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17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA
19

20 QUALCOMM INCORPORATED,,
21 Plaintiff,
22 vs.
23 APPLE INCORPORATED,
24 Defendant.

CASE NO. 3:17-CV-02402-CAB-MDD
**JOINT MOTION FOR
DETERMINATION OF
DISCOVERY DISPUTES
REGARDING APPLE'S
RESPONSES AND OBJECTIONS
TO QUALCOMM'S
INTERROGATORY NO. 6**

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1 **JOINT MOTION FOR DETERMINATION OF DISCOVERY DISPUTE**

2 Pursuant to the provisions of this Court’s Civil Pretrial Procedures regarding
3 discovery disputes, Qualcomm Incorporated (“Qualcomm”) and Apple Inc.
4 (“Apple”) submit this Joint Motion for Determination of Discovery Disputes
5 concerning certain of Apple’s responses and objections to Qualcomm’s First Set of
6 Interrogatories, served on March 9 and May 9, 2018. Given that only one
7 interrogatory response is at issue in this submission, the Parties are not submitting a
8 separate memorandum of points and authorities. Concurrently with this Joint
9 Motion, Qualcomm is also filing a declaration regarding compliance with the
10 Court’s meet and confer requirements.

11 This Court extended the deadline to file a joint motion on this set of discovery
12 to June 29, 2018. (Dkt. No. 105, 120.)

13 **I. INTERROGATORY NO. 6 REQUESTING BASIS FOR LICENSE**
14 **DEFENSE**

15 **A. Qualcomm’s Introduction**

16 Qualcomm seeks foundational discovery regarding Apple’s allegation that the
17 Asserted Patents are licensed. In response to Qualcomm’s discovery requests,
18 Apple refuses to provide clear positions regarding the bases for the licensing and
19 exhaustion defenses plead in its Complaint, even though Apple has the necessary
20 information in its possession, custody and control. Apple’s failure to appropriately
21 respond to Qualcomm’s interrogatory is impeding the progress of this case.

22
23 **INTERROGATORY NO. 6:**

24 Explain in detail all factual and legal bases for any contention by You that
25 any of the Accused Products are subject to any license(s) to the Qualcomm Asserted
26 Patents, including by identifying (i) each such license and the parties thereto; (ii)
27 each Qualcomm Asserted Patent you contend is affected by the license; (iii) the
28 Accused Product(s) or the Component of the Accused Products You contend are

1 covered by each license; and (iv) the period of time during which You contend each
2 license covered each Accused Product, and by explaining how each license covers
3 each Accused Products; and identify all evidence you contend supports your
4 contention.

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6 **RESPONSE TO INTERROGATORY NO. 6:**

7 Apple incorporates its General Objections above as if set forth fully herein.
8 Apple objects to this Interrogatory to the extent that it seeks identification of “all
9 factual and legal bases” and “all evidence” on the grounds of over breadth, undue
10 burden, and expense. Apple further objects to this Interrogatory to the extent it calls
11 for information that is protected by the attorney-client privilege, the attorney work
12 product doctrine, the common interest privilege, or any other applicable privilege or
13 immunity against disclosure. Apple objects to this Interrogatory to the extent that it
14 requires a legal conclusion to provide the information that is sought. Apple objects
15 to this Interrogatory to the extent that it is cumulative and/or duplicative of other
16 Interrogatories contained herein.

17 Subject to and without waiving the foregoing specific objections and General
18 Objections, Apple responds as follows:

19 Apple directs Qualcomm to the transcript of the parties’ February 7, 2018
20 Case Management Conference, in which Qualcomm’s counsel states that [REDACTED]

21

22 Apple further directs Qualcomm to Q2017MDL1_03114785-
23 Q2017MDL1_03114843. Qualcomm produced these documents on March 2, 2018.

24 Apple is licensed to the extent any agreement between Qualcomm and an
25 Apple contract manufacturer extends to Apple or any accused products. At the
26 parties’ February 7, 2018 Case Management Conference, Qualcomm stated that

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In that regard, on March 3, 2018, pursuant to Court Order, [REDACTED]

[REDACTED]

Additionally, the '132 patent claims on its face the benefit of a provisional application filed prior to [REDACTED] and Qualcomm itself contends that the '132 patent is entitled to a priority date earlier than [REDACTED]. See Qualcomm's P.R. 3-1 Disclosures at 14-15.¹ [REDACTED]

[REDACTED]

Moreover, [REDACTED]

[REDACTED]

¹ Apple admits nothing with regard to Qualcomm's positions on priority dates of the Asserted Patents and reserves all rights to contest Qualcomm's position on priority dates of the Asserted Patents to the extent that one or more parent applications to which Qualcomm's is attempting to claim priority lacks sufficient disclosure to support any asserted claims.

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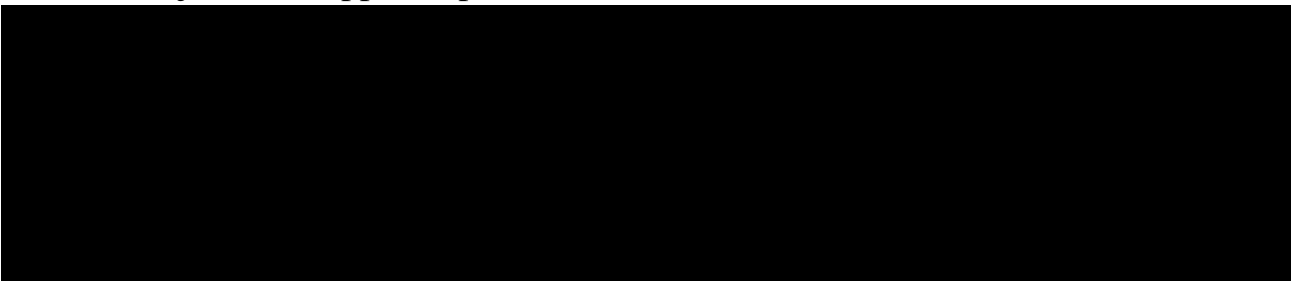
Apple's exhaustion

defense is consistent with the U.S. Supreme Court's landmark decision in Impression Products, Inc. v. Lexmark International, Inc., holding *inter alia*, that a patent holder may demand only "one reward" for its patented products, and when it has secured the reward for its invention, it may not, under the patent laws, further restrict the use or enjoyment of the item.

Investigation and discovery are ongoing in this case. The objections and responses are based upon information currently available to Apple, and are made without prejudice to Apple's rights to use or rely on any subsequently discovered information. Apple specifically reserves the right to supplement, amend, modify, and/or correct these responses during discovery.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6:

Apple incorporates its General and Specific Objections as if set forth fully herein. Subject to and without waiving the foregoing specific objections and General Objections, Apple responds further as follows:



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