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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 GOOGLE INC.,
12 Plaintiff,
13 v.
14 CONTENTGUARD HOLDINGS, INC.,
15 Defendant.

CASE NO.
**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NOS. 6,963,859;
7,523,072; 7,774,280; 8,001,053; 7,269,576;
8,370,956; 8,393,007; 7,225,160; 8,583,556**
DEMAND FOR JURY TRIAL

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18 Plaintiff Google Inc. (“Google”) seeks a declaration that Google does not directly or
19 indirectly infringe United States Patent Nos. 6,963,859, 7,523,072, 7,774,280, 8,001,053,
20 7,269,576, 8,370,956, 8,393,007, 7,225,160, and 8,583,556 as follows:

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1 **NATURE OF THE ACTION**

2 1. This is an action for a declaratory judgment of non-infringement arising under the
3 patent laws of the United States, Title 35 of the United States Code. Google requests this relief
4 because Defendant ContentGuard Holdings, Inc. (“ContentGuard”) recently filed a lawsuit in the
5 Eastern District of Texas, Case No. 2:13-cv-01112 (“DRM Action”)¹, claiming that several mobile
6 device manufacturers, some of which are Google’s customers, infringe some or all of United
7 States Patent Nos. 6,963,859, 7,523,072, 7,774,280, 8,001,053, 7,269,576, 8,370,956, 8,393,007,
8 7,225,160, and 8,583,556 (the “patents-in-suit”) by making, using, selling, and/or offering for sale
9 products and methods that “use one or more of the Google Play ‘apps’ (Google Play Books,
10 Google Play Movies, and Google Play Music) to practice the claimed inventions . . . Google Play
11 Books and Google Play Music are available and have been used in accused devices made by each
12 of the Defendants, including, merely by way of example, the Apple iPad, the Amazon Kindle Fire,
13 the Blackberry Z10, the HTC One Max, the Huawei Ascend, the Motorola Moto X, and the
14 Samsung Galaxy S4. In each of these devices and many other devices supplied by Defendants,
15 Google Play Books and Google Play Music are and have been used to practice ContentGuard’s
16 DRM patents. In addition, Google Play Movies is and has been used to practice ContentGuard’s
17 DRM patents on accused devices.” (See DRM Action, Am. Compl., D.E. 22 at ¶ 52.)
18 ContentGuard’s litigation has threatened Google’s business and relationships with its customers
19 and partners, and created a justiciable controversy between Google and ContentGuard.

20 **THE PARTIES**

21 2. Plaintiff Google Inc. (“Google”) is a corporation organized and existing under the
22 laws of the state of Delaware, with its principal place of business at 1600 Amphitheatre Parkway,
23 Mountain View, California, 94043. Google’s mission is to organize the world’s information and
24 make it universally accessible and useful. As part of that mission, Google developed Google Play
25 Books, Google Play Music, and Google Play Movies.

26
27 ¹ ContentGuard’s Case No. 2:13-cv-1112, will hereinafter be referred to as the “DRM Action”.
28 The abbreviation “DRM” stands for digital rights management.

1 983c-865ad2b72304/Pendrell%20IR%20Stephens%20FINAL%20053113.pdf; see DRM Action,
2 Am. Compl., D.E. 22 at ¶ 38.)²

3 8. ContentGuard has purposefully directed into California its enforcement activities
4 regarding the patents-in-suit. On information and belief, ContentGuard contacted and/or met with
5 California-based companies, including Apple, in order to discuss the licensing of ContentGuard's
6 patent portfolio regarding DRM technology.

7 9. In addition, ContentGuard has expressed its interest in pursuing, and its intent to
8 pursue, license agreements with a host of companies based in California including Google, ACER,
9 Adata, Adobe, Asus, DirecTV, Disney, Kingston, Kyocera, Landmark Theaters, Paramount,
10 Sandisk, Transcend, Universal, Vizio, and 20th Century Fox. (See Ex. A, Pendrell Presentation.)

11 10. On information and belief, ContentGuard's licensing and enforcement efforts in
12 and from California have generated substantial revenues. (See DRM Action, Am. Compl., D.E. 22
13 at ¶ 38.)

14 11. Additionally, ContentGuard conducts business by marketing and distributing a
15 software application in the state of California and this judicial district. The application,
16 "CONTENTGUARD," is for sale via Apple Inc.'s ("Apple") iTunes store and available at least on
17 Apple's mobile devices. ContentGuard's application can be and has been downloaded in the state
18 of California. ContentGuard alleges that its mobile family of products, including its app, practice
19 the '859 patent by providing notice under 35 U.S.C. § 287(a) on its website.
20 (<http://www.contentguard.com/>.)

21 12. On information and belief, a number of inventors of the patents-in-suit reside in
22 California. Mark J. Stefik, inventor of U.S. Patent Nos. 6,963,859 (the "'859 patent"), 7,523,072

23 _____
24 ² Pendrell Corp. ("Pendrell") is a 90.1% shareholder of ContentGuard, and Time Warner, Inc.
25 ("Time Warner"), is a 9.9% shareholder of ContentGuard. Pendrell's headquarters are in
26 Kirkland, Washington, and it maintains an office in San Francisco, California; its wholly owned
27 subsidiary, Ovidian Group LLC, also has an office in Berkeley, California. In addition, Time
28 Warner, which is based in New York, has subsidiaries that are headquartered in California,
including Warner Bros. Entertainment Inc. and New Line Cinema.

1 (the “’072 patent”), 7,269,576 (the “’576 patent”), 8,370,956 (the “’956 patent”), 8,393,007 (the
2 “’007 patent”), and 7,225,160 (the “’160 patent”), resides in Portola Valley, California. Peter
3 Pirolli, inventor of the ‘859, ‘072, ‘576, ‘956, ‘007, and the ‘160 patents, resides in or around San
4 Francisco, California. Ralph Merkle, inventor of the ‘576 and the ‘160 patents, resides in
5 Sunnyvale, California. Mai Nguyen, inventor of U.S. Patent Nos. 7,774,280 (the “’280 patent”)
6 and 8,001,053 (the “’053 patent”), resides in Sunnyvale, California. Xin Wang, inventor of the
7 ‘280 and the ‘053 patents, resides in Los Angeles, California. Thanh Ta, inventor of the ‘280
8 patent, resides in Irvine, California. Eddie Chen, inventor of the ‘280 and the ‘053 patents, resides
9 in Los Angeles, California.

10 13. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), because a
11 substantial part of the events giving rise to Google’s claim occurred in this district, and because
12 ContentGuard is subject to personal jurisdiction here.

13 14. An immediate, real, and justiciable controversy exists between Google and
14 ContentGuard as to whether Google is infringing or has infringed the ‘859, ‘072, ‘280, ‘053, ‘576,
15 ‘956, ‘007, and ‘160 patents and U.S. Patent No. 8,583,556 (the “’556 patent”).

16 **INTRADISTRICT ASSIGNMENT**

17 15. For purposes of intradistrict assignment under Civil Local Rules 3-2(c) and 3-5(b),
18 this Intellectual Property Action will be assigned on a district-wide basis.

19 **CONTENTGUARD’S THREATENED LITIGATION AGAINST GOOGLE**

20 16. On December 18, 2013, ContentGuard brought a patent infringement action against
21 Amazon.com (“Amazon”), Apple, Blackberry Corporation (fka Research in Motion Corporation)
22 (“Blackberry Corporation”), Huawei Device USA, Inc. (“Huawei Device”), and Motorola
23 Mobility LLC (“Motorola”) in the Marshall Division of the United States District Court for the
24 Eastern District of Texas. DRM Action. On January 17, 2014, ContentGuard amended its patent
25 infringement complaint in the DRM Action, adding additional defendants: Blackberry Limited
26 (fka Research in Motion Limited) (“Blackberry Limited”), HTC Corporation and HTC America,
27 Inc. (collectively “HTC”), Huawei Technologies Co. Ltd. (“Huawei Technologies”), Samsung
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1 Electronics America, Inc. and Samsung Telecommunications America, LLC (collectively,
2 “Samsung”).³

3 17. In the DRM Action, ContentGuard alleges that each DRM Defendant infringes
4 some or all of the ‘859, ‘072, ‘280, ‘053, ‘576, ‘956, ‘007, ‘160, and ‘556 patents by making,
5 using, selling, and/or offering for sale products and methods that “use one or more of the Google
6 Play ‘apps’ (Google Play Books, Google Play Movies, and Google Play Music) to practice the
7 claimed inventions . . . Google Play Books and Google Play Music are available and have been
8 used in accused devices made by each of the Defendants, including, merely by way of example,
9 the Apple iPad, the Amazon Kindle Fire, the Blackberry Z10, the HTC One Max, the Huawei
10 Ascend, the Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many
11 other devices supplied by Defendants, Google Play Books and Google Play Music are and have
12 been used to practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has
13 been used to practice ContentGuard’s DRM patents on accused devices.” (See DRM Action, Am.
14 Compl., D.E. 22 at ¶ 52.)

15 18. ContentGuard has alleged that the DRM Defendants’ “ability to sell the accused
16 products is wholly dependent upon the availability of these [Google Play] ‘apps’ and the digital
17 content they make available to users.” (See e.g., *id.* at ¶ 52.) ContentGuard further alleges that
18 “[t]hese [Google Play] ‘apps’ cannot be used with accused [DRM Defendant] . . . products without
19 infringing” the patents-in-suit. (See e.g., *id.*)

20 19. Moreover, in publicly available material, ContentGuard has made clear that it
21 intends to target Google as part of its digital media licensing and patent portfolio program. Of the
22 entities listed under the “Digital Media Licensing Program Representative Unlicensed
23 Companies” section of the Pendrell Presentation, six out of the fifteen companies that *do not* have
24 licenses related to Pendrell’s Digital Media recently were named as defendants in ContentGuard’s
25 DRM Action, suggesting that it is only a matter of time before Google (which similarly was listed

26 ³ The defendants accused in both ContentGuard’s initial and amended complaint in the DRM
27 Action, will hereinafter be referred to as the “DRM Defendants.”
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1 as unlicensed in the Pendrell Presentation) will be accused in a ContentGuard suit involving the
2 patents-in-suit. (See Ex. A, Pendrell Presentation.)

3 20. On information and belief, ContentGuard intends the DRM Action to harm Google
4 Play Books, Google Play Music, and Google Play Movies, and to disrupt Google’s relationships
5 with many of the DRM Defendants.

6 21. For all these reasons, an actual controversy exists between Google and
7 ContentGuard regarding the alleged infringement of the ‘859, ‘072, ‘280, ‘053, ‘576, ‘956, ‘007,
8 ‘160, and ‘556 patents.

9 **GOOGLE DOES NOT INFRINGE THE PATENTS-IN-SUIT**

10 22. No version of Google Play Books, Google Play Music, and/or Google Play Movies
11 provided by Google directly or indirectly infringes the ‘859, ‘072, ‘280, ‘053, ‘576, ‘956, ‘007,
12 ‘160, and ‘556 patents.

13 23. To the best of Google’s knowledge, no third party infringes the ‘859, ‘072, ‘280,
14 ‘053, ‘576, ‘956, ‘007, ‘160, and ‘556 patents by using Google Play Books, Google Play Music,
15 and/or Google Play Movies. Google has not caused, directed, requested, or facilitated any such
16 infringement, much less with specific intent to do so. Google Play Books, Google Play Music,
17 and/or Google Play Movies are not designed to infringe the ‘859, ‘072, ‘280, ‘053, ‘576, ‘956,
18 ‘007, ‘160, and ‘556 patents. To the contrary, each of these applications is a product with
19 substantial uses that do not infringe any of these patents.

20 **FIRST COUNT**

21 **(Declaration of Non-Infringement of the ‘859 Patent)**

22 24. Google restates and incorporates by reference the allegations in paragraphs 1
23 through 23 of this Complaint as if fully set forth herein.

24 25. ContentGuard claims to own all rights, title, and interest in United States Patent
25 No. 6,963,859 (the “‘859 patent”). A true and correct copy of the ‘859 patent is attached hereto as
26 Exhibit B.

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1 26. In the DRM Action, ContentGuard accuses all of the DRM Defendants: Amazon,
2 Apple, Blackberry Corporation and Blackberry Limited (collectively “Blackberry”), HTC, Huawei
3 Device and Huawei Technologies (collectively “Huawei”), Motorola, and Samsung of infringing
4 the ‘859 patent, and alleges that each “actively induces content providers and/or end users of . . .
5 [DRM Defendants] products to infringe the ‘859 Patent by, among other things, (a) providing
6 access to certain ‘apps’ (such as . . . Google Play ‘apps’) that use the ContentGuard DRM solution
7 claimed in the ‘859 Patent, (b) providing instructions for using such ‘apps’; (c) providing
8 advertisings for using such ‘apps’ . . .” (*See* DRM Action, Am. Compl., D.E. 22 at ¶ 57.)

9 27. The Amended Complaint in the DRM Action accuses three Google Play apps:
10 Google Play Books, Google Play Music, and Google Play Movies. Specifically, ContentGuard
11 has accused the DRM Defendants of infringing the patents-in-suit by making, using, selling,
12 and/or offering for sale products and methods that “use one or more of the Google Play ‘apps’
13 (Google Play Books, Google Play Movies, and Google Play Music) to practice the claimed
14 inventions. . . . Google Play Books and Google Play Music are available and have been used in
15 accused devices made by each of the Defendants, including, merely by way of example, the Apple
16 iPad, the Amazon Kindle Fire, the Blackberry Z10, the HTC One Max, the Huawei Ascend, the
17 Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many other devices
18 supplied by Defendants, Google Play Books and Google Play Music are and have been used to
19 practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has been used to
20 practice ContentGuard’s DRM patents on accused devices.” (*See* DRM Action, Am. Compl., D.E.
21 22 at ¶ 52.)

22 28. Additionally, the DRM Action alleges that all the DRM Defendants engage in the
23 alleged activities because they “specifically intend” end users of their products “to use [Google
24 Play] ‘apps’ that deploy, and content providers to distribute content that is protected by, the
25 ContentGuard DRM solutions claimed in the ‘859 Patent.” (*See* DRM Action, Am. Compl., D.E.
26 22 at ¶ 57.) Furthermore, ContentGuard alleges that the DRM Defendants’ “ability to sell the
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1 accused products is wholly dependent upon the availability of these [Google Play] ‘apps’ and the
2 digital content they make available to users.” (See DRM Action, Am. Compl., D.E. 22 at ¶ 57.)

3 29. Moreover, the DRM Action alleges that all the DRM Defendants contributorily
4 infringe the ‘859 patent “because there is no substantial non-infringing use of these [Google Play]
5 ‘apps’ on the accused . . . products . . . [and because] [t]hese [Google Play] ‘apps’ cannot be used
6 with accused [DRM Defendants] . . . products without infringing the ‘859 patent.” (See *id.*)

7 30. A substantial, immediate, and real controversy therefore exists between Google and
8 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
9 Movies infringe the ‘859 patent. A judicial declaration is necessary to determine the parties’
10 respective rights regarding the ‘859 patent.

11 31. Google seeks a judgment declaring that Google Play Books, Google Play Music,
12 and/or Google Play Movies do not directly or indirectly infringe the ‘859 patent.

13 **SECOND COUNT**
14 **(Declaration of Non-Infringement of the ‘072 Patent)**

15 32. Google restates and incorporates by reference the allegations in paragraphs 1
16 through 31 of this Complaint as if fully set forth herein.

17 33. ContentGuard claims to own all rights, title, and interest in United States Patent
18 No. 7,523,072 (the “’072 patent”). A true and correct copy of the ’072 patent is attached hereto as
19 Exhibit C.

20 34. In the DRM Action, ContentGuard accuses all the DRM Defendants of infringing
21 the ‘072 patent, and alleges that each “actively induces content providers and/or end users of . . .
22 [DRM Defendants]’ products to infringe the ‘072 Patent by, among other things, (a) providing
23 access to certain ‘apps’ (such as . . . Google Play ‘apps’) that use the ContentGuard DRM solution
24 claimed in the ‘072 Patent, (b) providing instructions for using such ‘apps’; (c) providing
25 advertisings for using such ‘apps’ . . .” (See DRM Action, Am. Compl., D.E. 22 at ¶ 65.)

26 35. The Amended Complaint in the DRM Action accuses three Google Play apps:
27 Google Play Books, Google Play Music, and Google Play Movies. Specifically, ContentGuard
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1 has accused the DRM Defendants of infringing the patents-in-suit by making, using, selling,
2 and/or offering for sale products and methods that “use one or more of the Google Play ‘apps’
3 (Google Play Books, Google Play Movies, and Google Play Music) to practice the claimed
4 inventions. . . . Google Play Books and Google Play Music are available and have been used in
5 accused devices made by each of the Defendants, including, merely by way of example, the Apple
6 iPad, the Amazon Kindle Fire, the Blackberry Z10, the HTC One Max, the Huawei Ascend, the
7 Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many other devices
8 supplied by Defendants, Google Play Books and Google Play Music are and have been used to
9 practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has been used to
10 practice ContentGuard’s DRM patents on accused devices.” (*See* DRM Action, Am. Compl., D.E.
11 22 at ¶ 52.)

12 36. Additionally, the DRM Action alleges that all the DRM Defendants “specifically
13 intend” end users of their products “to use [Google Play] ‘apps’ that deploy, and content providers
14 to distribute content that is protected by, the ContentGuard DRM solutions claimed in the ‘072
15 Patent.” (*See* DRM Action, Am. Compl., D.E. 22 at ¶ 65.) Furthermore, ContentGuard alleges
16 that the DRM Defendants’ “ability to sell the accused products is wholly dependent upon the
17 availability of these [Google Play] ‘apps’ and the digital content they make available to users.”
18 (*See* DRM Action, Am. Compl., D.E. 22 at ¶ 65.)

19 37. Moreover, the DRM Action alleges that all the DRM Defendants contributorily
20 infringe the ‘072 patent “because there is no substantial non-infringing use of these [Google Play]
21 ‘apps’ on the accused . . . products . . . [and because] [t]hese [Google Play] ‘apps’ cannot be used
22 with accused [DRM Defendants] . . . products without infringing the ‘072 patent.” (*See id.*)

23 38. A substantial, immediate, and real controversy therefore exists between Google and
24 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
25 Movies infringe or have infringed the ‘072 patent. A judicial declaration is necessary to determine
26 the parties’ respective rights regarding the ‘072 patent.

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1 practice ContentGuard’s DRM patents on accused devices.” (See DRM Action, Am. Compl., D.E.
2 22 at ¶ 52.)

3 44. Additionally, the DRM Action alleges that DRM Defendants Apple, Blackberry,
4 HTC, Huawei, Motorola, and Samsung “specifically intend” end users of their products “to use
5 [Google Play] ‘apps’ that deploy, and content providers to distribute content that is protected by,
6 the ContentGuard DRM solutions claimed in the ‘280 Patent.” (See DRM Action, Am. Compl.,
7 D.E. 22 at ¶ 73.) Furthermore, ContentGuard alleges that these DRM Defendants’ “ability to sell
8 the accused products is wholly dependent upon the availability of these [Google Play] ‘apps’ and
9 the digital content they make available to users.” (See DRM Action, Am. Compl., D.E. 22 at ¶
10 73.)

11 45. Moreover, the DRM Action alleges that DRM Defendants Apple, Blackberry,
12 HTC, Huawei, Motorola, and Samsung contributorily infringe the ‘280 patent “because there is no
13 substantial non-infringing use of these [Google Play] ‘apps’ on the accused . . . products . . . [and
14 because] [t]hese [Google Play] ‘apps’ cannot be used with accused [DRM Defendants] . . .
15 products without infringing the ‘280 patent.” (See *id.*)

16 46. A substantial, immediate, and real controversy therefore exists between Google and
17 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
18 Movies infringe or have infringed the ‘280 patent. A judicial declaration is necessary to determine
19 the parties’ respective rights regarding the ‘280 patent.

20 47. Google seeks a judgment declaring that Google Play Books, Google Play Music,
21 and/or Google Play Movies do not directly or indirectly infringe the ‘280 patent.

22 **FOURTH COUNT**
23 **(Declaration of Non-Infringement of the ‘053 Patent)**

24 48. Google restates and incorporates by reference the allegations in paragraphs 1
25 through 47 of this Complaint as if fully set forth herein.

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1 49. ContentGuard claims to own all rights, title, and interest in United States Patent
2 No. 8,001,053 (the “’053 patent”). A true and correct copy of the ‘053 patent is attached hereto as
3 Exhibit E.

4 50. In the DRM Action, ContentGuard accuses DRM Defendants Apple, Blackberry,
5 HTC, Huawei, Motorola, and Samsung of infringing the ‘053 patent, and alleges that each of these
6 defendants “actively induces content providers and/or end users of . . . [DRM Defendants’]
7 products to infringe the ‘053 Patent by, among other things, (a) providing access to certain ‘apps’
8 (such as . . . Google Play ‘apps’) that use the ContentGuard DRM solution claimed in the ‘053
9 Patent, (b) providing instructions for using such ‘apps’; (c) providing advertisings for using such
10 ‘apps’ . . .” (*See* DRM Action, Am. Compl., D.E. 22 at ¶ 80.)

11 51. The Amended Complaint in the DRM Action accuses three Google Play apps:
12 Google Play Books, Google Play Music, and Google Play Movies. Specifically, ContentGuard
13 has accused the DRM Defendants of infringing the patents-in-suit by making, using, selling,
14 and/or offering for sale products and methods that “use one or more of the Google Play ‘apps’
15 (Google Play Books, Google Play Movies, and Google Play Music) to practice the claimed
16 inventions . . . Google Play Books and Google Play Music are available and have been used in
17 accused devices made by each of the Defendants, including, merely by way of example, the Apple
18 iPad, the Amazon Kindle Fire, the Blackberry Z10, the HTC One Max, the Huawei Ascend, the
19 Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many other devices
20 supplied by Defendants, Google Play Books and Google Play Music are and have been used to
21 practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has been used to
22 practice ContentGuard’s DRM patents on accused devices.” (*See* DRM Action, Am. Compl., D.E.
23 22 at ¶ 52.)

24 52. Additionally, the DRM Action alleges that DRM Defendants Apple, Blackberry,
25 HTC, Huawei, Motorola, and Samsung “specifically intend” end users of their products “to use
26 [Google Play] ‘apps’ that deploy, and content providers to distribute content that is protected by,
27 the ContentGuard DRM solutions claimed in the ‘053 Patent.” (*See* DRM Action, Am. Compl.,
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1 D.E. 22 at ¶ 80.) Furthermore, ContentGuard alleges that these DRM Defendants’ “ability to sell
2 the accused products is wholly dependent upon the availability of these [Google Play] ‘apps’ and
3 the digital content they make available to users.” (See DRM Action, Am. Compl., D.E. 22 at ¶
4 80.)

5 53. Moreover, the DRM Action alleges that the DRM Defendants Apple, Blackberry,
6 HTC, Huawei, Motorola, and Samsung contributorily infringe the ‘053 patent “because there is no
7 substantial non-infringing use of these [Google Play] ‘apps’ on the accused . . . products . . . [and
8 because] [t]hese [Google Play] ‘apps’ cannot be used with accused [DRM Defendants] . . .
9 products without infringing the ‘053 patent.” (See *id.*)

10 54. A substantial, immediate, and real controversy therefore exists between Google and
11 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
12 Movies infringe or have infringed the ‘053 patent. A judicial declaration is necessary to determine
13 the parties’ respective rights regarding the ‘053 patent.

14 55. Google seeks a judgment declaring that Google Play Books, Google Play Music,
15 and/or Google Play Movies do not directly or indirectly infringe the ‘053 patent.

16 **FIFTH COUNT**
17 **(Declaration of Non-Infringement of the ‘576 Patent)**

18 56. Google restates and incorporates by reference the allegations in paragraphs 1
19 through 55 of this Complaint as if fully set forth herein.

20 57. ContentGuard claims to own all rights, title, and interest in United States Patent
21 No. 7,269,576 (the “‘576 patent”). A true and correct copy of the ‘576 patent is attached hereto as
22 Exhibit F.

23 58. In the DRM Action, ContentGuard accuses all the DRM Defendants of infringing
24 the ‘576 patent, and alleges that each “actively induces content providers and/or end users of . . .
25 [DRM Defendants]’ products to infringe the ‘576 Patent by, among other things, (a) providing
26 access to certain ‘apps’ (such as . . . Google Play ‘apps’) that use the ContentGuard DRM solution
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1 claimed in the ‘576 Patent, (b) providing instructions for using such ‘apps’; (c) providing
2 advertisings for using such ‘apps’ . . .” (See DRM Action, Am. Compl., D.E. 22 at ¶ 87.)

3 59. The Amended Complaint in the DRM Action accuses three Google Play apps:
4 Google Play Books, Google Play Music, and Google Play Movies. Specifically, ContentGuard
5 has accused the DRM Defendants of infringing the patents-in-suit by making, using, selling,
6 and/or offering for sale products and methods that “use one or more of the Google Play ‘apps’
7 (Google Play Books, Google Play Movies, and Google Play Music) to practice the claimed
8 inventions . . . Google Play Books and Google Play Music are available and have been used in
9 accused devices made by each of the Defendants, including, merely by way of example, the Apple
10 iPad, the Amazon Kindle Fire, the Blackberry Z10, the HTC One Max, the Huawei Ascend, the
11 Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many other devices
12 supplied by Defendants, Google Play Books and Google Play Music are and have been used to
13 practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has been used to
14 practice ContentGuard’s DRM patents on accused devices.” (See DRM Action, Am. Compl., D.E.
15 22 at ¶ 52.)

16 60. Additionally, the DRM Action alleges that all the DRM Defendants engage in the
17 alleged activities because they “specifically intend” end users of their products “to use [Google
18 Play] ‘apps’ that deploy, and content providers to distribute content that is protected by, the
19 ContentGuard DRM solutions claimed in the ‘576 Patent.” (See DRM Action, Am. Compl., D.E.
20 22 at ¶ 87.) Furthermore, ContentGuard alleges that the DRM Defendants’ “ability to sell the
21 accused products is wholly dependent upon the availability of these [Google Play] ‘apps’ and the
22 digital content they make available to users.” (See DRM Action, Am. Compl., D.E. 22 at ¶ 87.)

23 61. Moreover, the DRM Action alleges that all the DRM Defendants contributorily
24 infringe the ‘576 patent “because there is no substantial non-infringing use of these [Google Play]
25 ‘apps’ on the accused . . . products . . . [and because] [t]hese [Google Play] ‘apps’ cannot be used
26 with accused [DRM Defendants] . . . products without infringing the ‘576 patent.” (See *id.*)

1 Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many other devices
2 supplied by Defendants, Google Play Books and Google Play Music are and have been used to
3 practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has been used to
4 practice ContentGuard’s DRM patents on accused devices.” (See DRM Action, Am. Compl., D.E.
5 22 at ¶ 52.)

6 68. Additionally, the DRM Action alleges that the DRM Defendants “specifically
7 intend” end users of their products “to use [Google Play] ‘apps’ that deploy, and content providers
8 to distribute content that is protected by, the ContentGuard DRM solutions claimed in the ‘956
9 Patent.” (See DRM Action, Am. Compl., D.E. 22 at ¶ 95.) Furthermore, ContentGuard alleges
10 that the DRM Defendants’ “ability to sell the accused products is wholly dependent upon the
11 availability of these [Google Play] ‘apps’ and the digital content they make available to users.”
12 (See DRM Action, Am. Compl., D.E. 22 at ¶ 95.)

13 69. Moreover, the DRM Action alleges that all the DRM Defendants contributorily
14 infringe the ‘956 patent “because there is no substantial non-infringing use of these [Google Play]
15 ‘apps’ on the accused . . . products . . . [and because] [t]hese [Google Play] ‘apps’ cannot be used
16 with accused [DRM Defendants] . . . products without infringing the ‘956 patent.” (See *id.*)

17 70. A substantial, immediate, and real controversy therefore exists between Google and
18 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
19 Movies infringe or have infringed the ‘956 patent. A judicial declaration is necessary to determine
20 the parties’ respective rights regarding the ‘956 patent.

21 71. Google seeks a judgment declaring that Google Play Books, Google Play Music,
22 and/or Google Play Movies do not directly or indirectly infringe the ‘956 patent.

23 **SEVENTH COUNT**
24 **(Declaration of Non-Infringement of the ‘007 Patent)**

25 72. Google restates and incorporates by reference the allegations in paragraphs 1
26 through 71 of this Complaint as if fully set forth herein.

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1 73. ContentGuard claims to own all rights, title, and interest in United States Patent
2 No. 8,393,007 (the “’007 patent”). A true and correct copy of the ‘007 patent is attached hereto as
3 Exhibit H.

4 74. In the DRM Action, ContentGuard accuses all the DRM Defendants of infringing
5 the ‘007 patent, and alleges that each “actively induces content providers and/or end users of . . .
6 [DRM Defendants] products to infringe the ‘007 Patent by, among other things, (a) providing
7 access to certain ‘apps’ (such as . . . Google Play ‘apps’) that use the ContentGuard DRM solution
8 claimed in the ‘007 Patent, (b) providing instructions for using such ‘apps’; (c) providing
9 advertisings for using such ‘apps’ . . .” (*See* DRM Action, Am. Compl., D.E. 22 at ¶ 103.)

10 75. The Amended Complaint in the DRM Action accuses three Google Play apps:
11 Google Play Books, Google Play Music, and Google Play Movies. Specifically, ContentGuard
12 has accused the DRM Defendants of infringing the patents-in-suit by making, using, selling,
13 and/or offering for sale products and methods that “use one or more of the Google Play ‘apps’
14 (Google Play Books, Google Play Movies, and Google Play Music) to practice the claimed
15 inventions . . . Google Play Books and Google Play Music are available and have been used in
16 accused devices made by each of the Defendants, including, merely by way of example, the Apple
17 iPad, the Amazon Kindle Fire, the Blackberry Z10, the HTC One Max, the Huawei Ascend, the
18 Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many other devices
19 supplied by Defendants, Google Play Books and Google Play Music are and have been used to
20 practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has been used to
21 practice ContentGuard’s DRM patents on accused devices.” (*See* DRM Action, Am. Compl., D.E.
22 22 at ¶ 52.)

23 76. Additionally, the DRM Action alleges that all the DRM Defendants engage in the
24 alleged activities because they “specifically intend” end users of their products “to use [Google
25 Play] ‘apps’ that deploy, and content providers to distribute content that is protected by, the
26 ContentGuard DRM solutions claimed in the ‘007 Patent.” (*See* DRM Action, Am. Compl., D.E.
27 22 at ¶ 103.) Furthermore, ContentGuard alleges that the DRM Defendants’ “ability to sell the
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1 accused products is wholly dependent upon the availability of these [Google Play] ‘apps’ and the
2 digital content they make available to users.” (See DRM Action, Am. Compl., D.E. 22 at ¶ 103.)

3 77. Moreover, the DRM Action alleges that all the DRM Defendants contributorily
4 infringe the ‘007 patent “because there is no substantial non-infringing use of these [Google Play]
5 ‘apps’ on the accused . . . products . . . [and because] [t]hese [Google Play] ‘apps’ cannot be used
6 with accused [DRM Defendants] . . . products without infringing the ‘007 patent.” (See *id.*)

7 78. A substantial, immediate, and real controversy therefore exists between Google and
8 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
9 Movies infringe or have infringed the ‘007 patent. A judicial declaration is necessary to determine
10 the parties’ respective rights regarding the ‘007 patent.

11 79. Google seeks a judgment declaring that Google Play Books, Google Play Music,
12 and/or Google Play Movies do not directly or indirectly infringe the ‘007 patent.

13 **EIGHTH COUNT**
14 **(Declaration of Non-Infringement of the ‘160 Patent)**

15 80. Google restates and incorporates by reference the allegations in paragraphs 1
16 through 79 of this Complaint as if fully set forth herein.

17 81. ContentGuard claims to own all rights, title, and interest in United States Patent
18 No. 7,225,160 (the “‘160 patent”). A true and correct copy of the ‘160 patent is attached hereto as
19 Exhibit I.

20 82. In the DRM Action, ContentGuard accuses all the DRM Defendants of infringing
21 the ‘160 patent, and alleges that each “actively induces content providers and/or end users of . . .
22 [DRM Defendants]’ products to infringe the ‘160 Patent by, among other things, (a) providing
23 access to certain ‘apps’ (such as . . . Google Play ‘apps’) that use the ContentGuard DRM solution
24 claimed in the ‘160 Patent, (b) providing instructions for using such ‘apps’; (c) providing
25 advertisings for using such ‘apps’ . . .” (See DRM Action, Am. Compl., D.E. 22 at ¶ 111.)

26 83. The Amended Complaint in the DRM Action accuses three Google Play apps:
27 Google Play Books, Google Play Music, and Google Play Movies. Specifically, ContentGuard
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1 has accused the DRM Defendants of infringing the patents-in-suit by making, using, selling,
2 and/or offering for sale products and methods that “use one or more of the Google Play ‘apps’
3 (Google Play Books, Google Play Movies, and Google Play Music) to practice the claimed
4 inventions . . . Google Play Books and Google Play Music are available and have been used in
5 accused devices made by each of the Defendants, including, merely by way of example, the Apple
6 iPad, the Amazon Kindle Fire, the Blackberry Z10, the HTC One Max, the Huawei Ascend, the
7 Motorola Moto X, and the Samsung Galaxy S4. In each of these devices and many other devices
8 supplied by Defendants, Google Play Books and Google Play Music are and have been used to
9 practice ContentGuard’s DRM patents. In addition, Google Play Movies is and has been used to
10 practice ContentGuard’s DRM patents on accused devices.” (*See* DRM Action, Am. Compl., D.E.
11 22 at ¶ 52.)

12 84. Additionally, the DRM Action alleges that all the DRM Defendants engage in the
13 alleged activities because they “specifically intend” end users of their products “to use [Google
14 Play] ‘apps’ that deploy, and content providers to distribute content that is protected by, the
15 ContentGuard DRM solutions claimed in the ‘160 Patent.” (*See* DRM Action, Am. Compl., D.E.
16 22 at ¶ 111.) Furthermore, ContentGuard alleges that the DRM Defendants’ “ability to sell the
17 accused products is wholly dependent upon the availability of these [Google Play] ‘apps’ and the
18 digital content they make available to users.” (*See* DRM Action, Am. Compl., D.E. 22 at ¶ 111.)

19 85. Moreover, the DRM Action alleges that all the DRM Defendants contributorily
20 infringe the ‘160 patent “because there is no substantial non-infringing use of these [Google Play]
21 ‘apps’ on the accused . . . products . . . [and because] [t]hese [Google Play] ‘apps’ cannot be used
22 with accused [DRM Defendants] . . . products without infringing the ‘160 patent.” (*See id.*)

23 86. A substantial, immediate, and real controversy therefore exists between Google and
24 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
25 Movies infringe or have infringed the ‘160 patent. A judicial declaration is necessary to determine
26 the parties’ respective rights regarding the ‘160 patent.

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1 practice ContentGuard’s DRM patents on accused devices.” (See DRM Action, Am. Compl., D.E.
2 22 at ¶ 52.)

3 92. Additionally, the DRM Action alleges that all the DRM Defendants engage in the
4 alleged activities because they “specifically intend” end users of their products “to use [Google
5 Play] ‘apps’ that deploy, and content providers to distribute content that is protected by, the
6 ContentGuard DRM solutions claimed in the ‘556 Patent.” (See DRM Action, Am. Compl., D.E.
7 22 at ¶ 119.) Furthermore, ContentGuard alleges that the DRM Defendants’ “ability to sell the
8 accused products is wholly dependent upon the availability of these [Google Play] ‘apps’ and the
9 digital content they make available to users.” (See DRM Action, Am. Compl., D.E. 22 at ¶ 119.)

10 93. Moreover, the DRM Action alleges that all the DRM Defendants contributorily
11 infringe the ‘556 patent “because there is no substantial non-infringing use of these [Google Play]
12 ‘apps’ on the accused . . . products . . . [and because] [t]hese [Google Play] ‘apps’ cannot be used
13 with accused [DRM Defendants] . . . products without infringing the ‘556 patent.” (See *id.*)

14 94. A substantial, immediate, and real controversy therefore exists between Google and
15 ContentGuard regarding whether Google Play Books, Google Play Music, and/or Google Play
16 Movies infringe or have infringed the ‘556 patent. A judicial declaration is necessary to determine
17 the parties’ respective rights regarding the ‘556 patent.

18 95. Google seeks a judgment declaring that Google Play Books, Google Play Music,
19 and/or Google Play Movies do not directly or indirectly infringe the ‘556 patent.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Google prays for judgment and relief as follows:

22 A. Declaring that Google Play Books, Google Play Music, and/or Google Play Movies
23 do not infringe any of the ‘859, ‘072, ‘280, ‘053, ‘576, ‘956, ‘007, ‘160, and ‘556 patents;

24 B. Declaring that judgment be entered in favor of Google and against ContentGuard
25 on each of Google’s claims;

26 C. Finding that this an exceptional case under 35 U.S.C. § 285;

27 D. Awarding Google its costs and attorneys’ fees in connection with this action; and
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E. Such further and additional relief as the Court deems just and proper.

JURY DEMAND

Google demands a jury trial on all issues and claims so triable.

DATED: January 31, 2014

Respectfully submitted,

KAYE SCHOLER, LLP

By /s Michael Malecek
Michael J. Malecek
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