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Attorneys for Plaintiff Realtek

Semiconductor Corp.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

Case No. _____

REALTEK SEMICONDUCTOR CORP.,

Plaintiff,

vs.

ANDREA ELECTRONICS CORP.,

Defendant.

**COMPLAINT FOR BREACH OF
CONTRACT AND DECLARATORY
JUDGMENT**

**PUBLIC REDACTED VERSION OF
DOCUMENT SOUGHT TO BE SEALED**

JURY TRIAL DEMANDED

1 Plaintiff Realtek Semiconductor Corporation (“Realtek”), for its Complaint against
2 Defendant Andrea Electronics Corporation (“Andrea”), states as follows:

3 **NATURE OF ACTION**

4 1. This is a breach of contract and declaratory judgment action brought by Realtek
5 against Andrea, concerning a License Agreement entered into between Realtek and Andrea
6 (“License Agreement”). [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 2. Despite [REDACTED]
14 [REDACTED] Andrea filed a complaint before the International Trade Commission, alleging
15 that Realtek’s products infringe five United States patents directed to systems utilizing the licensed
16 software algorithms. Andrea has requested that the International Trade Commission issue a Limited
17 Exclusion Order excluding both Realtek’s audio products and any third-party products (such as
18 laptops) that incorporate the licensed Realtek audio products from entry into the United States.
19 Andrea also filed suit in the United States District Court for the Eastern District of New York,
20 alleging infringement of the same five patents, but has not properly effected service of its complaint.

21 3. Andrea’s initiation of litigation and allegations of unlicensed infringement of its
22 patents against Realtek is a material breach of the License Agreement. Accordingly, Realtek brings
23 this action to recover damages resulting from Andrea’s breach. In addition, Realtek seeks injunctive
24 relief and an order requiring specific performance, requiring Andrea move to terminate the ITC
25 investigation as to Realtek and its customers and/or preventing Andrea from requesting a Limited
26 Exclusion Order or other injunctive relief in violation of the License Agreement. Realtek also seeks
27 a declaratory judgment that: (1) its accused products are licensed by Andrea under the License
28 Agreement; (2) the “intent and purpose” of the License Agreement cannot be effected without a

1 license to any and all of Andrea's audio processing patents, including without limitation any patent
2 Andrea has asserted against Realtek; (3) Andrea is barred from asserting the five asserted patents
3 under various equitable doctrines; and (4) Andrea's ability to audit Realtek is limited by the License
4 Agreement.

5 **THE PARTIES**

6 4. Realtek is a Taiwanese corporation with a principal place of business at No. 2,
7 Innovation Road II, Hsinchu Science Park, Hsinchu 300, Taiwan, R.O.C.

8 5. On information and belief, Andrea is a New York corporation with a principal place
9 of business at 65 Orville Drive, Suite One, Bohemia, NY 11716.

10 **JURISDICTION AND VENUE**

11 6. This action arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201
12 and 2202.

13 7. This Court has subject matter jurisdiction pursuant to, without limitation, 28 U.S.C.
14 §§ 2201 and 2202. This Court further has subject matter jurisdiction over this action pursuant to 28
15 U.S.C. § 1332(a) because this matter is between a citizen of a State and a citizen of a foreign state
16 and the amount in controversy exceeds \$75,000. This Court further has supplemental subject matter
17 jurisdiction pursuant to 28 U.S.C. § 1367(a).

18 8. This Court has personal jurisdiction over Andrea because Andrea has consented to
19 adjudicating disputes in this Court. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 9. Venue is appropriate because Andrea has consented to venue in this District. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 10. For purposes of intradistrict assignment pursuant to Civil Local Rules 3-2(c) and 3-
26 5(b), this Breach of Contract action should be assigned to the San Jose Division [REDACTED]

27 [REDACTED]

28 [REDACTED]

THE LICENSE AGREEMENT BETWEEN REALTEK AND ANDREA

1
2 11. Realtek is a maker of audio codec chips that are typically incorporated into personal
3 computers, such as laptops. In addition to hardware, Realtek provides the option of using its
4 software drivers to work in conjunction with the audio codec chips. Realtek has invested significant
5 time, money and resources in creating a distribution channel that supplies the chips to distributors
6 and original design manufacturers, primarily located in Asia. Realtek further makes software drivers
7 for its audio codec chips available [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 12. [REDACTED]

12 [REDACTED]
13 [REDACTED] On information and belief, [REDACTED]

14 [REDACTED], Andrea was struggling in the PC audio technology
15 market and wished to increase the availability of its audio software to manufacturers and end users.

16 13. On information and belief, [REDACTED] Andrea sold PC
17 audio equipment such as microphones and speakers, primarily in the after market. Andrea's audio
18 equipment worked in conjunction with software algorithms that performed audio signal processing.
19 Because Andrea's algorithms were not incorporated into most audio encoder/decoder ("codec")
20 chips at the time, Andrea sold microphone arrays and other audio equipment that connected to
21 computers through Universal Serial Bus (USB) connections and provided software drivers that
22 performed its algorithms on the main processor (rather than on the audio codec chip), which required
23 installation of the software. Andrea could not sell microphones and other audio equipment that used
24 analog connections, such as the microphone and speaker jacks, since they were directly connected to
25 the computer's audio codec chip. In order to increase sales by opening up this segment of the
26 market, Andrea desired to partner with audio codec chip manufacturers, such as Realtek, to
27 incorporate Andrea's software algorithms directly into drivers for audio codec chips.
28

1 14. Additionally, on information and belief, [REDACTED] a
2 purchaser of Andrea USB-based audio equipment was required to install Andrea’s audio software
3 onto the PC either from a disk or from the Internet. This extra step prevented the consumer from
4 having a “plug and play” experience. Thus, Andrea further desired to partner with audio codec chip
5 manufacturers to incorporate its software algorithms directly into drivers to provide a “plug and
6 play” experience to end users, again, to increase sales.

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

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

26 17. [REDACTED]
27 [REDACTED]
28 [REDACTED]

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