

REDACTED VERSION OF DOCUMENT SOUGHT TO BE CONDITIONALLY SEALED

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 APPLE INC.,
13
14 **Plaintiff,**
15 v.
16 ACACIA RESEARCH CORPORATION,
17 SAINT LAWRENCE COMMUNICATIONS
LLC, SAINT LAWRENCE
COMMUNICATIONS GMBH, AND
VOICEAGE CORPORATION,
18 **Defendants.**

Case No. 5:16-cv-07266-EJD
SECOND AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

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APPLE INC.

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INTRODUCTION

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2 1. Apple Inc. (Apple) brings this action to end and remedy Defendants’ anticompetitive
3 conduct. Acacia Research Corporation, along with its subsidiaries Saint Lawrence Communications
4 LLC and Saint Lawrence Communications GmbH (collectively, “Acacia”), has conspired with
5 VoiceAge Corporation (VoiceAge) in an anticompetitive scheme to transfer hundreds of patents
6 declared essential to cellular industry standards (SEPs) from VoiceAge to Acacia and then
7 circumvent VoiceAge’s promises to license its patents on fair, reasonable, and non-discriminatory
8 (FRAND) terms. Once armed with VoiceAge’s patents, Acacia has demanded exorbitant royalties
9 many times above FRAND and, in contravention of its FRAND obligations, and sought injunctions
10 to coerce cellular product suppliers to accept licenses on those royalty terms.

11 2. VoiceAge obtains no efficiencies from transferring its patents to Acacia. Indeed, it
12 had previously demonstrated its ability to obtain fair value for its patents. VoiceAge transferred its
13 patents to and conspired with Acacia to take advantage of Acacia’s ability, as a patent assertion
14 entity (PAE), to engage in brazen and exploitive patent assertion conduct, including demanding and
15 receiving exorbitant non-FRAND royalties. VoiceAge could not have engaged in similar conduct
16 because, as an operating technology company, it faced constraints on its conduct that Acacia does
17 not.

18 3. Defendants’ conduct has imposed extraordinary costs and burdens not only on Apple
19 but on the cellular device industry more broadly. Apple and other victims of the Defendants’
20 conduct have paid excessive royalties and spent millions of dollars defending against the barrage of
21 patent litigation brought by Acacia as part of its conspiracy with VoiceAge. Apple seeks to recover
22 its damages and halt the illegal conduct. Unless enjoined, the Defendants’ conduct will persist and
23 continue to injure Apple, other participants in industries that are vital to the national economy, and
24 consumers in the United States and elsewhere.

THE PARTIES

25
26 4. Plaintiff Apple designs and sells innovative, iconic consumer electronics such as the
27 iPhone, iPad, and MacBook. Apple is a corporation organized and existing under the laws of the
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1 State of California with its principal place of business at 1 Infinite Loop, Cupertino, California
2 95014.

3 5. Defendant Acacia Research Corporation is a publicly-traded corporation that
4 describes itself as “an intermediary in the patent marketplace.”¹ Acacia Research Corporation has a
5 bewildering array of shell subsidiaries that “generate revenues and related cash flows from the
6 granting of intellectual property rights for the use of patented technologies that our operating
7 subsidiaries control or own.”² Acacia Research Corporation is a Delaware corporation having its
8 principal place of business at 500 Newport Center Drive, Suite 700, Newport Beach, California
9 92660. Defendant Saint Lawrence Communications LLC (SLC) is a subsidiary of Acacia Research
10 Group LLC, which is in turn a wholly-owned subsidiary of Acacia Research Corporation. SLC is a
11 Texas limited liability company, having its principal place of business at 2400 Dallas Parkway, Suite
12 200, Plano, Texas 75093. Saint Lawrence Communications GmbH (SLC GmbH) is a German
13 limited liability company that is a subsidiary of Acacia, with its principal place of business at
14 Pettenkoferstrasse 4, 80336 Munich, Germany.

15 6. Defendant VoiceAge is a privately-held Canadian corporation headquartered at 750
16 Lucerne Road, Suite 250, Montreal (Quebec), Canada, H3R 2H6. VoiceAge is “engaged in the
17 development, integration, and marketing of digital speech and audio compression solutions and
18 services.”³

JURISDICTION AND VENUE

19
20 7. Apple brings this action under Sections 4 and 7 of the Clayton Act, 15 U.S.C. §§ 15
21 and 18; Section 1 of the Sherman Act, 15 U.S.C. § 1; for breach of contract; and under Cal. Bus. &
22 Prof. Code § 17200 et seq.

23 8. This Court has jurisdiction over the federal claims alleged under 28 U.S.C. §§ 1331
24 and 1337(a). This Court has jurisdiction over the breach of contract and unfair competition claims
25 arising under state law pursuant to 28 U.S.C. § 1367(a).

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27 ¹ Acacia Research Corporation 2015 Form 10-K, 1.

28 ² *Id.*

³ VoiceAge Corporation, “Company,” <http://www.voiceage.com/COMPANY.html>.

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1 9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c), and 15
2 U.S.C. §§ 15, 22, because, during the relevant period, Acacia and VoiceAge resided, transacted
3 business, were found, or had agents in this District, and because a substantial portion of the affected
4 interstate trade and commerce described herein has been carried out in this District.

INTRADISTRICT ASSIGNMENT

6 10. The appropriate intradistrict assignment is the San Jose Division. Under Civil Local
7 Rule 3-2(c), a civil action shall be assigned to the division “serving the county in which the action
8 arises.” An action “arises in the county in which a substantial part of the events or omissions which
9 give rise to the claim occurred.” Civ. L.R. 3-2(c). Here, a substantial part of those events or
10 omissions occurred in Santa Clara County, where Apple is headquartered and where a substantial
11 portion of the events set forth in this Complaint has a locus. Civil actions arising in Santa Clara
12 County “shall be assigned to the San Jose Division.” *Id.* at 3-2(e).

ACACIA’S AND VOICEAGE’S ILLEGAL CONDUCT**I. VoiceAge Promised To License On FRAND Terms Declared SEPs It Transferred To Acacia.**

15 11. Acacia acquired declared SEPs from VoiceAge, which was involved in the European
16 Telecommunications Standards Institute (ETSI) and the Third Generation Partnership Project
17 (3GPP), particularly in the development of a voice coding and decoding codec known as AMR-WB.
18 AMR-WB is part of the cellular standards adopted by 3GPP/ETSI.

19 12. Standard-setting activities create significant benefits for the industry and consumers
20 at large, allowing manufacturers of many different devices to invest in the design and marketing of
21 their products knowing that those products will interoperate effectively with other manufacturers’
22 devices.

23 13. When companies decide to implement a standard, they make significant investments
24 in designing their products and supply chains around the standard. Once they have made those
25 investments, they are “locked in” to the standard—it can become much more complicated,
26 expensive, or impossible due to industry adoption to start over with a new technology, even if that
27 other technology is just as good. The risk potential implementers face is that a patentee will engage
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1 in “patent hold-up” after they have become locked in to the standard. In a patent hold-up, a patent
2 owner waits until a standard has become widely adopted and then seeks to extort far more in
3 royalties than its technology is worth, because implementers are already locked in and therefore
4 cannot avoid exorbitant royalty demands.

5 14. The cellular standards promulgated by 3GPP and ETSI have been widely adopted and
6 are deployed for the consistent use of cellular networks around the world. Apple and other
7 manufacturers have made massive investments to comply with these ETSI standards.

8 15. In an effort to constrain the exercise of monopoly power in markets that encompass
9 standardized technology, standard-setting organizations require participants to disclose the patents
10 they own that might cover the standard and to agree to license those patents on FRAND terms. In
11 particular, ETSI’s Intellectual Property Rights Policy (IPR Policy) requires its members to disclose
12 their patents or patent applications during the standard-setting process (i.e., before the technology is
13 or might be incorporated into the standard) and to promise to license those patents on FRAND terms
14 if they are essential to the standard.

15 16. With regard to disclosure of potentially essential patents, Clause 4.1 of the IPR Policy
16 states:

17 Subject to Clause 4.2 below, each MEMBER shall use its reasonable
18 endeavours, in particular during the development of a STANDARD or
19 TECHNICAL SPECIFICATION where it participates, to inform ETSI
20 of ESSENTIAL IPRs in a timely fashion. In particular, a MEMBER
submitting a technical proposal for a STANDARD or TECHNICAL
SPECIFICATION shall, on a bona fide basis, draw the attention of ETSI
to any of that MEMBER’s IPR which might be ESSENTIAL if that
proposal is adopted.

21 17. Clause 6.1 of the IPR Policy requires that “[w]hen an ESSENTIAL [Intellectual
22 Property Right] relating to a particular STANDARD or TECHNICAL SPECIFICATION is brought
23 to the attention of ETSI, the Director-General of ETSI shall immediately request the owner to give
24 within three months an irrevocable undertaking in writing that it is prepared to grant irrevocable
25 licenses on fair, reasonable and non-discriminatory [FRAND] terms and conditions under such
26 IPR.”⁴

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28 ⁴ 2008 IPR Policy, Clause 6.1; *see also* 2001 ETSI IPR Policy.

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1 18. If an ETSI participant is unwilling to commit to licensing its patents on FRAND
2 terms and conditions, the ETSI IPR Policy mandates that the participant’s technologies be excluded
3 from the standard. Clause 8.1.1 of the 2008 ETSI IPR Policy states: “Where prior to the publication
4 of a STANDARD or a TECHNICAL SPECIFICATION an IPR owner informs ETSI that it is not
5 prepared to license an IPR in respect of a STANDARD or TECHNICAL SPECIFICATION in
6 accordance with Clause 6.1 above, the General Assembly shall ... satisfy itself that a viable
7 alternative technology is available ...” In those instances in which, in the opinion of the General
8 Assembly, no viable alternative technology exists, Clause 8.1.2 further provides that work on the
9 standard or technical specification at issue “shall cease.” These terms make clear that in deciding to
10 incorporate technology into its standards, ETSI relies on its members’ FRAND commitments
11 regarding potentially essential patents and patent applications. Clause 12 of the ETSI IPR Policy
12 states that it shall be governed by the laws of France.

13 19. 3GPP did not adopt its own intellectual property rights policy but instead decided that
14 members of each of its Organizational Partners (of which ETSI is one) would abide by the respective
15 Organizational Partners’ intellectual property rights policies.

II. FRAND Commitments Are Binding Contractual Obligations That Transfer With SEPs

16 20. As a member of ETSI, VoiceAge is (and was at all relevant times) contractually
17 bound to abide by ETSI’s IPR Policy (including during its participation in 3GPP). VoiceAge
18 submitted numerous declarations to ETSI identifying patents and patent applications that it claimed
19 were essential to the various standards adopted by ETSI and 3GPP. VoiceAge’s declarations
20 committed to licensing those patents on FRAND terms.

21 21. Acacia has acknowledged in presentations to investors that it is bound by VoiceAge’s
22 FRAND commitments, observing that the FRAND obligations applicable to its former VoiceAge
23 patents would present “legal and regulatory challenges.”⁵

24 22. Indeed, the current version of the ETSI IPR Policy explicitly states that FRAND
25 commitments are encumbrances on patents that bind all successors-in-interest. In particular,
26 Clause 6.1bis states:
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28 ⁵ Acacia Research Group, LLC, 2014 Analyst and Investor Day Presentation, at 31.

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2 FRAND licensing undertakings made pursuant to Clause 6 shall be
3 interpreted as encumbrances that bind all successors-in-interest.
4 Recognizing that this interpretation may not apply in all legal
5 jurisdictions, any Declarant who has submitted a FRAND undertaking
6 according to the POLICY who transfers ownership of ESSENTIAL IPR
7 that is subject to such undertaking shall include appropriate provisions
8 in the relevant transfer documents to ensure that the undertaking is
9 binding on the transferee and that the transferee will similarly include
10 appropriate provisions in the event of future transfers with the goal of
11 binding all successors-in-interest. The undertaking shall be interpreted
12 as binding on successors-in-interest regardless of whether such
13 provisions are included in the relevant transfer documents.

8
9 23. ETSI's IPR Policy was designed to benefit all ETSI members, as well as all other
10 parties that implement an ETSI standard. In particular, the stated objective of the policy, described
11 in Clause 3.1, is to "reduce the risk" to those implementing the standards "that investment in the
12 preparation, adoption and application of the STANDARDS could be wasted as a result of an
13 ESSENTIAL IPR for a STANDARD or TECHNICAL SPECIFICATION being unavailable."
14 Apple, as a member of ETSI and an implementer of standards that ETSI adopted, is an intended
15 third-party beneficiary of VoiceAge's FRAND commitments made under the ETSI IPR Policy.

16 **III. VoiceAge Conspires With Acacia To Transfer Patents Previously Licensed To Apple
17 And Obtain Grossly Inflated Royalties And Breach FRAND Commitments**

18 24. Before transferring declared SEPs to Acacia, VoiceAge had licensed the patents
19 through the W-CDMA patent pool formerly administered by Sipro Lab Telecom, as did many other
20 sophisticated declared SEP holders. One of the goals of the Sipro patent pool was to ensure "access
21 to worldwide patents that are essential to W-CDMA FDD 3GPP Standard under fair, reasonable and
22 non-discriminatory [FRAND] terms and conditions."⁶ Through the pool, Apple paid a royalty for a
23 license to VoiceAge patents until December 2015. Moreover, before the transfers, Apple amicably
24 entered into multiple bi-lateral licensing agreements with VoiceAge. Thus, VoiceAge was
25 demonstrably capable of obtaining FRAND royalties for its declared SEPs.

26 25. VoiceAge, however, sought to obtain above-FRAND royalties for its declared SEPs.
27 It removed them from the Sipro patent pool and has conspired with Acacia to take advantage of

28 ⁶ Sipro Lab Telecom, *W-CDMA*, previously available at <http://www.sipro.com/W-CDMA.html>.

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1 Acacia's status as a PAE and its abusive patent enforcement strategies to exploit potential licensees.
2 As part of the conspiracy, in December 2013, VoiceAge transferred to Acacia a portfolio of declared
3 SEPs.⁷ Acacia claims to own a portfolio of over 225 U.S. and international "standards essential
4 voice coding patents that were developed by VoiceAge Corporation."⁸ Exhibit A attached hereto
5 contains a non-exhaustive list of the former VoiceAge patents that Acacia acquired. On information
6 and belief, VoiceAge and Acacia also agreed to share the ill-gotten proceeds from Acacia's licensing
7 efforts of the former VoiceAge patents in which VoiceAge and Acacia split the royalties for the
8 patents.

9 26. After acquiring the VoiceAge patents, Acacia immediately raised the license price for
10 the patents and began to demand above-FRAND royalties. [REDACTED]

11 [REDACTED]
12 [REDACTED].] Apple explained this to Acacia, and [REDACTED]
13 [REDACTED], and despite Apple's stated willingness to license the patents on FRAND terms,
14 Acacia sued Apple through its subsidiary, SLC GmbH, in Germany, seeking an injunction against
15 the sale of Apple's iPhones and iPads based on six VoiceAge Patents. The suit came without
16 warning—on December 21, 2015, [REDACTED]
17 [REDACTED] Instead, Acacia
18 secretly filed the German suit nine days later on December 30, 2015, even before Apple's license
19 had expired. Acacia, through SLC LLC, also sued Apple in the United States on January 27, 2016,
20 asserting declared SEPs. Apple has made a [REDACTED] offer to license SLC GmbH's patents, [REDACTED]
21 [REDACTED] to license SLC's patents worldwide, which
22 Acacia also rejected.

23 27. Acacia has successfully exploited its status as a PAE to coerce cellular device
24 suppliers to pay exorbitant, non-FRAND royalties for the former VoiceAge patents. Through its
25 subsidiary SLC GmbH, Acacia has sought and obtained injunctions against HTC, Motorola,

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27 ⁷ On December 29, 2013, VoiceAge transferred at least ten patents and applications to SLC,
including U.S. Patent Nos. 6,807,524; 7,260,521; 7,672,837; 8,036,885; 6,795,805; 7,151,802;
28 7,191,123; and 7,280,959; and U.S. Patent Application Nos. 10965795 and 10964752.

⁸ SLC website, available at <http://web.saintlawrencegmbh.com/>.

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1 Deutsche Telekom, and Vodafone in Germany on declared SEPs acquired from VoiceAge. On
2 information and belief, certain licensees have settled and agreed to pay supra-FRAND royalties for
3 the former VoiceAge patents.

4 28. Acacia's conduct is a quintessential example of "patent hold-up" that implicates the
5 very anticompetitive dangers of standard-setting the ETSI IPR Policy was designed to avoid. Acacia
6 has breached FRAND undertakings and committed illegal acts by demanding non-FRAND royalties,
7 notwithstanding that it has at all relevant times been bound by VoiceAge's commitments to license
8 on FRAND terms all implementers of the relevant cellular standards.

9 IV. VoiceAge's and Acacia's Patent Transfers Have Lessened Competition

10 29. VoiceAge's transfer of patents to Acacia has lessened competition and created and
11 enhanced market power in SEP Technology Markets (defined below) because Acacia, as a PAE, has
12 used the acquired patents to exploit product suppliers in ways VoiceAge could not. Indeed, the
13 patent transfers were designed to have that effect. The lessening of competition and creation and
14 enhancement of market power is reflected in, among other things, Acacia's breaches of FRAND
15 commitments.

16 30. Acacia's acquisitions of the former VoiceAge patents created and enhanced market
17 power that does not derive from the value of the patents, but rather from the fact that the constraints
18 on the conduct of operating technology companies like VoiceAge do not apply to Acacia's conduct.
19 PAEs like Acacia can afford to bring suits regardless of the merits because their litigation costs and
20 risks are trivial in comparison with the technology companies that they sue, and the risk of penalty is
21 practically non-existent. They do not develop their own technology and have minimal documents,
22 making their litigation discovery costs a fraction of those that a technology company would have
23 faced. Acacia also does not face any risks to its reputation or business relationships from aggressive
24 demands or litigation. To the contrary, its benefits from a reputation for brazen and ruthless patent
25 assertion tactics, which intimidates targets into settling to avoid the repeated harassment for which
26 Acacia is well known.

27 31. Acacia has every incentive to and does demand excessive royalties untied to the value
28 of the patents. By seeking in litigation more money than the patent in suit is worth, it also exploits

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1 the risk of error in the judicial process. Acacia pressures its targets to settle to avoid facing the risk
2 of an exorbitant damages award if they choose to defend themselves through trial, while Acacia
3 stands only to gain a windfall from an erroneously high award.

4 32. Courts are limited in their practical ability to police erroneous awards due to the
5 structure of PAEs. Critical information to assess the merits and value of the patents may be
6 unavailable in litigation because Acacia did not develop the patented technology. VoiceAge is
7 headquartered abroad, outside the subpoena power of the U.S. courts. Incomplete information
8 increases the likelihood of a mistaken verdict of infringement or failure to find invalidity or
9 unenforceability.

10 33. Acacia's acquisitions do not create efficiencies that VoiceAge could not generate
11 through direct and transparent licensing. PAEs can demand higher payments and disregard FRAND
12 commitments because they do not face the same structural constraints as operating companies, which
13 is what makes them an attractive co-conspirator to VoiceAge.

14 **V. Defendants' Abuses Harm Apple, The Cellular Industry, And Consumers**

15 34. VoiceAge has illegally conspired with Acacia to transfer patents to Acacia, which
16 then breaches FRAND commitments, otherwise exploits those patents in ways VoiceAge could not,
17 and then shares with VoiceAge the exorbitant royalties created by the FRAND breaches and other
18 types of exploitation. The conspiracy has resulted in the parties illegally obtaining or enhancing
19 market power and injuring competition in the markets for functions performed by technologies
20 purportedly covered by declared SEPs acquired from VoiceAge (SEP Technology Markets). Each
21 SEP Technology Market consists of a technology covered by a patent acquired by Acacia from
22 VoiceAge and any other technologies that compete or formerly competed to perform the same
23 function. Acacia offers to license the patents in its SEP Technology Markets to companies located
24 all over the world, so the market is worldwide.

25 35. In SEP Technology Markets, when the relevant standard was established, the
26 particular technology covered by the SEP was selected over formerly competing technologies that no
27 longer compete (or do not compete closely) once the standard is set. Because product suppliers
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1 design and make enormous sunk investments in products that support standards developed by ETSI,
2 and the only significant telecommunications networks in many parts of the world support only ETSI
3 standards, makers of products that support ETSI standards have no economically viable option to
4 switch to supplying products that support other standards rather than ETSI standards. Accordingly,
5 Acacia holds monopoly power in the SEP Technology Markets.

6 36. The exorbitant royalties that Acacia has extracted from Apple and others are direct
7 evidence that Acacia has monopoly power in the relevant markets and that the market does not
8 provide a significant constraint on its ability to extract supracompetitive royalties. That monopoly
9 power is independent of whether the patents asserted are actually valid and infringed.

10 37. VoiceAge's transfer of patents to Acacia has manufactured market power that derives
11 not from any inventive value of the patents, but rather from Acacia's incentives and ability, as a
12 PAE, to exploit Apple and other product suppliers in ways that VoiceAge could not. Put another
13 way, the acquisitions do not "unlock" fair value that VoiceAge could not obtain. As described in
14 Paragraph 26, VoiceAge is fully capable of extracting fair values for its patents. Acacia, however,
15 can extort exorbitant value from the transferred patents because it does not face the same structural
16 constraints or incentives as VoiceAge. As a result of that wrongfully-obtained or enhanced market
17 power, Acacia has inflated royalties in licensing markets. While Acacia tries to tax Apple because
18 of its significant revenue generated from innovations entirely unrelated to the former VoiceAge
19 patents, it is extracting exorbitant royalties from other suppliers of products that support the relevant
20 standards, and creating a barrier to entry for new suppliers of standards-compliant products.

21 38. Acacia's and VoiceAge's conspiracy has resulted in inflated licensing royalties—i.e.,
22 higher prices—and imposed burdens, costs, and uncertainties for Apple and potential licensees in the
23 SEP Technology Markets, including cellular product suppliers. In addition, U.S. and other end
24 consumers have been harmed and face a continuing threat of increased prices and reduced
25 innovation and quality for cell phones and other cellular devices.

26 39. This illegal conduct causes obvious harm to potential licensees such as Apple—i.e.,
27 customers in the SEP Technology Markets—when they are compelled to pay inflated, non-FRAND
28 royalties. Potential licensees are also harmed, even when they do not acquiesce to an inflated

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1 royalty, by being forced to incur substantial expenses, uncertainty, and burdens in resisting the
2 patent litigations and injunction threats. For example, Apple has spent millions to date on outside
3 resources (including counsel, experts, and vendors) due to Acacia's exorbitant demands and
4 injunction threats. Apple has also been harmed by the enormous amounts of time its employees
5 have been forced to spend on these litigations, including collecting information and documents and
6 preparing for depositions, rather than doing their jobs. Acacia's acquisitions and misuse of patents
7 obtained from VoiceAge, as well as its disregard for its FRAND commitments, has enabled it to
8 impose these costs on licensees and potential licensees in the SEP Technology Markets.

9 40. Acacia's and VoiceAge's conduct has also harmed end consumers who purchase cell
10 phones and other devices with cellular capability (such as tablets). Acacia's acquisitions inflate
11 prices and decrease innovation and quality for those cellular products by raising the costs and
12 burdens associated with product suppliers' licensing of declared SEPs and by discouraging suppliers
13 from making the large investments required to innovate effectively.

14 41. Moreover, Acacia's abuse of its declared SEPs has chilled, and, if not enjoined, will
15 continue to chill, procompetitive standard-setting, to the detriment of industry and American and
16 other consumers alike.

COUNT I**BREACH OF CONTRACT**

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20 42. Apple repeats and realleges each allegation above as if fully set forth herein.

21 43. VoiceAge contractually committed to make its declared SEPs available on FRAND
22 terms and conditions. FRAND commitments are binding on all subsequent patent owners, including
23 Acacia, which agreed to be bound by VoiceAge's FRAND commitments at the time it purchased
24 VoiceAge's patents.

25 44. When Acacia acquired these declared SEPs, it entered into or was assigned the
26 express or implied contractual commitments with ETSI.

27 45. Apple, as a member of ETSI and an implementer of ETSI standards, is an intended
28 third-party beneficiary of VoiceAge's and Acacia's contracts with ETSI to license declared SEPs on

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1 FRAND terms. Each third party that would potentially implement ETSI/3GPP standards such as
2 AMR-WB, including Apple, was an intended beneficiary of VoiceAge's agreement with ETSI
3 (which continues to bind Acacia).

4 46. VoiceAge breached these contracts by transferring them to Acacia with the
5 knowledge and intent that Acacia would not abide by the terms of VoiceAge's FRAND
6 commitment.

7 47. Acacia breached its FRAND obligations by demanding above-FRAND royalties for
8 its declared SEPs acquired from VoiceAge, and by seeking injunctions blocking Apple's products
9 based on such patents.

10 48. As a direct result of Acacia's and VoiceAge contractual breaches, Apple has suffered
11 harm to its business and property, and, absent an injunction, Apple will continue to suffer from these
12 effects. Apple's past and continuing harm includes litigation costs, supracompetitive licensing rates,
13 business uncertainty, and business resources lost in dealing with the consequences of Defendants'
14 contractual breaches.

COUNT II**UNLAWFUL ASSET ACQUISITION****(SECTION 7 OF THE CLAYTON ACT)**

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19 49. Apple repeats and realleges each allegation above as if fully set forth herein.

20 50. The relevant markets for this claim are the SEP Technology Markets.

21 51. Acacia, through SLC, has acquired hundreds of patents from VoiceAge, which are
22 assets under Section 7 of the Clayton Act. The effects of these acquisitions by Acacia have been to
23 lessen competition substantially, and to tend to create monopolies in the SEP Technology Markets
24 due to the changes in the licensing market structure described above. Put differently, Acacia's
25 acquisitions resulted in significantly enhanced ability and incentives to harm competition through
26 Acacia's assertions and coercive litigation designed to extract exorbitant royalties from Apple and
27 other operating technology companies far above what the transferor of the patents, VoiceAge, had
28 obtained and could have continued to obtain itself.

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1 52. Acacia's patent acquisitions do not result in efficiencies because, among other things,
2 VoiceAge was fully capable of obtaining reasonable royalties itself. Insofar as the acquisitions
3 resulted in any efficiencies, those efficiencies are outweighed by the anticompetitive effects of the
4 acquisitions.

5 53. As a direct result of Acacia's patent acquisitions from VoiceAge, Apple has suffered
6 harm to its business and property, and, absent injunctive relief, Apple will continue to suffer from
7 these effects. Apple's past and continuing harm includes litigation costs, supracompetitive licensing
8 rates, business uncertainty, and business resources lost in dealing with the consequences of Acacia's
9 assertion of its acquired VoiceAge patents. As a result of Acacia's acquisitions, consumers for end
10 cellular devices have suffered or are threatened with higher prices and reduced innovation and
11 quality.

12
13 **COUNT III**

14 **ILLEGAL AGREEMENT RESTRAINT OF TRADE**
15 **(SECTION 1 OF THE SHERMAN ACT)**

16 54. Apple repeats and realleges each allegation as if fully set forth herein.

17 55. VoiceAge conspired with Acacia to transfer declared SEPs to Acacia for the purpose
18 and with the effect of evading VoiceAge's FRAND commitments and exploiting the patents in ways
19 that VoiceAge could not by acting alone.

20 56. VoiceAge's agreement with Acacia was expressly intended to enable and had the
21 effect of enabling Acacia to extract exorbitant royalties from cell phone and other cellular device
22 suppliers (like Apple) based on FRAND-committed patents, far beyond what VoiceAge could
23 extract itself. As they intended in reaching this agreement, VoiceAge and Acacia share in the fruits
24 of the non-FRAND royalties Acacia demands from product suppliers through VoiceAge's interest in
25 the royalties Acacia obtains.

26 57. The conspiracy between VoiceAge and Acacia raised prices and resulted in other
27 anticompetitive effects in the SEP Technology Markets, and for cellular devices sold to end
28 consumers.

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1 58. The patent transfers from VoiceAge to Acacia generated no efficiencies, and in fact
2 were designed to create inefficiencies in licensing that VoiceAge and Acacia could exploit to harm
3 Apple, other potential licensees, and end cellular product consumers. Any conceivable efficiencies
4 that the agreement may have created were significantly outweighed by their anticompetitive effects.

5 59. As a direct result of the unlawful agreement between VoiceAge and Acacia, Apple
6 has suffered harm to its business and property, and, absent injunctive relief, Apple will continue to
7 suffer from these effects. Apple’s past and continuing harm includes litigation costs,
8 supracompetitive licensing rates, business uncertainty, and business resources lost in dealing with
9 the consequences of the unlawful agreement. Consumers for end cellular products have suffered or
10 are threatened with higher prices and reduced innovation and quality.

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COUNT IV

UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200

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14 60. Apple repeats and realleges each allegation above as if fully set forth herein.

15 61. Acacia and VoiceAge have engaged and continue to engage in unfair competition in
16 violation of Cal. Bus. Prof. Code § 17200, et seq. As set forth above, Acacia has engaged in illegal
17 conduct by violating the Clayton Act, and Acacia and VoiceAge have engaged in illegal conduct by
18 violating the Sherman Act. Additionally, as discussed below, Acacia has violated Section 5 of the
19 Federal Trade Commission Act, 15 U.S.C. § 45. That conduct is also unfair in that it violates the
20 spirit and policy of the antitrust laws.

21 62. Acacia’s and Voice Age’s unfair business practices include their conspiracy to evade
22 VoiceAge’s FRAND commitments by transferring declared SEPs to Acacia. Acacia has
23 subsequently demanded non-FRAND royalties and has sought injunctions in violation of those
24 FRAND commitments.

25 63. The United States Federal Trade Commission (FTC) enforces Section 5 of the Federal
26 Trade Commission. The FTC has brought an action under Section 5 where, like here, an acquiring

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1 firm refused to abide by licensing commitments that its predecessor made in connection with
2 industry standard-setting activities.⁹

3 64. The FTC has also brought actions under Section 5 where, like here, a holder of
4 FRAND-committed patents sought to obtain an injunction against a standard implementer.¹⁰

5 65. As a direct result of Acacia's and VoiceAge's wrongful conduct, competition has
6 been injured in the SEP Technology Markets as alleged above. Moreover, this conduct threatens
7 injury to downstream competition for price, innovation, and quality in markets for cellular devices,
8 thereby injuring consumers in California and elsewhere. These threatened injuries include the
9 passing on to consumers of improperly inflated royalties, and reductions in innovation and quality
10 for cellular devices that comply with relevant standards by raising costs for innovators to bring
11 products to market.

12 66. As a direct result of Acacia's and VoiceAge's illegal conduct, Apple has suffered
13 economic harm in the form of litigation costs and diversion of resources away from innovation.

RELIEF SOUGHT

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16 Apple respectfully requests the following relief:

- 17 A. That Acacia's' unlawful conduct as alleged herein be declared a violation of Section 7 of the
18 Clayton Act, 15 U.S.C. § 18;
- 19 B. That Acacia's and VoiceAge's unlawful conduct as alleged herein be declared a violation of
20 Section 1 of the Sherman Act, 15 U.S.C. §1;
- 21 C. That Acacia's and VoiceAge's unlawful and unfair conduct as alleged herein be declared a
22 violation of Cal. Bus. Prof. Code § 17200, et seq.;
- 23 D. That Acacia's and VoiceAge's conduct as alleged herein be judged a breach of contract;
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27 ⁹ See Decision and Order, In the Matter of Negotiated Data Solutions LLC, File No. 051-0094 (Jan. 23, 2008), available
at <https://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122do.pdf>.

28 ¹⁰ See, e.g., Decision and Order, In the Matter of Motorola Mobility LLC, File No. 121-120 (July 24, 2013), available at
<https://www.ftc.gov/sites/default/files/documents/cases/2013/07/130724googlemotorolado.pdf>.

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- 1 E. That Apple recover damages against Acacia and VoiceAge, including incidental and
2 consequential damages, in an amount to be determined and multiplied to the extent provided
3 by law;
- 4 F. That all contracts or agreements that VoiceAge and Acacia entered into in violation of the
5 Sherman Act, Clayton Act, Cal. Bus. Prov. Code § 17200, et seq., or in breach of VoiceAge's
6 or Acacia's FRAND obligations be declared void and the patents covered by those transfer
7 agreements be transferred back from Acacia (or its subsidiaries) to VoiceAge;
- 8 G. That all patents Acacia (or its subsidiaries) has acquired from VoiceAge be declared
9 unenforceable;
- 10 H. That Acacia be enjoined from seeking injunctions against Apple based on declared SEPs
11 obtained from VoiceAge;
- 12 I. That Apple be awarded expenses and costs of suit, including reasonable attorneys' fees, to
13 the extent provided by law; and
- 14 J. That Apple be awarded such additional relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

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16 Pursuant to Federal Rule of Civil Procedure 38(b), Apple demands a trial by jury on all
17 issues triable by jury.

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1 DATED: October 11, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2017, I electronically filed the foregoing documents using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

DATED: October 11, 2017

/s/ Mark D. Selwyn
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