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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 KYOCERA INTERNATIONAL, INC.,

12 Plaintiff,

13 v.

14 BLUE SPIKE, LLC,

15 Defendant.

Case No. '17CV0262 BTM JMA

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

1 **COMPLAINT FOR DECLARATORY JUDGMENT**

2 Plaintiff Kyocera International, Inc. (“Kyocera” or “Plaintiff”), by and through its
3 undersigned attorneys, for its Complaint for Declaratory Judgment against Blue Spike,
4 LLC (“Blue Spike” or “Defendant”), and demanding trial by jury, hereby alleges as
5 follows:

6 **NATURE OF ACTION**

7 1. This is a declaratory judgment action seeking a declaration of non-
8 infringement of U.S. Patent Nos. 5,745,569 (“the ’569 patent”) and 8,930,719 (“the ’719
9 patent”), true and correct copies of which are attached hereto as Exhibits 1 and 2.

10 **THE PARTIES**

11 2. Kyocera is a California corporation having its principal place of business at
12 8611 Balboa Avenue, San Diego, California 92123.

13 3. On information and belief, Defendant Blue Spike is a Texas limited liability
14 company and has its principal place of business at 1820 Shiloh Road, Suite 1201-C,
15 Tyler, Texas 75703.

16 **JURISDICTION AND VENUE**

17 4. This Complaint arises under the Patent Laws of the United States, 35 U.S.C.
18 § 100 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, based upon
19 an actual controversy between the parties to declare that Kyocera does not infringe any
20 claim of the ’569 and ’719 patents.

21 5. This Court has jurisdiction over the subject matter of this claim pursuant to
22 28 U.S.C. §§ 1331, 1338(a), 1367(a), 2201, and 2202, and 35 U.S.C. § 100, *et seq.*

23 6. This Court has personal jurisdiction over Blue Spike at least because of its
24 continuous and systematic contacts with the State of California, including conducting of
25 substantial and regular business therein through the enforcement and licensing of its
26 intellectual property, including the ’569 and ’719 patents, to California corporations and
27 business entities and individuals residing in California and/or organized under the laws of
28 the State of California.

1 7. Blue Spike has conducted extensive enforcement efforts regarding its patent
2 portfolio, including the '569 and '719 patents, in this District and elsewhere in California
3 by and through its litigation counsel and agents from the law offices of Garteiser Honea,
4 P.C., located and based in San Rafael, California ("Litigation Counsel"). Blue Spike,
5 through its Litigation Counsel, filed and prosecuted over 100 lawsuits from California
6 asserting infringement of patents within Blue Spike's patent portfolio, including at least
7 19 cases involving one or more of the '569 and/or '719 patents.

8 8. In addition, many of the companies against whom Blue Spike has sought to
9 enforce the '569 and '719 patents in the above-mentioned lawsuits maintain their
10 principal places of business in this District and/or California. These companies include
11 InfoSonics Corporation (San Diego), VeryKool USA, Inc. (San Diego), OPPO Digital,
12 Inc. (Mountain View), ASUS Computer International, Inc. (Fremont), iRULU
13 Technologies, Inc. (San Jose), G.B.T. Inc. (City of Industry), ViewSonic Corporation
14 (Walnut), Vizio, Inc. (Irvine), Contixo Inc. (Ontario), MTM Trading LLC (San Jose),
15 TCT Mobile (US), Inc. (Irvine), Visual Land Inc. (Cerritos), and LeMall Corp. (San
16 Jose). Accordingly, on information and belief, litigation negotiations and settlement
17 activity between Blue Spike, through its Litigation Counsel, and California-based
18 companies being sued by Blue Spike has physically taken place in California, including
19 this District.

20 9. This Court has general jurisdiction over Blue Spike because Blue Spike has
21 maintained continuous and systematic contacts with California and this District,
22 including, without limitation, those contacts and activities described above.

23 10. This Court has specific jurisdiction over Blue Spike because Blue Spike has
24 specifically directed its activities with respect to the '569 and '719 patents generally, and
25 against Kyocera specifically, at California, as set forth above.

26 11. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), and
27 1400(b).

FACTUAL BACKGROUND

12. Blue Spike has brought a series of lawsuits against various companies concerning the '569 and '719 patents.

13. On November 18, 2016, Blue Spike filed a First Amended Complaint accusing Kyocera of infringing the '569 and '719 patents in the Eastern District of Texas (No. 6:16-cv-01142-RWS-JDL). On February 9, 2017, Blue Spike unilaterally filed a Notice of Voluntary Dismissal of Kyocera without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) in the Eastern District of Texas.

PATENTS-IN-SUIT

14. On its face, the '569 patent entitled "Method for Stega-Cipher Protection of Computer Code" indicates it was issued by the United States Patent and Trademark Office on April 28, 1998.

15. On its face, the '719 patent entitled "Data Protection Method and Device" indicates it was issued by the United States Patent and Trademark Office on January 6, 2015.

16. On information and belief, and based on the assertions of Blue Spike in *Blue Spike v. Archos, Inc. et al.*, No. 6:16-cv-011452-RWS-JDL (E.D. Tex.), Blue Spike is the assignee of the '569 and '719 patents and has all substantial rights and interest in the '569 and '719 patents.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

OF THE '569 PATENT

17. Kyocera repeats and realleges Paragraphs 1-16 of its Complaint as if fully set forth herein.

18. Blue Spike has asserted that Kyocera has infringed one or more claims of the '569 patent.

19. Kyocera denies any claim of infringement of the claims of the '569 patent, and contends that it does not infringe any claim of the '569 patent. For example, the

1 Kyocera products Blue Spike accuses of infringing the '569 patent do not perform the
2 step of “intermittently relocating each of the plurality of executable code resources to a
3 different address within the memory of the computer during execution of the software
4 application” as required by claim 16 of the '569 patent.

5 20. An actual and justiciable controversy has thus arisen between Blue Spike
6 and Kyocera concerning the alleged infringement of the '569 patent.

7 21. Pursuant to the Federal Declaratory Act, 28 U.S.C. § 2201, *et seq.*, Kyocera
8 is entitled to judgment from this Court finding that the '569 patent is not infringed,
9 directly or indirectly, by Kyocera.

10 **COUNT II**

11 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

12 **OF THE '719 PATENT**

13 22. Kyocera repeats and realleges Paragraphs 1-21 of its Complaint as if fully
14 set forth herein.

15 23. Blue Spike has asserted that Kyocera has infringed one or more claims of the
16 '719 patent.

17 24. Kyocera denies any claim of infringement of the claims of the '719 patent,
18 and contends that it does not infringe any claim of the '719 patent. For example, the
19 Kyocera products Blue Spike accuses of infringing the '719 patent do not contain the
20 claim limitation “wherein said memory scheduled code resource, when called, functions
21 to shuffle said other code resources in said memory” as required by claim 1 of the '719
22 patent.

23 25. An actual and justiciable controversy has thus arisen between Blue Spike
24 and Kyocera concerning the alleged infringement of the '719 patent.

25 26. Pursuant to the Federal Declaratory Act, 28 U.S.C. § 2201, *et seq.*, Kyocera
26 is entitled to judgment from this Court finding that the '719 patent is not infringed,
27 directly or indirectly, by Kyocera.

DEMAND FOR JURY TRIAL

Kyocera demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Kyocera prays as follows:

A. Declare that Kyocera has not infringed any claim of the '569 and '719 patents;

B. Enjoin Blue Spike, its assigns, and all those in privity therewith from asserting any of the claims of the '569 and '719 patents against Kyocera or any of its customers or suppliers;

C. Find this case an exceptional case and award Kyocera its fees and costs in this suit under 35 U.S.C. § 285; and

D. For such other and further relief as the Court may deem just and proper.

Dated: February 10, 2017

Respectfully submitted,
FOLEY & LARDNER LLP

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