced by Apple’s products. (By contrast, Apple
25 provided no explanation of what value it attaches to its own patents, despite
26 proposing a cross-license to Apple’s cellular SEPs.)

27 168. Apple requested meetings to discuss representative claim charts
28 demonstrating how specific patents are practiced by Apple devices. Qualcomm

1 was willing to provide and discuss that information, and proposed that the parties
2 enter into an agreement that would enable the free exchange of this information
3 without the threat that one party would use the information to commence litigation
4 against the other. To that end, Qualcomm made a number of proposals. Qualcomm
5 first proposed a limited non-use agreement—a common, reasonable condition on
6 the exchange of sensitive business information such as claim charts. Apple rejected
7 that option. Then the parties discussed a mutual standstill agreement. Apple
8 expressed interest in the idea, and Qualcomm undertook the work to draft the
9 proposed agreement. Apple then rejected that as well, refusing to offer edits or a
10 counterproposal. As Apple’s behavior demonstrates, Apple sought Qualcomm’s
11 business information for one reason and one reason only—to acquire information it
12 could use in a complaint against Qualcomm, *not* to further the parties’ licensing
13 negotiations.

14 169. Notwithstanding Apple’s tactics, Qualcomm did as Apple asked,
15 providing a number of claim charts to Apple to demonstrate how specific patents
16 are practiced by Apple devices. Qualcomm conducted several in-person meetings
17 with Apple to review those claim charts. And Qualcomm was just getting started; it
18 was prepared to continue with numerous meetings to present hundreds of additional
19 claim charts. In fact, the parties already had scheduled another meeting to review
20 additional claim charts, but Apple filed this lawsuit—including claims on certain of
21 the claim charts that Apple insisted Qualcomm present—before the meeting could
22 take place.

23 170. Apple’s numerous attempts to impose the onerous requirement of
24 patent-by-patent information as a condition of licensing demonstrate that Apple is
25 an unwilling licensee and engaged in those requests only to delay negotiations and
26 to posture for litigation.

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1 **B. Qualcomm Has Provided a Complete, Written Offer**
2 **on FRAND Terms.**

3 171. Over the summer of 2016, Qualcomm provided Apple with a
4 complete, written offer, in two parts, for a license to Qualcomm’s cellular SEPs.
5 These written offers memorialized verbal offers that Qualcomm had provided to
6 Apple months earlier. On June 15, 2016, Qualcomm offered Apple a license to
7 Qualcomm’s Chinese 3G and 4G cellular SEPs on the same terms agreed to by
8 many Chinese cellular industry players in the last 18 months, and noted that an
9 offer for the rest of Qualcomm’s cellular SEPs would follow shortly. On July 15,
10 2016, as promised, Qualcomm provided Apple with an offer for a license covering
11 Qualcomm’s “rest of world” (*i.e.*, other than China) 3G and 4G cellular SEPs.

12 172. Qualcomm has made a complete, written offer for its cellular SEPs
13 that complies with its contractual FRAND commitment in every respect.

14 173. The terms of Qualcomm’s offer are based on the market-established
15 value of Qualcomm’s portfolio. The value is grounded in 25 years of market
16 experience and hundreds of freely negotiated licenses to Qualcomm’s portfolio
17 currently in effect, many of which were recently negotiated with some of the largest
18 and most sophisticated companies in the industry.

19 174. Consistent with industry practice, Qualcomm’s offer calculates the
20 royalty as a percentage of the net selling price (“NSP”) of the entire device, subject
21 to a per unit cap. When licensing its entire portfolio of SEPs and NEPs, Qualcomm
22 (like other licensors in the industry) typically seeks royalties that are calculated as a
23 percentage of the full NSP of a licensed product. But Apple initially requested a
24 license only to cellular SEPs—*i.e.*, less than Qualcomm’s full patent portfolio—so,
25 in accordance with the [REDACTED]

26 [REDACTED]

27 [REDACTED]

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1 175. Qualcomm has offered Apple a license to a portfolio of patents, not to
2 individual patents, because as the industry (and Apple, when it serves its own
3 interests) has long recognized, it would be practically impossible to conduct a
4 patent-by-patent negotiation of hundreds or thousands of patents. Moreover, courts
5 have recognized that portfolio-wide offers to large patent portfolios (such as
6 Qualcomm's portfolio) are consistent with ETSI's IPR policy and that portfolio
7 licensing has procompetitive benefits.

8 **C. Apple's Response to Qualcomm Was Unreasonable.**

9 176. Apple responded to Qualcomm's complete, written offer by accusing
10 Qualcomm of breaching its FRAND commitment and by making an unreasonable
11 counteroffer which rejected Qualcomm's offer.

12 177. Apple objected to Qualcomm's offer on the ground that the offer
13 purportedly did not utilize the proper base for calculating a royalty. According to
14 Apple, the proper base should be no more than a portion of the price of the
15 baseband chipset, which Apple claims is the smallest salable patent-practicing unit
16 ("SSPPU").

17 178. But this argument has no basis in law or industry practice. No court
18 has held that a royalty voluntarily negotiated between parties for a portfolio license
19 must be calculated as a percentage of an SSPPU value in order to comply with a
20 contractual FRAND licensing commitment. In fact, the Federal Circuit has
21 recognized that SSPPU is an evidentiary damages theory relevant to jury trials for
22 individual patents asserted in patent infringement litigation, not a rule relevant to
23 negotiations over a portfolio license in a commercial context.

24 179. ETSI's IPR policy does not require a patent holder to use the value of
25 any SSPPU as the royalty base. Further, since the start of the cellular industry, the
26 most widely accepted practice has been to charge patent royalties calculated as a
27 percentage of the NSP of the entire device. And because of the range and diversity
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1 of Qualcomm's SEP portfolio, and because the portfolio is comprised of patents
2 largely directed at cellular communications systems, the appropriate SSPPU (if any)
3 is the complete operational device.

4 180. Just as baseless was the royalty Apple counteroffered: [REDACTED]
5 [REDACTED]. When broken down to a per-iPhone royalty
6 using Apple's 2015 sales figures, the proposed royalty would amount to less than
7 [REDACTED] per device—a small fraction of the royalties Qualcomm currently receives
8 from the Contract Manufacturers.

9 181. Apple's counteroffer is irreconcilable with its approach to valuing its
10 own patents. As noted above, in its recent litigation with Samsung, Apple claimed
11 that three Apple patents on user-interface features were worth \$7.14 per phone.
12 That is, Apple claims that thousands of Qualcomm patents on fundamental
13 technologies that are essential to cellular communication—critical to the usefulness
14 of the iPhone itself—pale in comparison to just three Apple patents on user-
15 interface features.

16 182. As the parties' negotiating history makes clear, Apple is an unwilling
17 licensee.

18 **D. Qualcomm Offered to Arbitrate Any Dispute over Licensing**
19 **Terms.**

20 183. Recognizing that the negotiations ultimately might reach an impasse,
21 and to avoid expensive and protracted litigation, Qualcomm also has sought to
22 negotiate a framework to arbitrate some or all of the terms of a license agreement
23 without constraints on how Qualcomm or Apple could argue its case.

24 184. Qualcomm first proposed arbitration several months before the
25 licensing negotiations resumed in earnest. During the course of the negotiations,
26 Qualcomm made a series of offers in an attempt to find a mutually agreeable
27 arbitration framework. Qualcomm even offered to arbitrate under the arbitration
28 procedures endorsed by the U.S. FTC in its consent order with Google in 2013.

1 Consistent with the U.S. FTC's framework, Qualcomm's proposal did not mandate
2 any particular valuation methodology and permitted the parties to make whatever
3 arguments they wished to the arbitral panel. By contrast, Apple wanted to place
4 significant constraints on what arguments the parties could raise in arbitration.

5 185. Qualcomm was willing to arbitrate *any* license for *any* portfolio of
6 patents in which Apple was interested, including the portfolio of patents for which
7 Apple made a counteroffer.

8 186. But Apple refused every arbitration proposal and put forth an entirely
9 one-sided, unreasonable proposal of its own. Apple's arbitration proposal, like its
10 negotiating position, required a patent-by-patent analysis and imposed other unfair
11 or unreasonable conditions that attempted to dictate how Qualcomm must present
12 its patents, always in ways that favored Apple. Apple's repeated insistence on
13 imposing unfair conditions on an arbitration, which it knew Qualcomm could not
14 accept, demonstrates that Apple has been angling for litigation from the outset and
15 is, in fact, an unwilling licensee.

16 **VII. Apple Has Engaged in a Multifaceted Attack on Qualcomm's Business.**

17 187. Apple has achieved unprecedented success in large part by using
18 Qualcomm's innovative cellular technology. That technology was available to
19 Apple over the past decade because Apple has operated under the Contract
20 Manufacturers' licensing agreements with Qualcomm. Apple now seeks to stop
21 paying fair value for Qualcomm's intellectual property despite having used that
22 intellectual property to achieve its dominance and vast profits. To that end, Apple
23 has attacked Qualcomm in an attempt to upend the contractual arrangements in
24 place for the past decade. But, in doing so, Apple violated the law and its
25 agreements with Qualcomm.

26 188. Among other conduct, (i) Apple induced regulatory investigations
27 against Qualcomm's chipset business and licensing business around the world by,
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1 among other things, encouraging investigations of Qualcomm, making false
2 statements to regulators about Qualcomm, and advocating for worldwide penalties
3 against Qualcomm; (ii) Apple has interfered with Qualcomm’s agreements with the
4 Contract Manufacturers by obstructing Qualcomm from performing audits of the
5 Contract Manufacturers and blocking them from paying royalties owed to
6 Qualcomm; (iii) Apple threatened Qualcomm to prevent it from promoting the
7 performance of its own chipsets, and publicly denied the superior performance of
8 iPhones with Qualcomm’s chipsets; (iv) Apple withheld approximately
9 ██████████ in chipset-related payments that Apple owes Qualcomm, which
10 includes approximately ██████████ in payments that Apple has admitted it owes
11 Qualcomm but refuses to pay unless Qualcomm drops its claim to the remaining
12 amount owed; and (v) Apple ██████████

13 ██████████
14 **A. Apple Actively Induced Investigations of Qualcomm.**

15 189. Apple released Qualcomm from its payment obligations under the
16 Cooperation Agreement by inciting and encouraging investigations by the KFTC,
17 among other regulatory agencies. Specifically, Apple has actively induced
18 regulatory investigations, which is conduct covered by Section 7 of the parties’
19 Cooperation Agreement.

20 190. Among other things, (i) Apple induced government investigations of
21 Qualcomm’s chipset and licensing businesses; (ii) Apple knowingly made false
22 statements to government agencies; and (iii) Apple urged the imposition of
23 extraterritorial regulatory remedies against Qualcomm. In other words, Apple
24 breached the peace—the “Cooperation Agreement”—that the parties had agreed to
25 keep.

26 191. Apple Induced Regulatory Action Against Qualcomm. At a conference
27 in Idaho during the summer of 2015, a top Apple executive encouraged Samsung to
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1 “get aggressive” in asking the KFTC to continue to pursue Qualcomm, explaining
2 that the KFTC investigation would be Samsung’s “best chance” to try to force
3 Qualcomm to change its licensing model.

4 192. Samsung is the largest “chaebol” (a Korean term for a massive,
5 privately controlled business conglomerate) in Korea, accounting for about 20% of
6 Korea’s GDP and wielding extraordinary political power. Although they compete
7 and have fought bitterly in many contexts, Apple and Samsung share a common
8 interest in diminishing Qualcomm’s ability to obtain fair value for its innovations.
9 Apple and Samsung’s inducement of regulatory action had nothing to do with the
10 protection of competition. Instead, they saw an opportunity to try to avoid paying
11 fair value for Qualcomm’s intellectual property and to impede Qualcomm’s
12 licensing program—and they acted.

13 193. Apple Made False and Misleading Statements to Government
14 Agencies. In a public KFTC hearing on August 17, 2016, Apple gave a lengthy
15 presentation to the KFTC titled “[Apple’s] Views on Qualcomm’s Abuse of
16 Dominance”. In this presentation, Apple made a number of misstatements
17 regarding Qualcomm’s licensing practices and its business dealings with Apple that
18 Apple knew were untrue.

19 194. For example, Apple’s August 17, 2016 KFTC presentation states that
20 “Apple has yet to add a [second chipset] supplier because of Qualcomm’s
21 exclusionary conduct”.

22 195. Apple knew this statement was false. When Apple made that
23 statement in August, it had already decided to incorporate Intel chipsets in the new
24 iPhone and had already started sourcing those chipsets. In fact, Apple was mere
25 weeks away from the September *release* of the iPhone 7, many of which use Intel
26 baseband chipsets, including *all* iPhone 7s sold in Korea. Apple follows an
27 exceptionally long launch timeline for its iPhones, [REDACTED]
28 [REDACTED]

1 [REDACTED] Thus, in August
2 2016, *one month* prior to launching the iPhone 7, Apple had already purchased (or
3 caused contract manufacturers to purchase) large numbers of Intel chipsets for the
4 iPhone.

5 196. Apple falsely asserted that it was not permitted to disclose publicly
6 that it had added Intel as a supplier. But Apple's self-imposed confidentiality
7 restriction does not excuse an affirmative misrepresentation to the KFTC
8 specifically calculated to harm Qualcomm. Nor is there any reason why Apple
9 could not have provided this information to the KFTC in a closed session. Further,
10 the KFTC's request to Apple did not call for information about whether Apple had
11 added another chipset supplier. Rather, Apple volunteered this false information.
12 The only plausible explanation for Apple's conduct is that it intended to mislead the
13 KFTC into believing that Qualcomm's conduct had an exclusionary effect, when it
14 plainly did not.

15 197. Apple also told the KFTC that Qualcomm has never made a good
16 faith offer for "an unbundled license for cellular SEPs only". Again, when Apple
17 made this statement to the KFTC on August 17, 2016, Apple knew it was false.
18 Just one month earlier, Qualcomm had provided Apple with a complete, written
19 offer to license Qualcomm's cellular SEP portfolio.

20 198. Apple made additional misrepresentations in other submissions to the
21 KFTC. Qualcomm has had extremely limited access to statements Apple made to
22 the KFTC. For that reason, the full extent of Apple's involvement in the KFTC
23 investigation has not yet been fully revealed.

24 199. Apple has also made untrue statements to other agencies around the
25 world on topics such as Apple's license negotiations with Qualcomm and its
26 consideration and use of Qualcomm's chipsets and other suppliers' chipsets.
27 Qualcomm has had limited access (and in some case no access) to Apple's
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1 submissions to other regulatory agencies as well. For that reason, the full extent of
2 Apple's involvement in other investigations has not yet been fully revealed.

3 200. By misleading regulators, Apple released Qualcomm from its payment
4 obligations under the parties' Cooperation Agreement. Apple initially claimed that
5 its right to respond to regulators and collect payments under the Cooperation
6 Agreement was "unconditional"—arguing that it could say anything to agencies
7 about Qualcomm, "truthful or not", and still demand Cooperation Agreement
8 payments. Apple later conceded, as it had to, that the Cooperation Agreement's
9 protection for responses to regulatory inquiries is limited to truthful statements.
10 However, in its Complaint, Apple reversed itself again and reasserts the untenable
11 position that it can make false or misleading statements to regulators with impunity
12 and still be entitled to payments from Qualcomm under the Cooperation
13 Agreement. False statements are, by their very nature, not responsive to a
14 government inquiry. An untrue statement hinders, rather than facilitates, an
15 agency's investigation.

16 201. Apple's "Extortion" Allegations Against Qualcomm Are Made in Bad
17 Faith. As the parties engaged in discussions that Qualcomm thought were an
18 attempt to resolve the Cooperation Agreement dispute, Apple asked Qualcomm to
19 propose ways in which Apple could address Qualcomm's concerns, including
20 proposing clarifying statements that Apple could make to the KFTC to rectify the
21 situation. In a meeting in late 2016 between certain Qualcomm and Apple high-
22 level executives, an Apple executive first suggested that Qualcomm consider
23 whether Apple (even if it disagreed with Qualcomm's position) could resolve the
24 dispute by making remedial statements to the KFTC.

25 202. In response, Qualcomm proposed specific remedial steps Apple could
26 take to cure its conduct, including identifying specific examples of Apple's untrue
27 and misleading statements and providing the correct information relating to those
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1 statements. Apple summarily rejected the proposal it had requested from
2 Qualcomm.

3 203. Apple’s invitation to Qualcomm to propose remedies is an example of
4 Apple exploiting Qualcomm’s good faith efforts to negotiate. In its Complaint,
5 Apple repeatedly portrays Qualcomm’s *response to Apple’s request* as an attempt
6 by Qualcomm to “extort” Apple. That is plainly not true. What has become clear
7 is that Apple baited Qualcomm by asking Qualcomm to propose possible remedies
8 precisely so that Apple could later accuse Qualcomm of “extortion” in a lawsuit it
9 was already preparing to file.

10 204. Contrary to what Apple has alleged, as correspondence reveals,
11 Qualcomm has not tried to “gag” or “censor” Apple. Apple was and is free to
12 communicate with regulators. Qualcomm is in no way impeding Apple from
13 providing *truthful* information sought by agencies, regardless of whether that
14 information is critical of Qualcomm. Qualcomm, of course, cannot prevent Apple
15 from making *untrue* statements to agencies. But such conduct had contractual
16 consequences—namely, it released Qualcomm from the obligation to make
17 Cooperation Agreement payments.

18 205. *Apple Induced the KFTC To Impose Extraterritorial, Worldwide*
19 *Remedies Against Qualcomm.* Apple also urged the KFTC to impose remedies
20 against Qualcomm around the world—outside of Korea. Specifically, Apple
21 pleaded with the KFTC that its “relief should not be limited to purchases or sales
22 only in Korea”, arguing that this would “[p]rotect Korean [c]onsumers” and
23 “restore competition”. In other words, Apple urged the KFTC to regulate
24 Qualcomm’s licensing conduct in every country in the world, regardless of (i) those
25 countries’ respective intellectual property and competition laws, (ii) Qualcomm’s
26 due process rights in these jurisdictions, and (iii) whether the conduct had any
27 effect on Korea or Korean customers. This inducement of plainly extraterritorial,
28 worldwide regulatory remedies extinguished Qualcomm’s payment obligations

1 under the Cooperation Agreement. Inducing the KFTC to order Qualcomm to
2 modify its licensing practices in other countries is no different from Apple actively
3 inducing investigation or litigation in those countries.

4 206. By inducing governmental investigations, providing false and
5 misleading information to the agencies, and seeking extraterritorial, worldwide
6 remedies against Qualcomm, Apple directly denied Qualcomm the benefit of the
7 Cooperation Agreement. Apple also breached the covenant of good faith and fair
8 dealing implied in the Cooperation Agreement.

9 **B. Apple Interfered with Qualcomm's Agreements with the**
10 **Contract Manufacturers.**

11 207. The Contract Manufacturers' license agreements were entered into on
12 terms consistent with others in the industry, without Apple's involvement. In an
13 effort to impose its own terms on Qualcomm, Apple has tortiously interfered with
14 Qualcomm's contracts with the Contract Manufacturers.

15 208. Apple prevented, restricted, and discouraged the Contract
16 Manufacturers from complying fully with the terms of their license agreements,
17 which is prohibited by the Cooperation Agreement.

18 209. Accordingly, Apple (i) violated its obligations under Section 4 of the
19 parties' Cooperation Agreement and extinguished Qualcomm's payment
20 obligations under Section 7, and (ii) tortiously interfered with Qualcomm's
21 contractual relationship with the Contract Manufacturers.

22 210. *Audit Interference.* Apple has tortiously interfered with each of the
23 Contract Manufacturers' license agreements by forcing the Contract Manufacturers
24 to block Qualcomm from exercising its right to audit the Contract Manufacturers.

25 211. Qualcomm has the right to audit each of the Contract Manufacturers to
26 confirm that they are fully paying the royalties they owe Qualcomm under their
27 respective licenses agreements. The audits are conducted by independent royalty
28 auditors who enter into non-disclosure agreements with the Contract

1 Manufacturers, ensuring that no confidential information belonging to the Contract
2 Manufacturers or any of their customers will be provided to Qualcomm. The audit
3 is supposed to cover books and records concerning any devices the Contract
4 Manufacturers sell, including documents evidencing the number of devices sold and
5 the consideration charged by the Contract Manufacturer for such sales.

6 212. Apple has routinely obstructed these audits by prohibiting the Contract
7 Manufacturers from providing the independent royalty auditors with even basic
8 information about units sold to Apple. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 213. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] Apple is
20 seeking to obtain the benefits of relying on the Foxconn license agreement while at
21 the same time interfering with Qualcomm's rights under that agreement.

22 214. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 215. Due to Apple's interference, Qualcomm is unable to exercise its audit
26 rights to determine whether it is receiving all the royalties that the Contract
27 Manufacturers owe Qualcomm on Apple products.

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1 216. Interference with Contract Manufacturers' Royalty Payments. Apple
2 also actively and intentionally interfered with the Contract Manufacturers' payment
3 obligations to Qualcomm, causing certain Contract Manufacturers to withhold
4 royalties they owe Qualcomm. In so doing, Apple violated Section 4 of the
5 Cooperation Agreement, and tortiously interfered with Qualcomm's agreements
6 with the Contract Manufacturers.

7 217. Although Apple is obliged to reimburse the Contract Manufacturers
8 for their royalty payments to Qualcomm, at some point in 2016, Apple began
9 refusing to reimburse the Contract Manufacturers for most of the amounts owed to
10 Qualcomm as royalties on devices sold to Apple.

11 218. Apple did this for the direct purpose, and with the effect, of causing
12 those manufacturers to breach their own agreements with Qualcomm and by failing
13 to make required royalty payments on devices sold to Apple.

14 219. For example, in late January 2017, Foxconn provided Qualcomm with
15 the iPhone royalty report for Q4 2016. The report specified a nearly [REDACTED]
16 royalty due, but Foxconn requested that the invoice be issued for approximately
17 [REDACTED] of that amount because that was the "approval amount" from its
18 customer—Apple.

19 220. Apple acknowledges as much in its Complaint, stating that it has
20 withheld an amount representing royalties owed to Qualcomm from the Contract
21 Manufacturers. Foxconn confirmed this was the case, informing Qualcomm that
22 [REDACTED]
23 [REDACTED]

24 221. Further confirming its interference, Apple informed Qualcomm in
25 writing that it is withholding royalty reimbursement payments from certain
26 Contract Manufacturers, payments of virtually the same amount as the Contract
27 Manufacturers have asked Qualcomm to carve out from their invoices and withheld
28 from their payments to Qualcomm. [REDACTED]

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C. Apple Misrepresented the Performance of Qualcomm-Based iPhones and Threatened Qualcomm Not To Disclose the Truth.

222. Apple deliberately chose not to utilize certain speed-increasing features of Qualcomm’s chipsets in the iPhone 7 in an effort to match the slower speeds of Intel’s chipsets in other models of the iPhone 7. Apple used threats to prevent Qualcomm from making public comparisons of (i) the performance of the Qualcomm-based iPhones and Intel-based iPhones, or (ii) the performance of the Qualcomm chipsets in Qualcomm-based competitive devices and those in iPhones. Having rejected Qualcomm’s chipset enhancements and prevented Qualcomm from making public comparisons, Apple asserted, publicly and falsely, that there was “no discernible difference” between iPhones with Intel chipsets and those with Qualcomm chipsets.

223. Apple Chose Not to Utilize the Full Power of Qualcomm’s Chipsets.

On September 16, 2016, Apple released some iPhone 7 models with Qualcomm chipsets on select networks, whereas other models of the iPhone 7 were released on other networks using Intel chipsets.

224. Prior to the iPhone 7 launch, it had been five years since Apple launched a new generation of the iPhone that used an Infineon or Intel chipset. From 2011 until the fall of 2016, Qualcomm was Apple’s only cellular chipset supplier for new (*i.e.*, non-legacy) iPhones. Apple used only Qualcomm’s chipsets for five years because, among other reasons, Qualcomm’s chipsets were better than the competition, such as Intel, and Qualcomm’s chipsets (unlike its competitors) were able to meet Apple’s rigid schedule demands. That has not changed—Qualcomm’s chipsets are still better than the competition.

1 225. The Qualcomm chipset used in the iPhone 7, which relies on
2 Qualcomm's X12 modem, is capable of downloading data at speeds up to 600
3 megabits per second. By contrast, the modems in Intel's chipsets are capable of
4 downloading data at speeds of only 450 megabits per second.

5 226. To create artificial parity between the Qualcomm-based iPhone 7 and
6 the Intel-based iPhone 7, Apple decided not to use certain capabilities of the
7 Qualcomm chipset for the Qualcomm-based iPhone 7, so that they would run at
8 speeds closer to those of the inferior Intel-based iPhone 7. For example, Apple
9 decided not to use Qualcomm software that increases download rates, even though
10 that technology is enabled by other commercial devices launched in 2016, such as
11 the Samsung Galaxy S7.

12 227. Apple's decision not to use certain enhanced features of Qualcomm's
13 chipset prevented a more capable version of the iPhone 7 from reaching the market.
14 In addition, Apple's decision potentially could impede efficiency of other users on
15 the entire network. The inefficient allocation of bandwidth to iPhones has a
16 potential ripple effect across a whole network.

17 228. Apple Concealed the Superiority of the Qualcomm-Based iPhone 7
18 and Threatened Qualcomm Not to Disclose It. Apple made clear to Qualcomm that
19 if Qualcomm disclosed the iPhone's chipset speed disparity to the public, it would
20 jeopardize Qualcomm's business and prospects of supplying any chipsets to Apple
21 in the future. On an August 2016 phone call, an Apple executive told a Qualcomm
22 executive that Apple would use its marketing organization to retaliate against
23 Qualcomm if Qualcomm publicly compared the performance of Qualcomm-based
24 iPhones to Intel-based iPhones. Apple's executive also warned that such a
25 comparison would severely impact Qualcomm's standing as a supplier to Apple.

26 229. Apple Publicly Denied the iPhone Performance Disparity. By
27 choosing not to take advantage of speed-increasing features in Qualcomm's
28 chipsets, Apple tried to ensure that iPhones using Qualcomm chipsets were as slow

1 as iPhones using Intel chipsets. But when the iPhone 7 was launched on September
2 16, 2016, the Qualcomm-based iPhones were still outperforming the Intel-based
3 iPhones.

4 230. Within weeks of the iPhone 7's launch, independent studies showed
5 "huge performance differences between Intel and Qualcomm versions of [the]
6 iPhone 7". (Forbes, Aaron Tilley, Oct. 20, 2016.) As a specific example, LTE
7 connectivity studies conducted by Cellular Insights revealed that Qualcomm
8 modems outperformed Intel modems by 30% overall and by 75% when the cellular
9 signal is weakest. Again, this was after Apple had chosen not to use the more
10 advanced features of the Qualcomm chipsets.

11 231. Analyst reports also made clear that, even though iPhones using
12 Qualcomm chipsets were outperforming iPhones using Intel chipsets, the
13 Qualcomm-based iPhones had the potential to perform even faster. In other words,
14 but for Apple's choice to deprive consumers of speed and value, the performance
15 gap between iPhones using Qualcomm chipsets and iPhones using Intel chipsets
16 would have been even wider. For example, Bloomberg reported that the Verizon
17 version of the iPhone 7 using Qualcomm's chipset was faster than its AT&T
18 version of the iPhone 7 using Intel's chipset, but *still "not as fast as it could be"*.
19 (Ian King and Scott Moritz. Bloomberg. "Apple's Chip Choices May Leave Some
20 iPhone Users in Slow Lane", November 18, 2016, available at:
21 [https://www.bloomberg.com/news/articles/2016-11-18/apple-chip-choices-may-leave-some-iphone-users-in-slow-lane.](https://www.bloomberg.com/news/articles/2016-11-18/apple-chip-choices-may-leave-some-iphone-users-in-slow-lane))

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23 232. The impact of Apple's choice not to use enhancements of the
24 Qualcomm chipset for Qualcomm-based iPhones was further reflected by studies
25 comparing iPhones with non-Apple phones that used the same Qualcomm modem.
26 For instance, based on comparisons between the Qualcomm-based iPhone 7 and a
27 Qualcomm-based Samsung Galaxy S7 (which used the same Qualcomm X12
28 modem as the Verizon iPhone 7), Bloomberg reported that "[t]he S7 was about

1 twice as fast as the iPhone 7 running on the same network with the same modem
2 chip.” Other studies even indicated that Apple’s Intel-based iPhone 7 operates with
3 slower modem performance than the Qualcomm-based, prior generation iPhone 6S.

4 233. Apple publicly denied the findings of these independent studies,
5 harming consumers in the process. For example, in response to reports suggesting
6 that (i) Apple had chosen not to enhance the speeds of iPhones using Qualcomm
7 chipsets, and (ii) the iPhones using Qualcomm chipsets were still outperforming the
8 iPhones using Intel chipsets, an Apple spokesperson falsely claimed that there was
9 no difference between the Qualcomm-based iPhones and the Intel-based iPhones.
10 The spokesperson told Bloomberg: “In all of our rigorous lab tests based on
11 wireless industry standards, in thousands of hours of real-world field testing, and in
12 extensive carrier partner testing, the data shows *there is no discernible difference* in
13 the wireless performance of any of the models.” Apple publicly claimed that there
14 was “no discernible difference” between iPhones using Intel chipsets and iPhones
15 using Qualcomm chipsets when it knew the opposite to be true.

16 234. Apple’s comment that there was “no discernible difference” was
17 designed to rebut the findings of these third-party studies and to imply, falsely, that
18 Qualcomm’s chipsets and Intel’s chipsets were indistinguishable.

19 235. Apple’s Misstatements About the Relative Performance of the
20 Qualcomm Versus Intel Modems in iPhone 7 and Its Threat Have Harmed
21 Qualcomm and Consumers. Absent Apple’s conduct, Qualcomm’s chipsets would
22 be in higher demand, and Qualcomm would be able to sell more chips to Apple to
23 meet that demand. Apple’s decision not to use Qualcomm’s enhanced chipsets
24 denied consumers access to higher-performing devices, and Apple’s threats and
25 other efforts to hide the truth deprived consumers of meaningful choice. And, as
26 noted above, by choosing not to utilize the higher data rates that Qualcomm’s
27 chipsets can reach for the Qualcomm-based iPhones, Apple reduces the data
28 download resources available to *other* smartphones operating on the network.

1 236. By choosing not to use the best performing Qualcomm-based iPhones
2 (and risking that consumers would find out), Apple faced a potential backlash from
3 its customers. It avoided that backlash by concealing the truth, at the expense of
4 Qualcomm and consumers alike.

5 **D. Apple Is Withholding Approximately [REDACTED] in**
6 **Chipset Payments That It Owes Qualcomm.**

7 237. Apple has refused to pay approximately [REDACTED] that it owes
8 Qualcomm for an LTE chipset feature related to “carrier aggregation” (or “CA”) in
9 certain chipsets. The carrier aggregation feature enables smartphones operating on
10 LTE networks to send and receive data at much faster rates than they otherwise
11 could. Apple itself has said that this feature allows the iPhone to run “faster than
12 ever”. But Apple refuses to honor its contractual commitment to pay Qualcomm
13 for the carrier aggregation feature in the chipsets and related software it designed
14 for Apple.

15 238. In Apple and Qualcomm’s Statement of Work, dated
16 February 28, 2013, as amended (the “2013 SOW”), Apple promised to pay
17 Qualcomm a set rate, called an [REDACTED] for Apple products that included
18 Qualcomm’s MDM9625 chipset³ and met any one of the four criteria under
19 Section 4.2, enumerated below:

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 ³ The MDM9625 chipset was included in certain models of the iPhone and the
28 iPad that Apple launched in 2014 and 2015.

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[REDACTED]

239. Apple has *admitted* that it owes Qualcomm approximately [REDACTED] relating to carrier aggregation, but it has refused to pay even that amount. In fact, Apple owes Qualcomm substantially more.

240. [REDACTED]

[REDACTED] For example, one of the events in question took place at Apple’s iPhone 6 and iPhone 6 Plus (together, the “iPhone 6”) launch event—a major press event. As Apple put it, “It’s not just another day in Cupertino.” September 9, 2014 was “an important day in Apple’s history.” Following the opening remarks, Apple’s Senior Vice President of Worldwide Marketing, Phil Schiller, took the stage to “*tell the world about iPhone 6.*” One of the differentiating features of the iPhone 6 that Mr. Schiller touted was carrier aggregation. He stated:

“There’s new advanced wireless capabilities. The LTE in iPhone 6 and 6 Plus is faster than ever, 150 Mb per second as compared to 100 in the previous products. It does that with a technology called carrier aggregation and there is now 20 LTE bands compared to 13 previously. That’s the most in any smartphone in the world. It means we are working now with over 200 carriers around the world to support LTE on iPhone 6.”

241. Media coverage of the launch event included Mr. Schiller’s promotion of the iPhone 6’s carrier aggregation capability. For example, one publication reported that “Apple is boasting the implementation of a new technology called ‘carrier aggregation’ to boost your wireless LTE speeds.” Michael Learmonth, *Apple’s New iPhones: Everything You Need To Know About iPhone 6, iPhone 6*

1 *Plus*, International Business Times (Sept. 9, 2014), [http://www.ibtimes.com/apples-](http://www.ibtimes.com/apples-new-iphones-everything-you-need-know-about-iphone-6-iphone-6-plus-1682936)
2 [new-iphones-everything-you-need-know-about-iphone-6-iphone-6-plus-1682936](http://www.ibtimes.com/apples-new-iphones-everything-you-need-know-about-iphone-6-iphone-6-plus-1682936).

3 242. [REDACTED]

4 [REDACTED]
5 [REDACTED], Apple similarly advertised the carrier aggregation feature for
6 its iPads containing Qualcomm’s MDM9625 chipset. At the October 16, 2014
7 launch event for the iPad Air 2 (another “Apple Special Event”), Mr. Schiller
8 stated that the device has “faster LTE with more bands. It has up to 150 Mb per
9 second—*that’s using carrier aggregation*. And it has 20 LTE bands. That’s more
10 than any other tablet. So it connects at high LTE speeds on more networks around
11 the world.” [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 243. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 244. [REDACTED]

1 245. [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 246. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 247. [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 248. [REDACTED]
12 [REDACTED]

13 **E. Apple Materially Breached the Master Software Agreement.**

14 249. Apple has materially breached the MSA [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 250. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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1 251. [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 252. [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 Qualcomm provides Apple with its software, which is then loaded onto an iPhone
 14 or iPad (by the Contract Manufacturers); [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]

20 253. [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

COUNT I

**Tortious Interference with Qualcomm’s License Agreements
 with the Contract Manufacturers**

24 254. Qualcomm restates, re-alleges, and incorporates by reference each of
 26 the allegations set forth above as if fully set forth herein.
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1 264. Specifically, in the February 3 letter, Apple admitted to Qualcomm
2 that [REDACTED]

3 [REDACTED]
4 265. Apple knew that by withholding these payments Apple would cause
5 the Contract Manufacturers to stop paying royalties to Qualcomm, in breach of their
6 respective license agreements. And in its Complaint, Apple explicitly
7 acknowledged its intent to withhold payments from the Contract Manufacturers,
8 “which are Qualcomm licensees”.

9 266. Apple specifically intended that the Contract Manufacturers would
10 withhold payments and motivated them to do so [REDACTED]

11 267. As a result of Apple’s interference, certain Contract Manufacturers
12 have reduced their royalty payments to Qualcomm. For the fourth quarter of 2016,
13 Foxconn withheld more than [REDACTED] in royalties that it owes to Qualcomm,
14 which it did as a direct result of Apple’s interference.

15 268. For the fourth quarter of 2016, Pegatron withheld more than
16 [REDACTED] in royalties that it owes to Qualcomm, which it did as a direct result of
17 Apple’s interference.

18 269. For the fourth quarter of 2016, Wistron also failed to pay royalties it
19 owed Qualcomm, an action that occurred as a direct result of Apple’s interference.

20 270. In addition, Apple has tortiously interfered with, and continues to
21 tortiously interfere with, the Contract Manufacturers’ license agreements by
22 intentionally obstructing Qualcomm’s right to audit the Contract Manufacturers.
23 Apple has prohibited the Contract Manufacturers from fully complying with
24 independent royalty auditors, which Apple was and is certain or substantially
25 certain would result in the obstruction of Qualcomm’s audit rights. As a result,
26 Qualcomm has been and will continue to be unable to close a number of such
27 audits. Qualcomm’s repeated attempts to resolve these outstanding audits have
28 been unsuccessful.

1 271. Independent royalty auditors attempt to conduct audits of each of the
2 Contract Manufacturers every two years. Since each Contract Manufacturer began
3 producing Apple products, independent royalty auditors have conducted (or
4 attempted to conduct) multiple audits of the Contract Manufacturers. Because
5 Apple has instructed the Contract Manufacturers not to comply fully with
6 independent royalty auditors as required under their license agreements, Qualcomm
7 has been unable to close multiple audits, including the most recent audit of each
8 Contract Manufacturer. Every day that Apple prevents Qualcomm from closing
9 these audits or otherwise interferes with Qualcomm’s audit rights, Apple is
10 tortiously interfering with Qualcomm’s business relationships with the Contract
11 Manufacturers.

12 272. By interfering with Qualcomm’s contractual right to audit the Contract
13 Manufacturers, Apple has caused, and continues to cause, the Contract
14 Manufacturers to breach their license agreements and has significantly disrupted
15 and continues to significantly disrupt Qualcomm’s ability to conduct its business
16 with the Contract Manufacturers.

17 273. Apple has also directed the Contract Manufacturers to [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] Apple’s interference with the
21 Contract Manufacturers’ payment obligations has significantly disrupted
22 Qualcomm’s ability to conduct its business with the Contract Manufacturers.

23 274. Apple’s actions were, and continue to be, intentionally malicious and
24 oppressive toward Qualcomm. Not only does Apple intend to injure Qualcomm’s
25 economic interests and its relationships with the Contract Manufacturers, but Apple
26 has consciously and repeatedly disregarded Qualcomm’s independent business
27 relationships with the Contract Manufacturers, and continues to do so.
28

1 275. Qualcomm has been damaged, and continues to be damaged by,
2 Apple's tortious interference with the Contract Manufacturers' payment of
3 royalties, their calculation of royalties, and their compliance with Qualcomm's
4 audits.

5 276. Accordingly, Qualcomm is entitled to its economic damages, punitive
6 damages, attorneys' fees, and injunctive relief necessary to prevent future
7 threatened injury (including loss of profits, loss of customers and potential
8 customers, loss of goodwill and product image, and loss of business relationships)
9 and to prevent a multiplicity of judicial proceedings.

10 **COUNT II**

11 **Declaration That Qualcomm's License Agreements with the Contract**
12 **Manufacturers Do Not Violate Qualcomm's FRAND Commitments to ETSI**

13 277. Qualcomm restates, re-alleges, and incorporates by reference each of
14 the allegations set forth above as if fully set forth herein.

15 278. An actual controversy has arisen and now exists between Qualcomm
16 and Apple, which have adverse legal interests, regarding whether Qualcomm's
17 license agreements with the Contract Manufacturers violate Qualcomm's FRAND
18 commitments to ETSI. There is a case or controversy of sufficient immediacy,
19 reality, and ripeness to warrant the issuance of a declaratory judgment.

20 279. Qualcomm entered into a license agreement with Compal on February
21 10, 2000. The parties have executed six amendments to the license agreement.

22 280. Qualcomm entered into a license agreement with Foxconn on October
23 18, 2005. The parties have executed four amendments to the license agreement.

24 281. Qualcomm entered into a license agreement with Wistron on May 23,
25 2007. The parties have executed one amendment to the license agreement.

26 282. Qualcomm entered into a license agreement with Pegatron on April 29,
27 2010. The parties have executed four amendments to the license agreement.
28

1 283. Each license agreement and amendment is the result of arm's-length
2 negotiation by two sophisticated parties.

3 284. Each of the Contract Manufacturers chose to sign an agreement with
4 Qualcomm that grants it rights to various categories of Qualcomm's intellectual
5 property, including broad licenses to Qualcomm's portfolio of patents.

6 285. Each of the Contract Manufacturers' license agreements grants rights
7 to practice Qualcomm's cellular SEPs for the specified standards at any time during
8 the term of the agreement, plus many other patents and applications owned by
9 Qualcomm as of an agreed-upon date. [REDACTED]

10 [REDACTED]
11 [REDACTED] Each of the license agreements grants a
12 license to thousands of Qualcomm's SEPs and NEPs.

13 286. The royalties for devices under each of the Contract Manufacturers'
14 license agreements are calculated as a percentage of the net selling price of the
15 entire device sold by the Contract Manufacturer.

16 287. Each of the Contract Manufacturers' license agreements is consistent
17 with the license agreements Qualcomm has entered into with many other companies
18 on broadly similar terms.

19 288. Each Contract Manufacturer began paying Qualcomm royalties under
20 the terms of its license agreement for non-Apple products before paying royalties
21 for Apple products.

22 289. Until recently, each of the Contract Manufacturers had consistently
23 paid Qualcomm royalties under its license agreement for manufacturing both non-
24 Apple products and Apple products, *regardless of whether those products also used*
25 *Qualcomm's components or software.*

26 290. This course of conduct and the allegations set forth above show that
27 Qualcomm's license agreements with the Contract Manufacturers are consistent
28 with ETSI's IPR policy.

1 299. Each of the Contract Manufacturers chose to sign an agreement with
2 Qualcomm that grants it rights to various categories of Qualcomm’s intellectual
3 property, including broad licenses to Qualcomm’s portfolio of patents.

4 300. Each of the Contract Manufacturers’ license agreements grants rights
5 to practice Qualcomm’s cellular SEPs for the specified standards at any time during
6 the term of the agreement, plus many other patents and applications owned by
7 Qualcomm as of an agreed-upon date. [REDACTED]

8 [REDACTED]
9 [REDACTED] Each of the license agreements grants a
10 license to thousands of Qualcomm’s SEPs and NEPs.

11 301. The royalties for devices under each of the Contract Manufacturers’
12 license agreements are calculated as a percentage of the net selling price of the
13 entire device sold by the Contract Manufacturer.

14 302. Each of the Contract Manufacturers’ license agreements is consistent
15 with the license agreements Qualcomm has entered into with many other companies
16 on broadly similar terms.

17 303. Each of Qualcomm’s license agreements with the Contract
18 Manufacturers was entered into before Apple ever used a single Qualcomm chipset
19 in its products. The terms of the Contract Manufacturers license agreements with
20 Qualcomm have never depended on whether Apple used Qualcomm or non-
21 Qualcomm chipsets in its iPhones.

22 304. Each Contract Manufacturer began paying Qualcomm royalties under
23 the terms of its license agreement for non-Apple products before paying royalties
24 for Apple products. Until recently, each of the Contract Manufacturers had
25 consistently paid Qualcomm royalties under its license agreement for
26 manufacturing both non-Apple products and Apple products, *regardless of whether*
27 *those products also used Qualcomm’s components or software.*
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1 313. On July 15, 2016, as promised, Qualcomm provided Apple with an
2 offer for a license covering Qualcomm’s “rest of world” (*i.e.*, other than China)
3 3G and 4G cellular SEPs.

4 314. In response, Apple rejected Qualcomm’s cellular SEP-only offer,
5 accused Qualcomm of breaching its FRAND commitment, and proposed instead
6 unreasonable terms with respect to a license for a portfolio of SEPs *and* NEPs,
7 insisting on paying substantially less than the royalties Qualcomm currently
8 receives from the Contract Manufacturers.

9 315. From the outset of the parties’ licensing negotiations, Qualcomm tried
10 to negotiate a framework to arbitrate some or all of the terms of a license
11 agreement.

12 316. Qualcomm first proposed arbitration several months before the
13 licensing negotiations began in earnest and then made a series of offers in an
14 attempt to find a mutually agreeable arbitration framework. Qualcomm even
15 offered to arbitrate under the arbitration procedures endorsed by the U.S. FTC in its
16 consent order with Google in 2013.

17 317. Qualcomm was willing to arbitrate *any* license for *any* portfolio of
18 patents in which Apple was interested, including the portfolio of patents for which
19 Apple made a counteroffer.

20 318. Apple refused each of Qualcomm’s arbitration proposals. Instead,
21 Apple put forth an unreasonable proposal of its own. Apple’s arbitration proposal
22 sought to impose unreasonable and unfair conditions on Qualcomm.

23 319. Apple’s insistence on imposing unreasonable and unfair conditions on
24 an arbitration process demonstrates Apple’s preference from the outset for patent-
25 by-patent litigation. Apple’s behavior shows that Apple was never interested in
26 entering into a direct cellular SEP license with Qualcomm on FRAND terms.

27 320. While Qualcomm complied with its FRAND commitments, Apple
28 demonstrated itself to be an unwilling licensee.

1 321. Qualcomm, therefore, seeks a declaratory judgment that it has satisfied
2 its FRAND commitments during its negotiations with Apple.

3 **COUNT V**

4 **Breach of the Statement of Work, dated February 28, 2013**

5 322. Qualcomm restates, re-alleges, and incorporates by reference each of
6 the allegations set forth above as if fully set forth herein.

7 323. The Statement of Work between Qualcomm and Apple, dated
8 February 28, 2013, as amended, (the “2013 SOW”), constitutes a valid and
9 enforceable agreement between the parties.

10 324. Qualcomm has performed all of its obligations under the 2013 SOW,
11 whereas Apple has breached at least Section 4.2 of the 2013 SOW.

12 325. On February 10, 2017, Qualcomm notified Apple that it was invoking
13 the 2013 SOW’s dispute resolution procedures, outlined in Attachment 2 of the
14 ASTA, due to Apple’s breach of Section 4.2 of the 2013 SOW. The parties
15 engaged in certain discussions under the terms of the ASTA’s dispute resolution
16 process.

17 326. Pursuant to Section 4.2, Apple promised to pay Qualcomm a set rate,
18 called an [REDACTED], for Apple products that included Qualcomm’s MDM9625
19 chipset and met any one of the following four criteria:

- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED]
- 26 [REDACTED]
- 27 [REDACTED]
- 28 [REDACTED]

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[REDACTED]

327. Apple is refusing to honor its commitment to make carrier aggregation payments under at least Section 4.2(A) and Section 4.2(D).

328. Apple admits that it owes Qualcomm approximately [REDACTED] pursuant to Section 4.2 of the 2013 SOW. But Apple has refused to pay even that amount in an attempt to force Qualcomm to give up its rights to the rest of the money Apple owes.

329. In total, Apple is withholding approximately [REDACTED] in payments it owes Qualcomm.

330. Qualcomm has been damaged by Apple’s breach of the 2013 SOW in an amount to be proven at trial.

COUNT VI

Breach of the Business Cooperation and Patent Agreement

331. Qualcomm restates, re-alleges, and incorporates by reference each of the allegations set forth above as if fully set forth herein.

332. The Cooperation Agreement between Qualcomm and Apple constitutes a valid and enforceable agreement between the parties.

333. Qualcomm has performed all of its obligations under the Cooperation Agreement.

334. On October 9, 2016, Qualcomm notified Apple that it was invoking the Cooperation Agreement’s dispute resolution procedures, and that it would not make any further Cooperation Agreement payments to Apple. The parties engaged in escalation discussions pursuant to the terms of the Cooperation Agreement’s dispute resolution process.

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335. Breach of Section 7 of the Cooperation Agreement

a. [REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

c. Apple breached Section 7 of the Cooperation Agreement by accepting payments from Qualcomm, fully aware that Apple had not fulfilled the necessary conditions under Section 7 to be entitled to such payments.

d. Apple has been waging a worldwide campaign against Qualcomm with the goal of causing regulatory agencies to pursue investigations that would harm Qualcomm and benefit Apple. Qualcomm became aware of specific Apple conduct that constitutes active inducement under the Cooperation Agreement. For example: (i) Apple induced Samsung to suggest to the KFTC that it should broaden its investigation into Qualcomm; (ii) Apple made untrue statements to the KFTC and other government agencies about Qualcomm; and

1 (iii) Apple urged the KFTC to impose extraterritorial, worldwide remedies against
2 Qualcomm. Apple has engaged in similar conduct with other regulatory agencies.

3 e. These investigations concern Qualcomm’s licensing business
4 and its component and software supply businesses. For example, the KFTC
5 investigated both (i) whether Qualcomm offered a license on FRAND terms and
6 conditions, and (ii) Qualcomm’s chipset business.

7 f. Because Qualcomm only recently became aware of the extent of
8 Apple’s campaign against Qualcomm, Qualcomm has made payments to Apple
9 under the Cooperation Agreement, unaware that Apple had failed to satisfy the
10 necessary conditions to be entitled to such payments. Apple accepted such
11 payments, despite knowing that it had failed to meet the necessary conditions for
12 payment under Section 7.

13 g. Apple breached the Cooperation Agreement by accepting
14 hundreds of millions of dollars in payments to which it was not entitled under the
15 terms of Section 7.

16 336. Breach of Section 4 of the Cooperation Agreement

17 a. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 b. Apple has breached Section 4 of the Cooperation Agreement by,
23 for example, (i) deliberately inducing the Contract Manufacturers to reduce royalty
24 payments to Qualcomm, (ii) interfering with the audit procedures provided for in
25 the license agreements between the Contract Manufacturers and Qualcomm, and
26 (iii) directing the Contract Manufacturers to misstate or manipulate the net selling
27 price of the devices they sell to Apple.

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1 c. Section 4 bars Apple from knowingly taking any action that
2 prevents, restricts, or discourages the Contract Manufacturers from complying fully
3 with the terms of their agreements with Qualcomm.

4 d. Apple breached Section 4 by discouraging the Contract
5 Manufacturers from making full royalty payments to Qualcomm, as required under
6 their agreements with Qualcomm.

7 e. Apple also breached Section 4 by interfering with the
8 independent royalty audit procedures provided for in the agreements between the
9 Contract Manufacturers and Qualcomm. Specifically, Apple prevented, restricted,
10 and discouraged the Contract Manufacturers from complying fully with Section 14
11 of their respective license agreements.

12 f. Apple breached Section 4 by directing the Contract
13 Manufacturers to misstate or manipulate the net selling price of the devices they sell
14 to Apple, thereby causing the Contract Manufacturers not to pay the full amount of
15 royalties owed to Qualcomm under their respective license agreements.

16 337. Qualcomm has been damaged by Apple's breaches of the Cooperation
17 Agreement in an amount to be proven at trial.

18 **COUNT VII**

19 **Breach of Implied Covenant of Good Faith and Fair Dealing**

20 338. Qualcomm restates, re-alleges, and incorporates by reference each of
21 the allegations set forth above as if fully set forth herein.

22 339. The Cooperation Agreement between Qualcomm and Apple
23 constitutes a valid and enforceable agreement between the parties.

24 340. Qualcomm has performed all of its obligations under the Cooperation
25 Agreement, and any conditions required for Apple's performance have occurred.

26 341. Both Apple and Qualcomm's purpose in entering into the Cooperation
27 Agreement was to allow the parties to continue to work together to explore
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1 mutually beneficial business opportunities that could deepen their business
2 relationship.

3 342. Qualcomm has gone to great lengths to assist Apple. As discussed
4 above, Qualcomm’s engineers have responded to countless requests and demands
5 from Apple to create innovative solutions for Apple’s technical problems. By
6 contrast, Apple unfairly has taken advantage of Qualcomm’s cooperation efforts
7 and actively sought to harm Qualcomm’s business.

8 343. By deliberately making false statements to government agencies about
9 Qualcomm’s licensing practices and chipset business—in an effort to obtain a
10 discount to Qualcomm’s intellectual property—Apple has evaded the clear intent of
11 Section 7 and denied Qualcomm the benefit of its bargain.

12 344. By inducing and inciting governmental agencies to attack Qualcomm’s
13 business, serving its own interests at the expense of Qualcomm, Apple has evaded
14 the clear intent of Section 7 and denied Qualcomm the benefit of its bargain.

15 345. By partially disclosing confidential terms from its agreements with
16 Qualcomm—and by deliberately mischaracterizing those terms—Apple sought to
17 incite a backlash against Qualcomm from its other business partners and to further
18 harm Qualcomm.

19 346. Apple’s conduct is expressly covered by the text of Section 7; but even
20 if it were not, Apple has violated the fundamental understanding between the
21 parties and frustrated the purpose behind Section 7.

22 347. Apple has breached the covenant of good faith and fair dealing implied
23 in every contract governed by California law.

24 348. Qualcomm has been damaged by Apple’s conduct in an amount to be
25 proven at trial.

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COUNT VIII

Unjust Enrichment

349. Qualcomm restates, re-alleges, and incorporates by reference each of the allegations set forth above as if fully set forth herein.

350. In the alternative only, if there was no meeting of the minds on the meaning of Section 7 of the Cooperation Agreement, then:

- a. No contract was formed and the Cooperation Agreement is unenforceable.
- b. Section 7 is ambiguous and reasonably capable of different interpretations.
- c. Qualcomm and Apple apparently attached materially different, irreconcilable meanings to Section 7 when the parties signed the Cooperation Agreement. *See* Letter from Apple to Qualcomm, dated November 16, 2016 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- d. Section 7 is a material term of the Cooperation Agreement.
- e. Neither Qualcomm nor Apple knew or had reason to know the conflicting interpretation that the other party had applied to Section 7 when the parties entered into the Cooperation Agreement.
- f. Because no contract was formed and the Cooperation Agreement is unenforceable, Apple received and unjustly retained the benefit of substantial payments from Qualcomm.

351. Qualcomm is therefore entitled to restitution of the value of all unjustly retained payments, in an amount to be proven at trial.

COUNT IX

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Declaration That Qualcomm Is Released from Any Obligation To Make Further Payments Under the Cooperation Agreement

352. Qualcomm restates, re-alleges, and incorporates by reference each of the allegations set forth above as if fully set forth herein.

353. An actual controversy has arisen and now exists between Qualcomm and Apple, which have adverse legal interests, regarding whether Qualcomm is released from any obligation to make further payments under the Cooperation Agreement, including those for the second, third, and fourth quarters of 2016. There is a case or controversy of sufficient immediacy, reality, and ripeness to warrant the issuance of a declaratory judgment.

354. As alleged above, Qualcomm’s payment obligations under the Cooperation Agreement were extinguished when Apple failed to satisfy the necessary conditions for receipt of payment under the Cooperation Agreement.

355. Further, under Section 7 of the Cooperation Agreement, Qualcomm’s payment obligations apply only so long as Apple does not, *inter alia*, file a lawsuit against Qualcomm that includes any claim that Qualcomm failed to offer a license on FRAND terms and conditions, or any claim that the sale of a Qualcomm chipset exhausts any Qualcomm patents. By filing this lawsuit and others in the United Kingdom, China, and Japan, all of which include such claims, Apple relieved Qualcomm of its obligation to make further payments under the Cooperation Agreement.

356. In addition, under Section 10.4 of the Cooperation Agreement, Qualcomm is released from any payment obligations, including already accrued obligations, if Apple, *inter alia*, files a lawsuit against Qualcomm that includes any claim that Qualcomm failed to offer a license on FRAND terms and conditions, or any claim that the sale of a Qualcomm chipset exhausts any Qualcomm patents. By filing this lawsuit and others in the United Kingdom, China, and Japan, all of which

1 include such claims, Apple relieved Qualcomm of its obligation to make further
2 payments under the Cooperation Agreement.

3 357. Therefore, Qualcomm seeks a declaratory judgment that Qualcomm is
4 released from any obligation to make further payments under the Cooperation
5 Agreement, including those for the second, third, and fourth quarters of 2016.

6 **COUNT X**

7 **Violations of California Unfair Competition Law**

8 358. Qualcomm restates, re-alleges, and incorporates by reference each of
9 the allegations set forth above as if fully set forth herein.

10 359. Apple has engaged, and continues to engage, in unfair business acts
11 and practices in violation of California Business and Professions Code § 17200.

12 360. Apple has engaged in unfair business practices, including by
13 (i) attempting to cover up the performance differences between Qualcomm and
14 Intel-based iPhone 7s; (ii) publicly claiming there was “no discernible difference”
15 between those phone models; and (iii) threatening Qualcomm to prevent it from
16 disclosing information regarding the superior performance of Qualcomm-based
17 iPhones over Intel-based iPhones. Apple’s conduct was designed to prevent
18 consumers from insisting on the superior Qualcomm-based iPhones. Apple’s
19 conduct has harmed Qualcomm’s chipset business. Absent Apple’s conduct,
20 Qualcomm’s chipsets would be in higher demand, and Qualcomm would be able to
21 sell more chipsets to meet that demand.

22 361. Apple’s conduct also reduces incentives for Qualcomm to innovate
23 superior products, knowing that the Apple may try to prevent consumers from
24 learning about their capabilities.

25 362. As a result of Apple’s unfair conduct, Qualcomm has lost both money
26 and property, including loss of profits, loss of customers and potential customers,
27 loss of goodwill and product image, and loss of business relationships.

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1 363. There is no utility to any of Apple’s unfair acts. In fact, Apple’s
2 business practices have harmed everyone who depends on the cellular industry,
3 including Qualcomm and consumers.

4 364. Under California Business and Professions Code § 17203, Qualcomm
5 is entitled to an injunction enjoining Apple from continuing to engage in the unfair
6 business acts and practices enumerated above in order to prevent threatened injury
7 to Qualcomm, as well as restitution of any amount Apple received as a result of
8 Apple’s conduct in violation of § 17200.

9 **COUNT XI**

10 **Breach of the Master Software Agreement**

11 365. Qualcomm restates, re-alleges, and incorporates by reference each of
12 the allegations set forth above as if fully set forth herein.

13 366. The MSA between Qualcomm and Apple constitutes a valid and
14 enforceable agreement between the parties.

15 367. Qualcomm has performed all of its obligations under the MSA.

16 368. Apple has materially breached the MSA [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 369. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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[REDACTED]

[REDACTED]

370. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

371. [REDACTED]

[REDACTED]

[REDACTED] Qualcomm

provides Apple with its software, which is then loaded onto an iPhone or iPad

(by the Contract Manufacturers); [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

372. [REDACTED]

[REDACTED]

[REDACTED]

373. Qualcomm has been damaged by each of Apple’s material breaches of

the MSA in an amount to be proven at trial. Qualcomm also is entitled to an

injunction enjoining Apple from continuing to breach the MSA, [REDACTED]

[REDACTED]

[REDACTED]

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Qualcomm demands a jury trial on all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Qualcomm respectfully requests that the Court dismiss Apple’s Complaint with prejudice and enter judgment as follows:

(a) Award compensatory and punitive damages, as provided by California Civil Code § 3294, for Apple’s tortious interference with Qualcomm’s contractual relationships with the Contract Manufacturers in an amount to be proven at trial and enjoin Apple from further tortious interference;

(b) Award damages for Apple’s breach of the Statement of Work, dated February 28, 2013, as amended, in an amount to be proven at trial;

(c) Award damages, including but not limited to restitutionary damages, for breaches of Sections 4 and 7 of the Cooperation Agreement in an amount to be proven at trial; or alternately, award damages, including but not limited to restitutionary damages, for breach of the Cooperation Agreement’s implied covenant of good faith and fair dealing in an amount to be proven at trial;

(d) Award restitution for the value of unjustly retained payments made by Qualcomm under the Cooperation Agreement in an amount to be proven at trial;

(e) Declare that Qualcomm is released from any obligation to make further payments under the Cooperation Agreement;

(f) Declare that each of Qualcomm’s license agreements with the Contract Manufacturers, listed below, does not violate Qualcomm’s FRAND commitments to ETSI;

- i. Compal Subscriber Unit Licensing Agreement, dated February 10, 2000, as amended;
- ii. Foxconn Subscriber Unit License Agreement, dated October 18, 2005, as amended;

- 1 (m) Award reasonable attorneys' fees to Qualcomm;
- 2 (n) Award expenses, costs, and disbursements in this action, including
- 3 prejudgment interest; and
- 4 (o) Award such other and further relief as the Court deems just and proper.

5
6 Dated: April 10, 2017

Respectfully submitted,

7
8 By: /s/ Evan R. Chesler

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 10, 2017, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

By: /s/ Evan R. Chesler
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