

1 JOSE L. PATIÑO, CA Bar No. 149568
jpatino@foley.com
2 NICOLA A. PISANO, CA Bar No. 151282
npisano@foley.com
3 JUSTIN E. GRAY, CA Bar No. 282452
jegrays@foley.com
4 FOLEY & LARDNER LLP
3579 VALLEY CENTRE DRIVE, SUITE 300
5 SAN DIEGO, CA 92130
TELEPHONE: 858.847.6700
6 FACSIMILE: 858.792.6773

7 Attorneys for Plaintiff
8 KYOCERA INTERNATIONAL, INC.

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

11 KYOCERA INTERNATIONAL, INC.,

12 Plaintiff,

13 v.

14 SEMCON IP INC.,

15 Defendant.

Case No. '18CV1575 AJB MDD

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

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COMPLAINT FOR DECLARATORY JUDGMENT

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

NATURE OF ACTION

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7 1. This is a declaratory judgment action seeking a declaration of non-
8 infringement of U.S. Patent Nos. 7,100,061 (“the ’061 patent”), 7,596,708 (“the ’708
9 patent”), 8,566,627 (“the ’627 patent”), and 8,806,247 (“the ’247 patent”), true and
10 correct copies of which are attached hereto as Exhibits 1-4.

THE PARTIES

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

14 3. On information and belief, Defendant Semcon is a Texas corporation and
15 has its principal place of business at 100 W. Houston Street, Marshall, Texas 75670.

JURISDICTION AND VENUE

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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 International does not
20 infringe any claim of the ’061, ’708, ’627, and ’247 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 Semcon 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 ’061, ’708, ’627, and ’247 patents, to California
27 corporations and business entities and individuals residing in California and/or organized
28 under the laws of the State of California.

1 7. Semcon has conducted extensive enforcement efforts regarding its patent
2 portfolio, including the '061, '708, '627, and '247 patents. A number of the companies
3 against whom Semcon has sought to enforce the '061, '708, '627, and '247 patents
4 maintain their principal places of business in California. These companies include ZTE
5 (TX) Inc. (Milpitas) and MediaTek USA Inc. (San Jose). Additionally, a number of the
6 foreign companies against whom Semcon has sought to enforce the '061, '708, '627, and
7 '247 patents in lawsuits have relevant United States subsidiaries that maintain their
8 principal places of business in California. These companies include AsusTek Computer
9 Inc. (U.S. subsidiary ASUS Computer International has its principal place of business in
10 Fremont) and TCT Mobile International Limited (U.S. subsidiaries TCT Mobile Inc.,
11 TCT Mobile (US) Inc., and TCT Mobile (US) Holdings Inc. each has its respective
12 principal place of business in Irvine). Accordingly, on information and belief, litigation
13 negotiations and settlement activity between Semcon and California-based companies
14 being sued by Semcon has physically taken place in California.

15 8. Upon information and belief, Semcon retained the services of Process
16 Service Network, located at 21218 Merridy Street, Chatsworth, CA 91311, to assist
17 Semcon in delivering materials and fees in accordance with United States and Taiwanese
18 procedure relating to service of Semcon's complaint in Semcon's pending lawsuit against
19 AsusTek Computer Inc. in the Eastern District of Texas (No. 2:18-cv-00193-JRG).

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

23 10. This Court has specific jurisdiction over Semcon because Semcon has
24 specifically directed its activities with respect to the '061, '708, '627, and '247 patents
25 generally, and against Kyocera International 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).

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FACTUAL BACKGROUND

12. Semcon has brought a series of lawsuits against various companies concerning the '061, '708, '627, and '247 patents.

13. On May 9, 2018, Semcon filed a Complaint for Patent Infringement in the Eastern District of Texas (No. 2:18-cv-00197-JRG) accusing Kyocera Corporation of infringing the '061, '708, '627, and '247 patents, specifically identifying the DuraForce PRO smartphone as an allegedly infringing product.

14. Kyocera Corporation is a holding company which does not engage in activities under the Patent Act, 35 U.S.C. §§ 1-376, in the United States. Kyocera Corporation does not instruct, direct, or control the activities of its subsidiaries (or any other entity) relative to the operation or design of wireless device features and functionality.

15. Kyocera International is a wholly-owned subsidiary of Kyocera Corporation. Kyocera International purchases smartphones from Kyocera Corporation in Japan and then Kyocera International imports those smartphones into the United States and sells those smartphones to Kyocera International customers.

16. Kyocera International is the proper party to defend against allegations made in Semcon's patent infringement case filed May 9, 2018 in the Eastern District of Texas and Semcon's patent infringement case implicates actions taken by Kyocera International. However, as Kyocera International does not have any place of business in the Eastern District of Texas, Kyocera International cannot legitimately be added as a defendant to Semcon's patent infringement case filed against Kyocera Corporation in the Eastern District of Texas.

PATENTS-IN-SUIT

17. On its face, the '061 patent entitled "Adaptive Power Control" indicates it was issued by the United States Patent and Trademark Office on August 29, 2006.

18. On its face, the '708 patent entitled "Adaptive Power Control Integration System" indicates it was issued by the United States Patent and Trademark Office on

1 September 29, 2009.

2 19. On its face, the '627 patent entitled "Adaptive Power Control" indicates it
3 was issued by the United States Patent and Trademark Office on October 22, 2013.

4 20. On its face, the '247 patent entitled "Adaptive Power Control" indicates it
5 was issued by the United States Patent and Trademark Office on August 12, 2014.

6 21. On information and belief, and based on the assertions of Semcon in *Semcon*
7 *IP Inc. v. Kyocera Corporation*, No. 2:18-cv-00197-JRG (E.D. Tex.), Semcon is the
8 assignee of the '061, '708, '627, and '247 patents and has all substantial rights and
9 interest in the '061, '708, '627, and '247 patents.

10 **COUNT I**

11 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

12 **OF THE '061 PATENT**

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

15 23. Through its lawsuit filed against Kyocera Corporation in the Eastern District
16 of Texas, Semcon has asserted that Kyocera International has infringed one or more
17 claims of the '061 patent.

18 24. Kyocera International denies any claim of infringement of the claims of the
19 '061 patent, and contends that it does not infringe any claim of the '061 patent.

20 25. An actual and justiciable controversy has thus arisen between Semcon and
21 Kyocera International concerning the alleged infringement of the '061 patent.

22 26. Pursuant to the Federal Declaratory Act, 28 U.S.C. § 2201, *et seq.*, Kyocera
23 International is entitled to judgment from this Court finding that the '061 patent is not
24 infringed, directly or indirectly, by Kyocera International.

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COUNT II

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

OF THE '708 PATENT

27. Kyocera International repeats and realleges Paragraphs 1-21 of its Complaint as if fully set forth herein.

28. Through its lawsuit filed against Kyocera Corporation in the Eastern District of Texas, Semcon has asserted that Kyocera International has infringed one or more claims of the '708 patent.

29. Kyocera International denies any claim of infringement of the claims of the '708 patent, and contends that it does not infringe any claim of the '708 patent.

30. An actual and justiciable controversy has thus arisen between Semcon and Kyocera International concerning the alleged infringement of the '708 patent.

31. Pursuant to the Federal Declaratory Act, 28 U.S.C. § 2201, *et seq.*, Kyocera International is entitled to judgment from this Court finding that the '708 patent is not infringed, directly or indirectly, by Kyocera International.

COUNT III

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

OF THE '627 PATENT

32. Kyocera International repeats and realleges Paragraphs 1-21 of its Complaint as if fully set forth herein.

33. Through its lawsuit filed against Kyocera Corporation in the Eastern District of Texas, Semcon has asserted that Kyocera International has infringed one or more claims of the '627 patent.

34. Kyocera International denies any claim of infringement of the claims of the '627 patent, and contends that it does not infringe any claim of the '627 patent.

35. An actual and justiciable controversy has thus arisen between Semcon and Kyocera International concerning the alleged infringement of the '627 patent.

36. Pursuant to the Federal Declaratory Act, 28 U.S.C. § 2201, *et seq.*, Kyocera International is entitled to judgment from this Court finding that the '627 patent is not infringed, directly or indirectly, by Kyocera International.

COUNT IV

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

OF THE '247 PATENT

37. Kyocera International repeats and realleges Paragraphs 1-21 of its Complaint as if fully set forth herein.

38. Through its lawsuit filed against Kyocera Corporation in the Eastern District of Texas, Semcon has asserted that Kyocera International has infringed one or more claims of the '247 patent.

39. Kyocera International denies any claim of infringement of the claims of the '247 patent, and contends that it does not infringe any claim of the '247 patent.

40. An actual and justiciable controversy has thus arisen between Semcon and Kyocera International concerning the alleged infringement of the '247 patent.

41. Pursuant to the Federal Declaratory Act, 28 U.S.C. § 2201, *et seq.*, Kyocera International is entitled to judgment from this Court finding that the '247 patent is not infringed, directly or indirectly, by Kyocera International.

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DEMAND FOR JURY TRIAL

Kyocera International demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Kyocera International prays as follows:

- A. Declare that Kyocera International has not infringed any claim of the '061, '708, '627, and '247 patents;
- B. Enjoin Semcon, its assigns, and all those in privity therewith from asserting any of the claims of the '061, '708, '627, and '247 patents against Kyocera International or any of its customers or suppliers;
- C. Find this case an exceptional case and award Kyocera International 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: July 11, 2018

Respectfully submitted,
FOLEY & LARDNER LLP

/s/ Jose L. Patiño
Jose L. Patiño (CA Bar No. 149568)
jpatino@foley.com
Nicola A. Pisano (CA Bar No. 151282)
npisano@foley.com
Justin E. Gray (CA Bar No. 282452)
jegrays@foley.com
3579 Valley Centre Drive, Suite 300
San Diego, CA 92130-3302

Attorneys for Plaintiff
Kyocera International, Inc.