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E-filing

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MEJ

CASCADES COMPUTER INNOVATION LLC, Plaintiff, v. RPX CORPORATION, HTC CORPORATION, LG ELECTRONICS, INC., MOTOROLA MOBILITY HOLDINGS, INC., SAMSUNG ELECTRONICS CO. LTD., DELL INC., Defendants.	Case No. CV 12 1143 **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Cascades Computer Innovation LLC ("Cascades") complains of defendants RPX Corporation, HTC Corporation, LG Electronics, Inc., Motorola Mobility Holdings, Inc., Samsung Electronics Co. Ltd. And Dell Inc. (collectively, "defendants"), as follows:

THE PARTIES

1. Cascades is an Illinois limited liability company having its principal place of business at 500 Skokie Boulevard, Suite 250, Northbrook, Illinois 60062. It has the exclusive right to license and enforce a portfolio of 38 patents owned by Elbrus International Limited and Elbrus Svarog L.P. (collectively, "Elbrus").

2. RPX Corporation is a Delaware corporation with a principal place of business at One Market Plaza, Steuart Tower, Suite 700, San Francisco, California 94105. Backed by the hugely successful venture capital firm Kleiner, Perkins (early investors in Amazon, Google, Genentech, AOL), RPX is a patent aggregator that acquires patents for its members (now in excess of 110), each of whom is granted a license in exchange for a payment ranging from $60,000 to $6,000,000. To date, RPX has accumulated more than 1,600 patents in various fields, not counting the 29,000 patents for which it recently acquired exclusive licensing rights.

3. HTC Corporation ("HTC") is a foreign corporation with corporate headquarters at 23 Xinghua Road, Taoyuan 330, Taiwan. HTC does substantial business in this judicial district including the marketing, sale, offering for sale, and importation of cellular telephone devices which are accused of patent infringement in this case.

4. LG Electronics, Inc. ("LG") is a foreign corporation having a place of business at LG Twin Towers 20, Yeouido dong, Yeongdeungpo-gu, Seoul, Republic of Korea 150-721 with its United States headquarters at 10101 Old Grove Road, San Diego CA 92131. LG does substantial business in this judicial district including the marketing, sale, offering for sale, and importation of cellular telephone devices.

5. Motorola Mobility Holdings, Inc. ("Motorola") is a Delaware corporation headquartered at 600 N. U.S. Highway 45, Libertyville, Illinois 60048. Motorola does substantial business in this judicial district including the marketing, sale, offering for sale, and importation of cellular telephone devices.

6. Samsung Electronics Co., Ltd. ("Samsung") is a foreign corporation with corporate headquarters at 250, 2-ga, Taepyung-ro, Jung-gu, Seoul 100-742, Republic of Korea. Samsung does substantial business in this judicial district including the marketing, sale, offering for sale, and importation of cellular telephone devices and tablet computers.

7. Dell Inc. ("Dell") is a Delaware corporation with an office located at 1 Dell Way, Round Rock, Texas. Dell does substantial business in this judicial district including the marketing, sale, offering for sale, and importation of cellular telephone devices.

8. HTC, LG, Motorola, Samsung and Dell manufacture and sell wireless portable communication devices including cellular telephones and computer tablets that employ the Android operating system. Each is a member of RPX, as is Google, the owner of the Android operating system.

JURISDICTION AND VENUE

9. This Complaint states claims for violation of the federal antitrust laws and for violation of the Cartwright Act and California unfair competition law. This Court has subject matter jurisdiction over the federal antitrust claims under 15 U.S.C. §§ 15 and 26 and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Cascades' California state law claims under 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form part of the same case or controversy.

10. At all times relevant to this claim defendants have engaged in and affected interstate commerce and foreign import commerce and have affected United States export

commerce all within the meaning of the Sherman Act (15 U.S.C. §§ 1, 2 and 6(a)).

11. The violations of law described in this Complaint have been and are being carried out in the United States and in this judicial district. Venue in this judicial district is proper under 15 U.S.C. §§ 15 and 22 and 28 U.S.C. §§ 1391(c) and (d).

Cascades and Elbrus

12. After 40 years with the Russian government's Institute of Precision Mechanics and Computer Technology (where he led the development of the Elbrus supercomputers underpinning the Russian space mission control center), the lead inventor of the Cascades/Elbrus patents, Boris Babaian, turned his focus to private industry. As chairman and chief technologist of Elbrus International, he (and the same team that developed three generations of supercomputers) developed pioneering software technology like that covered, for example, by United States Patent No. 7,065,750, entitled "Method and Apparatus for Preserving Precise Exceptions in Binary Translated Code," issued June 20, 2006 (the "'750 patent"). Mr. Babaian is an Intel Fellow and the chairman and chief technologist of Elbrus International and oversees a design team that traces its roots to the days of Sputnik, the Soviet space satellite often cited as the catalyst for the scientific research that led to many Western technological innovations, such as the Internet. As noted above, Cascades acquired the exclusive right to license and enforce more than 35 Elbrus patents, including the '750 patent: 5,418,975, 5,781,924, 5,794,029, 5,889,985, 5,923,871, 5,958,048, 5,983,336, 6,243,822, 6,265,896, 6,301,706, 6,313,691, 6,320,446, 6,323,688, 6,351,155, 6,363,405, 6,366,130, 6,373,149, 6,412,105, 6,424,181, 6,516,462, 6,516,463, 6,526,573, 6,549,903, 6,560,775, 6,564,372, 6,567,831, 6,584,611, 6,594,824, 6,668,316, 6,718,541, 6,732,220, 6,751,645, 6,820,255, 6,954,927, 7,003,650, 7,065,750, 7,069,412, 7,143,401. Elbrus granted a license to Intel under its patents for a substantial lump-sum payment. Various of these patents are infringed by the manufacturing

defendants and all are subject to the group boycott and concerted refusal to deal complained of herein.

The Cascades Patents And Google's Android Operating Systems

13. Google's Android operating system has become the dominant mobile operating system in the world, achieving a 40% market share. The manufacturing defendants dominate the Android market in the United States as device suppliers that use the Android operating systems (HTC (41%), Motorola (35%), Samsung (17%) and LG (4%)). Dell has a market share below 4% but, together with the other manufacturing defendants, sells more than 90% of all cellular phones sold in the United States that use the Android operating systems. More than 300,000 applications are available for use on Android devices. An operating system of some kind is installed on more than 130 million devices and more than 10 billion applications are downloaded on those devices each year. Only devices that meet Google's compatibility requirements can install such applications on Android-based phones and tablets. The technology of the '750 patent, and others in the Cascades portfolio, facilitates the installation and use of such applications on Android devices (such as smart phones), through dependency trees, which permits the optimization of the bytes code used in an application, thus, increasing the speed and value of the application. The '750 patent covers such optimization techniques.

14. Defendant Motorola owns more than 17,000 patents in the area of mobile phone technology, making it one of the dominant patent holders in the mobile telephone market. Google has agreed to acquire Motorola for $12.5 billion to gain control of its patent portfolio. Together with the other defendants, Motorola (and Google) and RPX own or control many of the patents of significance for mobile phone technology. The number of U.S. patents owned or now controlled by each defendant is approximately: Google/Motorola, 22,046; Samsung, 47,348; LG, 16,823, HTC, 222; Dell, 2,461; and RPX, 1,600. Recently, RPX became an agent for

licensing Alcatel-Lucent's portfolio of 29,000 issued United States patents, allowing it to effectively control the licensing of those patents as well. Together the defendants own or control nearly 120,000 U.S. patents. Cascades owns or controls less than 100.

The Anti-Troll/Anti-NPE Conspiracy

15. The term "patent troll" was created in 2002 by Peter Detkin, then head of litigation for Intel Corporation. "Trolling for Dollars," The Recorder, Sandburg, B. (July 30, 2001) (Exhibit A). Intel had been sued for patent infringement and, later, for defamation for calling its opponent in the then-pending litigation "a patent extortionist." According to Detkin, a patent troll is "somebody who tries to make a lot of money off a patent that they are not practicing and have no intention of practicing and in most cases never practiced.". Detkin is a co-founder of Intellectual Ventures, one of the biggest patent aggregators and (thus, by his own definition) patent trolls in now existence. Intellectual Ventures accumulated more than 30,000 patents on the pledge that it was only acquiring patents for defensive purposes. That pledge was quickly broken in a string of high-profile patent infringement cases Intellectual Ventures brought in Delaware.

16. The troll label has been extended to non-manufacturing entities (called "NPEs") who are companies like Cascades that do not manufacture or sell products covered by patents they own or control. Of course, each of the defendants also owns or controls numerous patents that cover products they neither manufacture nor sell.

17. RPX is a spin-off of Intellectual Ventures and was originally backed by three venture capital firms, including Kleiner Perkins. RPX's stated goal is to protect its members from patent infringement claims from NPEs. In most cases, like in this case, an inventor turns to an NPE for financial or strategic assistance in asserting his or her patent rights, since inventors oftentimes lack the financial wherewithal or experience to do so themselves. Thus, if an inventor

like Mr. Babaian cannot afford the extraordinary expense of patent enforcement (commonly, $3 million to $8 million per litigation through trial) or is not knowledgeable about how patent licensing and enforcement works in this country, he or she must turn to a company like Cascades to provide financial and other support to license the patents. As in this case, the companies that infringe an inventor's patents are frequently large multinational companies with vast resources to devote to the defense of any patent claims, regardless of merit. Cascades and other NPE companies try to level the playing field on which the large corporations and the individual inventor or small patent holder play, by providing financial and other assistance to make it a more equal contest.

18. Law firms like Winston & Strawn that represent two of the defendants (Motorola and Dell) and others, like Sony-Ericsson who infringe the Cascades patents, have openly encouraged their clients and potential clients not to negotiate settlements, accept licenses or settle independently with NPEs, regardless of the merits (http://wlflegalpulse.com/2010/09/22/web-seminar-makes-case-for-patent-troll-lawsuit-targets-to-fight-back; http://wlflegalpulse.files.wordpress.com/ 2010/09/troll-presentation-5.pdf).

The RPX Business Model

19. RPX has more than 110 members, including each of the named manufacturing defendants and other infringers of the '750 patent and various other Cascades patents, including ASUSTEK Computer, Inc., Hynix Semiconductor, Inc., Philips Koninklijke Electronics, N.V., Sharp Electronics Corp., Sony-Ericsson and Pantech Wireless, Inc., each of which have also been sued for infringement of a Cascades patent. In 2010, RPX contacted Cascades about the possibility of acquiring license rights in the Elbrus portfolio and made a substantial offer on behalf of its members.

20. RPX frequently acts as the agent or intermediary of its members for purposes of

acquiring patents and negotiating licensing and purchase terms on behalf of its members collectively. Funding is provided by members and each can renew its membership periodically by paying additional monies to RPX. Although the contracts RPX has with its members purportedly give members the ability to deal independently in their own self-interest, the whole purpose of RPX and the reason for joining RPX is to form an industry group that can force individual inventors, patent owners and NPEs to deal collectively with RPX as an agent for its members acting in concert with each other, rather than having each member deal separately and independently with the patent holder. RPX selects its members based upon the frequency that they have been sued for patent infringement by NPEs. Currently, RPX has targeted for membership 275 companies that have been sued at least twice by an NPE.

21. On its website, RPX boasts about its ability to force lower prices through coercive, collective action on behalf of its members against NPEs:

> But even after an NPE has acquired an asset, RPX can help. NPEs acquire patents and in the process, take on the significant cost and risk of litigating against a large number of companies. RPX is often able to achieve "wholesale" pricing terms, where we can acquire rights for our members at significantly reduced cost relative to what the NPE might charge an individual company on its own. RPX believes we have saved our members tens of millions of dollars through these wholesale-priced transactions.
>
> Our approach enables our client network to manage patent litigation risks and costs through collective defensive patent initiatives, superior patent intelligence, and special advisory services.

http://www.rpxcorp.com/index.cfm?pageid=43.

22. RPX also gathers intelligence and data on patent acquisition opportunities, patent litigation and licensing activities and trends, all for the purpose of forcing lower royalty payments for licensing by combining the efforts of its members at the expense of their independent interests.

23. RPX has been accused of using coercive tactics with potential members to force

them to join RPX. A potential RPX member, Kaspersky Labs, claimed that RPX engaged in extortive and fraudulent practices by threatening that, if Kaspersky Labs did not join RPX, it could face lawsuits on patents RPX might acquire or that patents RPX already owned could be released to RPX members Kaspersky Labs had sued for infringement for possible retaliatory use against Kaspersky Labs (http://gametimeip.com/ 2011/05/31/patent-aggregator-rpx-accused-of-extortion-racketeering-wire-fraud).

24. RPX announced that its intention was to develop a new solution for dealing with NPEs:

> that will increase the value we provide for our current and prospective clients. For example, we intend to facilitate joint defense agreements and cross-licensing arrangements among our clients. A joint defense agreement is an agreement among multiple defendants in a lawsuit to appoint one legal counsel or group of legal counsel to represent multiple defendants. A cross-licensing arrangement is an agreement among two or more parties to license some or all of their patent portfolios to each other. As part of our potential joint defense solution, we are developing a plan to establish a risk retention group to help our clients cover costs incurred in defending patent infringement claims.

RPX Corporation, S.E.C. Registration Statement (Form S-1), at 16 (Jan. 21, 2011), *available at* http://www.secinfo.com/d14D5a.qbPx.htm.

25. By facilitating and funding joint defense arrangements, RPX enables its members to effectively act in concert in dealing with NPEs seeking to license their patents and eliminates the ability of its individual members to act independently.

26. RPX has recently offered NPE patent insurance to companies that may be sued for patent infringement by an NPE. This insurance, like the joint defense efforts, encourages group, not individual, efforts at negotiating or accepting patent licenses.

The RPX-Led Concerted Refusal to Deal

27. Initially, RPX negotiated with Cascades to acquire license rights under all of the Cascades patents for its 100-plus members (including each of the other defendants). The

manufacturing defendants were required to contribute to the settlement, which would have resulted in a high seven-figure payment to Cascades for a fully paid-up license. RPX's initial offer to license demonstrates its recognition of the validity and value of the Cascades patents.

28. RPX terminated negotiations with Cascades and withdraw its offer because one or more of its members allegedly would not fund the license deal. This demonstrated that all members either had to agree to a license or none would agree. On information and belief, after negotiations with Cascades ended, RPX and the other defendants conspired and agreed that none of them would separately negotiate with Cascades for a license and that all would act together to oppose Cascades' efforts to license and enforce the '750 and other Cascades patents, including through the mechanism of a joint defense arrangement among several of the defendants. On information and belief, the individual manufacturing defendants all agreed among themselves and with RPX not to negotiate independently with Cascades and to present a unified, concerted effort to oppose licensing and enforcement of the Cascades patents, with the objective of causing Cascades to abandon its efforts, accept a below-market-value offer by RPX or go out of business by virtue of the expense of litigation.

29. RPX members sign an agreement with RPX that effectively limits their freedom to negotiate licenses independently. RPX represents that, by negotiating licenses through it, royalty amounts can be reduced. By penalizing those who do not renew and continue their membership in RPX, members are effectively encouraged not to deal independently with patent owners like Cascades. RPX boasts that "more NPE activity spurs companies to join our network" -- the network being the 110 RPX members that, together with RPX, combine and conspire to accept, reject or negotiate licenses with NPEs.

30. As evidence of the conspiracy, the manufacturing defendants (HTC, LG, Motorola, Samsung and Dell) have clearly acted against their individual economic interests. In

January 2012, Cascades offered each of LG, Motorola, Samsung and HTC an identical license proposal that would have required a lump-sum royalty payment of $5 million for a fully paid-up license under all the Cascades patents with the right to recover up to all of the payment based on 25% of the licensing revenues that Cascades received from any other infringer. Thus, for example, if any individual defendant had accepted the offer and paid its $5 million and Cascades subsequently received an additional $15 million of licensing revenues from other sources, the defendant would recoup $3.75 million (25% of $15 million), so its net cost would be $1.25 million. If Cascades subsequently received $20 million or more, then the defendant would recoup all its costs. No manufacturing defendant even responded to the offer, clearly showing that the combination, agreement and conspiracy between them caused each individual defendant to act contrary to its own private economic interests.

31. Defendants have contracted, combined and conspired to restrain trade by jointly refusing to negotiate or accept licenses under the Cascades patents. Defendants' goal is to force either a drastically reduced royalty for rights under the Cascades patents or no royalty payment at all.

32. Google, who is also a member of RPX, benefits from the group boycott as well because it lessens the royalty burden on its Android operating system. Google, like RPX, encourages others not to accept licenses under patents owned by NPEs.

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FEDERAL ANTITRUST LAWS
AGAINST ALL DEFENDANTS

33. This claim is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26): (a) to recover damages sustained by Cascades as a result of its being injured in its business and property by reason of defendants' violations of the antitrust laws, particularly

Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), (b) to obtain injunctive relief against threatened loss or damage as a result of such violations, and (c) to recover the expense of bringing and maintaining this action, including reasonable attorneys' fees.

34. Cascades has the exclusive right to license and enforce the '750 patent, as well as more than 30 other patents owned by Elbrus. Though the '750 patent is used as an example, efforts to license the entire portfolio of Cascades/Elbrus patents is impacted by the combination and conspiracy among the defendants and other RPX members.

35. The '750 patent relates to software embedded in mobile phones and tablet computers that permits optimization of applications when Android operating systems are used. Cascades has actively sought to license the '750 patent, together with its other patents, so that the patented technology could be legally shared with the entire mobile phone and tablet industry that uses Android operating systems and related, relevant submarkets. There is a separate submarket for licenses under the '750 patent, the other Cascades/Elbrus patents and the patented technology itself within the meaning of the antitrust laws. The geographic scope of this market or submarket is nationwide.

36. As part of its business, Cascades has offered to license its '750 patent (and its other patents) under nearly identical terms to those entities (like HTC, LG, Motorola, Samsung and Dell) that sell devices that use Android operating systems and want to lawfully practice the inventions of the Cascades' patents. Cascades has continuously sought to grant licenses to users of its patented technology. Many separate companies have been repeatedly contacted over the last year alone, including the defendants and other manufacturers (such as ASUS, Pantech Wireless, Philips Electronics and Sharp Electronics). Dell and Pantech each made token offers of less than $100,000 for a fully paid-up license under all the Cascades patents, offers which Cascades believes were spurious and made in bad faith. Other than these token offers, no

manufacturing entity has engaged in independent, good-faith discussions or negotiations with Cascades or even acknowledged letters offering licenses, thus, acting contrary to their own private interests and, ultimately, the public good. As noted above, Motorola, LG, Samsung and HTC, who dominate the Android market, refused to even discuss a license, despite being offered terms that could effectively result in a zero royalty. Motorola and others chose to negotiate only through RPX.

37. Currently, each of the manufacturing defendants, and numerous others in the industry, have openly and notoriously infringed the '750 patent (and other Cascades patents) and/or contributed to or induced the infringement of others of the '750 patent. But, with the exception of RPX (which effectively sought to negotiate a bulk license at a single price for all of its hundreds of members, including the manufacturing defendants, and then withdrew its offer when its members agreed to boycott Cascades), everyone has refused to engage in any serious license negotiations of any kind or even, in some cases, to acknowledge Cascades' efforts to license.

38. Hence, despite its efforts to license the '750 patent (and other patents), Cascades has been unsuccessful with the named manufacturing defendants who control more than 95% of the Android market in the United States. These defendants have market power in the Android market. Prospective licensees have made no independent contact with Cascades because of concerted efforts on the part of defendants (as counseled by RPX and by the Winston & Strawn firm) and others like them in the relevant industry to refuse licenses under the Cascades patents. This behavior has continued despite defendant RPX's purported one-time interest in purchasing license rights for its members under the Cascades patents and granting licenses to its members. This uniformity of action (indeed, of inaction) strongly demonstrates a group effort to refuse to license, thereby forcing license prices below a competitive level at monopsony prices. Such

actions are buyer or licensee boycotts and illegal *per se*.

Combination And Conspiracy In Restraint Of Trade

39. Under the auspices of agreements with RPX, joint defense agreements, NPE insurance, common counsel, meetings, phone calls, emails and discussions with RPX and otherwise, defendants have met, conferred, conspired, combined and agreed among themselves and, on information and belief, with other potential licensees of the Cascades patents, that they would not accept licenses from Cascades under terms and conditions offered by Cascades (even with the potential of no royalty) but, instead, have decided they would infringe without the payment of any royalties and, thus, would collectively continue to jointly refuse to license the Cascades patents. This has become clear from the uniformity of action by defendants, even against their own economic interests.

40. As one example, many of the manufacturing defendants have used common counsel, the law firm of Winston & Strawn, to not only coordinate efforts in the defense of pending lawsuits for patent infringement, but also to create uniform action in refusing to consider or accept (or, for that matter, even discuss) a license under the Cascades patented technology. The common representation has been solicited and then used to be certain that the defendants do not operate independently in evaluating the terms and conditions of a license under the Cascades patents. Winston publishes a website in which its partners have urged companies not to negotiate licenses with NPEs.

41. Based on the uniformity of action, the '750 patent has been discussed by defendants, and agreements and understandings have been made to attack the '750 patent rather than to accept a license under it. RPX, which itself accumulates patents, was involved in the combination and conspiracy and knows that the manufacturing defendants have combined to refuse any reasonable license offer. Like Winston, RPX encourages individual entities not to

independently accept licenses from NPEs.

42. RPX has suggested that companies join its organization to gain leverage in obtaining licenses from patent owners like Cascades at lower prices. It has also threatened those who do not join its pool with the risk that RPX might sell some of its patents to direct competitors for enforcement.

43. In furtherance of the conspiracy and combination, defendants have now jointly engaged in a common defense against the '750 patent and the other Cascades patents. In that way, they effectively have agreed to limit their individual freedom of action in dealing with Cascades, even against their private economic interests; they have shared information through RPX and others (including the Winston & Strawn law firm) concerning their purported separate and independent negotiations with Cascades; they have agreed to cooperate and to share expenses for and to assist each other in attacking the Cascades patents; they have, through RPX, also attempted to persuade other potential licensees not to discuss or accept a license from Cascades under any terms or conditions; and, they have agreed not to negotiate with or accept licenses from Cascades without consulting and agreeing with other members of the conspiracy concerning the acceptability of the terms offered by Cascades, all for the purpose of assuring uniformity of action in accepting or rejecting Cascades' efforts to grant licenses under its patents and, thus, controlling the royalty rate and terms under which the patents are licensed. On information and belief, others in the industry are also involved with the named defendants and have discussed and agreed upon joint courses of action in dealing with the Cascades patents.

44. Based on their uniformity of action, defendants have not negotiated separately and independently with Cascades but have, in fact, been sharing information via RPX, Winston & Strawn and otherwise concerning their boycott of any license negotiations and have been acting jointly and in combination. The various meetings, discussions and communications between

defendants and others have taken place for the express purpose and with the effect of creating a uniform, agreed upon course of action among them in refusing to accept a license under the Cascades patents except upon terms which defendants could jointly dictate. Defendants have not acted independently, but instead have conspired and agreed to restrict their independent action in negotiating a license with Cascades.

45. As a consequence of the above-referenced combination and joint action, defendants, in combination with others, have prevented Cascades from licensing its patents separately and independently to each of the members of the relevant industry, and have jointly dictated the terms and conditions of any license that would be acceptable.

Effects Of The Conspiracy And Combination

46. Defendants HTC, LG, Motorola, Samsung and Dell sell more than 95% of all mobile phones and tablets that use the Android operating systems in the United States and are an important part of the Android market and related, relevant sub-markets (including products that require a license from Cascades under its patented technology). The manufacturing defendants constitute nearly the total demand for the licensing of Cascades' patented technology and collectively enjoy substantial market power in that market and, together with others in the industry, have exercised their power to control the acceptance and terms and conditions of licenses from Cascades. This power is augmented by the willingness and agreement of the manufacturing defendants to infringe Cascades' patents until such time as Cascades capitulates by either going out of business, declining to enforce the patents or offering defendants patent license terms below fair market value.

47. As a direct and proximate result of the aforesaid conspiracy, Cascades has been unable to independently negotiate a single license with any of the defendants, or others in the industry, on terms and conditions that would have been established by the forces of supply and

demand in an unrestrained market; Cascades has been unable to consummate a license with any defendant; it has been prevented from obtaining royalties and other compensation it would otherwise have received for licenses under the Cascades patents; and, it has been forced to incur the expense of enforcing the Cascades patents against defendants and others. That not a single major supplier of mobile phones using the Android operating systems would even discuss or consider a license or even acknowledge Cascades' letters or efforts to grant licenses shows the uniformity of the boycott. The common defense agreements (whether reduced to writing or not) share a common purpose: do not settle with Cascades; do not discuss the possibility of a license; do not negotiate independently; act consistently with each other. Further, by agreeing to negotiate only through RPX, the manufacturing defendants have effectively sought a license at a much lower price than if they acted independently. Indeed, although some defendants acting through RPX initially supported the idea of accepting a license, that support eroded and the defendants then joined forces and effectively agreed not to accept a license at any price.

48. The conspiracy complained of by Cascades has unreasonably restrained competition in the market or submarket for the licensing by Cascades of its patented technology in violation of the rule of reason and Section 1 of the Sherman Act.

49. The conduct complained of by Cascades also constitutes a *per se* illegal combination or conspiracy by defendants to fix the prices, terms and conditions of licenses under Cascades' patented technology and thereby violates Section 1 of the Sherman Act.

50. The conduct complained of by Cascades also constitutes a horizontal boycott and concerted refusal to deal by defendants which violates both the *per se* rule and the rule of reason and accordingly violates Section 1 of the Sherman Act.

51. The aforesaid violations are continuing, and unless enjoined by this Court, will continue to cause irreparable harm to Cascades for which there is no adequate remedy at law.

Injury To Competition

52. The acts of defendants complained of herein have injured competition in at least the following ways. Defendants' combination and concerted activities have the purpose and effect of artificially and unlawfully diminishing the value of products and services in the relevant market, i.e., licenses. Such artificial devaluation has the purpose and effect of reducing plaintiff's and any NPE's incentives to innovate or support innovation, and restricting plaintiff's activities in pursuit of its business purpose of developing or supporting the development of technology for new and useful products that would compete in the marketplace with the existing products of the manufacturing defendants. Thus, output of new technologies is restricted, and prices of existing technologies are inflated. Further, by acting together to boycott Cascades (and most other NPEs), defendants as a group, and RPX and its members, have created a buyer cartel, the object of which is to force the price for a license below a competitive level, indeed, to monopsony prices or, in this case, no price at all.

53. Defendants' conduct also has the purpose and effect of driving plaintiff Cascades out of business. By refusing a license at any price and further concentrating market power (through the accumulation of patents), RPX and the other defendants have effectively raised prices and reduced output in products covered under the relevant patents.

54. Defendants' conduct also has the purpose and effect of raising barriers to entry in the market for licenses. With buyers setting interdependent, collusive and artificially diminished prices, chances of any NPE entering the marketplace are reduced. Defendants know this and are implementing a plan to eliminate all NPEs (at least those that seek to license their patent rights), effectively eliminating a major source of innovation and new invention.

Injury To Cascades

55. As a direct result of the aforesaid combination and conspiracy among defendants,

and the actions taken pursuant thereto, Cascades has been injured in its business and property as follows:

a. Cascades has been unable to effect any license agreements with defendants or anyone else under reasonable terms and conditions which it otherwise would have been able to accomplish, and has lost substantial royalty income as a result;

b. Cascades has been precluded from business growth which it would otherwise have achieved;

c. Cascades has been required to incur extraordinary legal expenses to enforce its patents against the manufacturing defendants and others; and,

d. Cascades has otherwise been injured in its business and property.

WHEREFORE, Cascades prays for relief as set forth below.

SECOND CLAIM FOR RELIEF
MONOPSONIZATION, CONSPIRACY TO MONOPSONIZE AND ATTEMPT TO MONOPSONIZE AGAINST ALL DEFENDANTS

56. Cascades realleges and reincorporates paragraphs 1 through 55 above as though specifically set forth herein.

57. Defendants have combined and conspired for the specifically anticompetitive purpose and with the effect of eliminating competition between themselves in the purchase of licenses from Cascades under its patented technology and also for the specifically anticompetitive purpose and with the effect of obtaining and maintaining the power to control the royalty rate (i.e., prices) and terms and conditions under which such patented technology would be licensed. Defendants have accordingly conspired to monopsonize (i.e., accumulate market power over the buyer's side of the market sufficient to confer effective control of that market) the relevant market and submarkets alleged herein in violation of Section 2 of the Sherman Act.

58. Defendants' unlawful conduct alleged herein has been undertaken for the specifically anticompetitive purpose of obtaining or maintaining monopsony power over terms and conditions upon which Cascades can license its patented technology to buyers thereof. Unless restrained by this Court, there is a dangerous likelihood that defendants will succeed in the illegal scheme and obtain monopsony power within the relevant market or submarkets alleged herein in violation of Section 2 of the Sherman Act.

59. Through conspiratorial and anticompetitive conduct which is not the result of good business skill or acumen, defendants have obtained and maintained monopsony power which allows them to control the terms and conditions upon which the prospective licensees of Cascades' patented technology will agree to license such technology, all to the exclusion of competition for licenses under Cascades' patented technology and so as to monopsonize the relevant market and submarkets alleged herein in violation of Section 2 of the Sherman Act.

WHEREFORE, Cascades prays for relief as set forth below.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE CARTWRIGHT ACT
(CAL. BUS. & PROF. CODE §§ 16700, *et. seq.*)
AGAINST ALL DEFENDANTS

60. Cascades realleges and reincorporates paragraphs 1 through 59 above as though specifically set forth herein.

61. Defendants formed and operate a trust and have combined their resources as set forth above. The purpose and effect of the trust is to restrain trade and competition. The anti-competitive effect of this restraint outweighs any beneficial effect on competition.

62. Defendants' illegal conduct described herein constitutes an unlawful trust that restrains trade, commerce, and competition in violation of California Business and Professions Code § 16700.

63. Defendants' conduct has caused injury to Cascades and defendants' conduct is a substantial factor in that injury.

WHEREFORE, Cascades prays for relief as set forth below.

FOURTH CLAIM FOR RELIEF
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE. §§ 17200 *et seq.*)
AGAINST ALL DEFENDANTS

64. Cascades realleges and reincorporates paragraphs 1 through 63 above as though specifically set forth herein.

65. Defendants' conduct has been unlawful and in violation of the California unfair competition law and, as alleged above, the conduct is an unlawful and unfair business practice. The conduct violates both the Sherman Act and the California Cartwright Act and offends the established public policy of California. The harm caused by defendants' conduct outweighs any benefits the conduct could possibly have.

66. Defendants' "unfair" and "unlawful" actions discussed herein constitute unfair competition within the meaning of California Business and Professions Code § 17200. Defendants' violations of Federal and California antitrust laws have caused irreparable harm to Cascades, entitling it to immediate and permanent injunctive relief and to restitution.

WHEREFORE, Cascades prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Cascades asks this Court to enter judgment against defendants, their subsidiaries, affiliates, agents, servants, employees, attorneys and all persons in active concert or participation with them, granting it the following relief:

A. A finding that the conspiracy, combination, understanding and agreement by and among the defendants, and others, and the other actions alleged above are in violation of Sections 1 and 2 of the Sherman Act;

B. A judgment in Cascades' favor and against defendants, jointly and severally, in an amount according to proof, which the evidence will show Cascades has sustained as a result of its being injured in its business and property as a result of defendants' violations of the antitrust laws and of Cascades' statutory rights, all as provided for under Section 4 of the Clayton Act (15 U.S.C. § 15);

C. An injunction against each of the unlawful practices alleged, including under the California Business and Professions Code §§ 17200, et seq.;

D. An award of retribution;

E. An award to Cascades of the costs of suit, including its reasonable attorneys' fees;

F. An award of damages for violation of the Cartwright Act.

G. Such other and further relief as this Court and/or a jury may deem proper and just.

NIRO HALLER & NIRO
DAVIS WRIGHT TREMAINE LLP

By: _____
Martin L. Fineman

Attorneys for Plaintiff
Cascades Computer Innovation LLC

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JURY DEMAND

Cascades demands a trial by jury of all issues so triable.

NIRO HALLER & NIRO
DAVIS WRIGHT TREMAINE LLP

By: _____
Martin L. Fineman

Attorneys for Plaintiff
Cascades Computer Innovation LLC