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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 APPLE INC.,

19 Plaintiff,

20 v.

21 KOSS CORPORATION,

22 Defendant.

Case No. 5:20-cv-05504

**APPLE INC.'S COMPLAINT FOR
BREACH OF CONTRACT AND
DECLARATORY JUDGMENT OF NON-
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Apple Inc. (“Apple”) files this Complaint to enjoin Defendant Koss Corporation
2 (“Koss”) from further breaching the Parties’ Confidentiality Agreement, as well as for a declaratory
3 judgment of non-infringement. In support of its Complaint, Apple alleges as follows:

4 **NATURE OF THE ACTION**

5 1. On July 22, 2020, Koss filed a patent infringement action against Apple in the United
6 States District Court for the Western District of Texas. (Compl., *Koss Corporation v. Apple Inc.*, No.
7 6:20-cv-00665, Dkt. No. 1 (“Texas Complaint”).) Koss’ Texas Complaint (a) is barred by, and is a
8 breach of, a 2017 Confidentiality Agreement that the parties entered at Koss’ insistence, and (b)
9 asserts baseless claims of patent infringement. This Complaint seeks relief for Apple on each of these
10 grounds.

11 2. In 2017, Koss sought out Apple in a purported attempt to engage in licensing
12 discussions. Despite Apple’s request that all discussions be conducted without restriction, Koss
13 insisted that the parties enter into a written Confidentiality Agreement. The parties ultimately signed
14 such an agreement, with an effective date of August 6, 2017 (the “Confidentiality Agreement”). In
15 the Confidentiality Agreement, Koss and Apple agreed that neither party would “use or attempt to
16 use any Communications [between the parties], or the existence thereof, in a litigation or any other
17 administrative or court proceeding for any purpose.”

18 3. According to the terms of the Confidentiality Agreement, while the agreement was in
19 force, Apple could not advise a Court of Koss’ threats to file baseless infringement claims or ask a
20 Court to declare Apple’s rights and resolve the legal uncertainty it faced. The Confidentiality
21 Agreement also restricted how Apple could disclose and use the existence and contents of the
22 discussions. But the agreement also protected Apple—Koss was not permitted to later use the fact
23 that Apple had agreed to a discussion with Koss, or the contents of the discussion, against Apple in
24 litigation. In other words, having enticed Apple to participate in discussions, reveal information, and
25 forego some of its legal options, Koss could not use Apple’s participation against it as a “gotcha” to
26 bring claims in a later litigation.

27 4. That, however, is exactly what Koss did. After securing Apple’s assent to the
28 Confidentiality Agreement, Koss filed the Texas Complaint, which revealed and described the parties’

1 discussions, and included multiple different claims that relied on the very discussions Koss had
2 agreed not to use in litigation. For example, Koss alleged in the Texas Complaint that it had “informed
3 Apple that it was infringing” one of its patents on September 7, 2017, and that, “over the following
4 two and a half years, Koss and its representatives met with Apple a total of four times in Apple’s
5 California offices” to discuss claim charts and infringement allegations.

6 5. Koss’ willful violation of the Confidentiality Agreement must be addressed
7 immediately. Koss has shown that it will not abide by the agreement and is willing to violate its
8 express terms without any regard for its contractual obligations or for the harm inflicted on Apple.
9 Unless enjoined, Koss is likely to continue impermissibly breaching the Confidentiality Agreement.

10 6. Although Koss has sued Apple in Texas, it had no legal right to do so—the claims it
11 brought are squarely foreclosed by the Confidentiality Agreement. But the filing of Koss’ Texas
12 Complaint, and the allegations in it, make clear that Koss has a long history of threatening Apple with
13 alleged violations of its patent rights, and that it has no intention of stopping any time soon. Koss’
14 infringement allegations are baseless: as Koss knows from the very confidential discussions it has
15 impermissibly used and disclosed, Apple does not infringe any of Koss’ asserted claims. To finally
16 put Koss’ litany of infringement threats to rest, therefore, in addition to seeking to enjoin Koss from
17 its continuing breach of the Confidentiality Agreement, Apple seeks a declaratory judgment of non-
18 infringement.

19 7. The appropriate venue for this dispute is California. As Koss noted in its Texas
20 Complaint, Koss and Apple met several times in this District, where Apple is headquartered, and the
21 allegedly infringing products are designed and developed by Apple engineers working in or near
22 Apple’s Cupertino, California, headquarters.

23 THE PARTIES

24 8. Plaintiff Apple Inc. is a California corporation having its principal place of business
25 at One Apple Park Way, Cupertino, California 95014. Apple has over 35,000 employees who work
26 in or near its headquarters in Cupertino, California.

27 9. Apple is a leading designer and manufacturer of mobile communication devices,
28 personal computers, portable digital media players, and headphones. As a result of its significant

1 investment in research and development, Apple has developed innovative technologies that have
2 changed the face of the computing and telecommunications industries for four decades.

3 10. Apple's many pioneering and revolutionary products reflect decades of innovation,
4 and include the Macintosh PC (first released in 1984), PowerBook (first released in 1991), Newton
5 (first released in 1993), PowerMac (first released in 1994), iMac (first released in 1998), iPod (first
6 released in 2001), iTunes Store (opened in 2003), MacBook (first released in 2006), iPhone and Apple
7 TV (first released in 2007), Apple App Store (opened in 2008), Siri (first released 2010), iPad (first
8 released in 2010), Apple Watch (first released in 2015), and AirPods (first released in 2016).

9 11. The United States Patent & Trademark Office has awarded Apple thousands of patents
10 protecting the technological inventions underlying Apple's groundbreaking products and services,
11 including on technology relating to Apple's AirPods and HomePod products. Many well-known
12 functionalities and features of Apple's products were made possible with the inventions of Apple
13 engineers working in and around its Cupertino headquarters.

14 12. On information and belief, Defendant Koss Corporation is a company organized and
15 existing under the laws of Delaware with a principal place of business at 4129 N. Port Washington
16 Avenue, Milwaukee, Wisconsin 53212.

17 **JURISDICTION AND VENUE**

18 13. The Court has subject matter jurisdiction over the declaratory-judgment claims
19 presented in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because these claims arising under
20 the patent laws of the United States, 35 U.S.C. § 1, et seq., and under the Federal Declaratory
21 Judgment Act, 28 U.S.C. §§ 2201 and 2202.

22 14. On July 22, 2020, Koss filed a complaint against Apple in the Western District of
23 Texas alleging that certain of Apple's products infringe United States Patent Nos. 10,206,025 (the
24 "'025 Patent"); 10,298,451 (the "'451 patent"); 10,469,934 (the "'934 Patent"); 10,491,982 (the
25 "'982 Patent"); and 10,506,325 (the "'325 Patent") (collectively, the "Patents-in-Suit").

26 15. While the timing and form of Koss' claims in the Texas Complaint are barred by the
27 parties' Confidentiality Agreement, the Texas Complaint makes clear that there is and remains a
28 substantial controversy between Apple and Koss with regard to the non-infringement of the Patents-

1 in-Suit, and that this controversy is of sufficient immediacy and reality to warrant the issuance of a
2 declaratory judgment of non-infringement. In particular, Apple asserts that Apple's products,
3 including its AirPods and HomePod, do not infringe the Patents-in-Suit (as identified below), directly
4 or indirectly, literally or under the doctrine of equivalents. As the Texas Complaint reveals, Koss
5 contends that Apple's products do infringe the Patents-in-Suit. This Court thus has subject-matter
6 jurisdiction over Apple's claims seeking a declaratory judgment to resolve Apple's rights with respect
7 to these legal issues.

8 16. The Court has supplemental jurisdiction over the breach-of-contract claims asserted
9 herein pursuant to 28 U.S.C. § 1367, because those claims are so related to the declaratory-judgment
10 claims that they comprise part of the same case or controversy. For example, the breach-of-contract
11 claims asserted herein are based in part on the fact that Koss has asserted claims against Apple relating
12 to the patents at issue in the declaratory-judgment claims that are barred by the contract at issue.

13 17. The Court also has jurisdiction over the breach-of-contract claims asserted herein
14 pursuant to 28 U.S.C. § 1332(a)(1) because Apple and Koss are citizens of different states and the
15 amount in controversy herein exceeds \$75,000. As set forth above, Apple is incorporated in and has
16 its principal place of business in the state of California. Koss is incorporated in the state of Delaware
17 and has its principal place of business in Wisconsin. Therefore, the claims asserted herein are between
18 citizens of different states.

19 18. Further, the amount in controversy of the breach-of-contract claims herein exceeds
20 \$75,000. These claims seek relief in the form of an injunction barring Koss from violating a
21 contractual agreement between the parties by, among other things, making contractually-barred (and
22 false) claims that Apple willfully infringes certain patents. The value of this relief exceeds \$75,000
23 at least because the cost to Apple of defending against claims brought in breach of the parties'
24 contractual obligations would exceed that amount.

25 19. The Court has personal jurisdiction over Koss in this action because Koss has directed
26 and continues to direct acts to this District, including acts pertaining to the Patents-in-Suit and acts
27 giving rise to the claims for relief asserted in this action. Further, Koss has, and has had, continuous
28 and systematic contacts within the State of California, including this District, and has purposefully

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