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12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
15

16 U-BLOX AG, U-BLOX SAN DIEGO,
17 INC., AND U-BLOX AMERICA,
18 INC.,

19 Plaintiffs,

20 v.

21 SISVEL INTERNATIONAL S.A.,
22 SISVEL US, INC., and 3G Licensing
23 S.A.

24 Defendants.
25
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27
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Case No. '20CV0494 AJB NLS

COMPLAINT FOR:

- (1) Breach Of Contract;**
- (2) Declaratory Judgment;**
- (3) Antitrust Monopolization In Violation Of Section 2 Of The Sherman Act and Unlawful Asset Acquisition in violation of Section 7 of the Clayton Act;**
- (4) Declaratory Judgment of Unenforceability of U.S. Patent No. 7,433,698; and**
- (5) Declaratory Judgment of Unenforceability of U.S. Patent No. 8,364,196.**

1 Plaintiffs u-blox AG, u-blox San Diego, Inc., and u-blox America, Inc.
2 (collectively, “u-blox” or “Plaintiffs”), by and through the undersigned counsel, file
3 this Complaint against Sisvel International S.A., Sisvel US, Inc., and 3G Licensing
4 S.A. (“3G Licensing”) (collectively, “Sisvel” or “Defendants”) as follows.

5 **INTRODUCTION**

6 1. u-blox, a leading fabless semiconductor provider of embedded
7 positioning and wireless communication products, brings this lawsuit against Sisvel
8 because of Sisvel’s refusal and failure to license its alleged standard essential
9 patents (“SEPs”) on fair, reasonable, and non-discriminatory (also known as
10 “FRAND”) terms and conditions, and to prevent and restrain Sisvel’s
11 anticompetitive conduct and other violations of the law.

12 2. Sisvel acquired ownership and/or the right to grant non-exclusive
13 licenses to a number of patents it asserts are essential to the second generation
14 (“2G”), third generation (“3G”), and/or fourth generation (“4G”) cellular technology
15 standards established by the European Telecommunications Standards Institute
16 (“ETSI”), a standard setting organization (“SSO”). However, Sisvel did not
17 develop, create and/or promote the cellular technology it asserts is covered by its
18 alleged standard essential patents (“SEPs”). Sisvel’s SEPs were previously owned
19 by other entities including, for example, Nokia, Research in Motion, Mitsubishi,
20 Orange, and KPN (the “transferors” or “prior owners”). In acquiring these alleged
21 SEPs, Sisvel intentionally sought to accumulate and aggregate them into a portfolio
22 with a dominant position in the market for licensing them, and improperly seek
23 unreasonable royalty rates.

24 3. As explained herein, Sisvel and the prior owners of Sisvel’s alleged
25 SEPs are and/or were members of ETSI and, thus, the SEPs related to 2G, 3G, and
26 4G that Sisvel has the right to license are subject to ETSI’s Intellectual Property
27 Rights (“IPRs”) Policy. The ETSI IPR Policy requires its members to disclose any
28 intellectual property rights (“IPR”) that entity has in technology related to a standard

1 under consideration, and requires the entity to agree to an irrevocable obligation to
2 be prepared to offer licenses on a FRAND basis.

3 4. Sisvel and/or the prior owners have submitted a number of declarations
4 to ETSI identifying hundreds of patents as potentially essential to the 2G, 3G, and/or
5 4G cellular standards, and agreeing to the FRAND commitment. As ETSI members
6 proposing technology in the standardization process, ETSI relied on such FRAND
7 commitments to lock-in the technology into the standard.

8 5. Consistent with the intent of ETSI's IPR Policy, and relying on the
9 assurances of FRAND commitments by SEP holders, such as Sisvel and/or prior
10 owners, u-blox has invested substantial resources in developing and marketing
11 cellular modules that are compatible with the 2G, 3G, and/or 4G standards
12 worldwide, including in the United States and California.

13 6. However, now that this lock-in has occurred and alternative
14 technologies have been excluded from the standards, it has become clear that Sisvel
15 never intended to license its alleged SEPs on FRAND terms and conditions.

16 7. u-blox is a ready and willing licensee to Sisvel's alleged SEPs, but
17 Sisvel's license related conduct plainly violates its FRAND commitments, including
18 but not limited to:

- 19 • Demanding royalty rates that are far in excess of the fair and
20 reasonable value of Sisvel's SEPs;
- 21 • Upon information and belief discriminating against u-blox and
22 violating ETSI guidelines by demanding u-blox pay higher
23 royalty rates than other implementers;
- 24 • Demanding u-blox pay royalties for alleged SEPs covering
25 portions of the standard not implemented by certain u-blox
26 products;
- 27 • Demanding u-blox pay royalties for alleged SEPs that the prior
28 owners failed to timely disclose prior to the standard being
adopted; and
- Demanding royalty rates that do not account for the expiration of
Sisvel's alleged SEPs over the course of the license.

1 8. In addition, in a blatant attempt to coerce u-blox to enter into a license
2 that is not on FRAND terms, Sisvel has engaged in a course of conduct to damage
3 u-blox's relationships with its customers and, ultimately, to damage u-blox.
4 Specifically, in 2017, ignoring u-blox's request for a FRAND license, Sisvel
5 targeted u-blox's customers and downstream manufacturers, including Xirgo
6 Technologies, LLC ("Xirgo"), by sending demand letters and suing Xirgo in district
7 court.

8 9. Upon information and belief, Sisvel was well aware of the fact that: (i)
9 u-blox entered into relationships with its customers in reliance on Sisvel's and the
10 prior owners' commitment to offer a license to the alleged SEPs on FRAND terms,
11 and (ii) u-blox's customers and their downstream manufacturers relied on u-blox to
12 obtain a license from SEP holders such that they may design their products and
13 incorporate u-blox's technology into their products.

14 10. Sisvel has demanded greatly inflated patent royalties that are based off
15 the final end product, rather than the smallest saleable unit that practices the alleged
16 SEPs—the u-blox components. These inflated royalties Sisvel seeks, going back
17 years, far exceed the profit margin of the u-blox components, even though pricing
18 decisions had been made years ago, and the prior owners could have sought a
19 license from u-blox years ago.

20 11. In response to Sisvel's unreasonable royalty rate demands, u-blox
21 provided Sisvel with a counter-offer, along with a detailed explanation of how that
22 counter-offer is FRAND, and reiterated that it was willing to negotiate a FRAND
23 license with Sisvel.

24 12. Unfortunately, however, Sisvel refused to negotiate in good faith with
25 u-blox for a FRAND license. Among other things, Sisvel appears intent to pressure
26 u-blox into a license that is not FRAND by interfering with u-blox's important
27 customer relationships.

28 13. As a result of the foregoing, u-blox has no choice but to turn to the

1 Court to establish FRAND terms and conditions, including a royalty rate, for a
2 license to Sisvel's alleged SEPs, and to enjoin Sisvel from engaging in
3 anticompetitive conduct, including, but not limited to, demanding non-FRAND rates
4 from implementers, and seeking royalties for technology that was adopted into the
5 standards well before Sisvel and/or the prior owners properly disclosed their IPRs to
6 ETSI and its members—thereby rendering the alleged SEPs unenforceable.

7 **THE PARTIES**

8 **A. u-blox**

9 14. Plaintiff u-blox AG is a corporation organized and existing under the
10 laws of Switzerland, having its principal place of business in Zürcherstrasse 68,
11 8800 Thalwil, Switzerland.

12 15. Plaintiff u-blox San Diego, Inc. is a wholly-owned subsidiary of u-blox
13 AG. u-blox San Diego, Inc. is a corporation organized and existing under the laws
14 of Delaware, having its principal place of business at 12626 High Bluff Drive #200,
15 San Diego, California 92130.

16 16. Plaintiff u-blox America, Inc. is a wholly-owned subsidiary of u-blox
17 AG. u-blox America, Inc. is a corporation organized and existing under the laws of
18 Delaware, having its principal place of business at 1902 Campus Commons Drive
19 Suite 310, Reston, Virginia 20191.

20 17. u-blox delivers leading wireless technology to reliably locate and
21 connect people and devices. u-blox is a leading developer of global positioning
22 technology, including products and services based on Global Navigation Satellite
23 Systems (GNSS), including GPS and GALILEO, for the automotive, mobile
24 communications, and infrastructure markets. u-blox began offering wireless
25 products and services in 2009.

26 18. In 2011, u-blox acquired Fusion Wireless, a San Diego, California
27 based provider of CDMA wireless modules for consumer and machine-to-machine
28 (M2M) applications in North America. As u-blox's Chief Executive Officer

1 explained at the time, “[t]he acquisition of Fusion Wireless immediately gives
2 u-blox new, cutting-edge wireless module products plus access to the huge
3 embedded CDMA market in North America for both consumer and M2M
4 applications. It also expands our wireless module technology roadmap to cover all
5 popular standards used in the Americas based on a layout-consistent form factor.
6 This will allow our customers to easily adapt their products to match geographical
7 requirements as well as overcome network coverage limitations.”

8 19. Fusion Wireless has been integrated into u-blox as u-blox San Diego,
9 Inc., and the combined company continues to develop and market wireless
10 communications modules worldwide — including in California and throughout the
11 United States. Today u-blox offers a wide range of high-quality, scalable cellular
12 modules perfectly suited for vehicle, industrial, and M2M applications, and mass-
13 market consumer products with demanding size, cost, and quality requirements.

14 20. u-blox’s wireless communications modules are capable of
15 incorporating a wide variety of cellular technologies. Supported cellular
16 technologies provide global geographic coverage and include at least 2G, 3G, and/or
17 4G standards. Even within the 4G standard, u-blox offers a wide range of products
18 practicing different iterations and categories of the 4G standard designed for vastly
19 different tasks, including NB-IoT (LTE Cat NB1), LTE Cat M1, LTE Cat 1, LTE
20 Cat 4, and LTE Cat 6. These different cellular technologies offer different levels of
21 performance and cost benefits. For example, u-blox’s LTE Cat 1, LTE Cat M1, and
22 NB-IoT modules are designed to support a wide range of Internet of Things (IoT)
23 applications requiring medium to very low data rates. This includes a broad
24 spectrum of applications covering speeds high enough for voice and video
25 streaming, as well as those that need optimized performance for ultra-low power
26 consumption and extended in-building range. By contrast, u-blox’s high speed LTE
27 Cat 4 and LTE Cat 6 modules meet the needs of applications requiring high data
28 rates, such as for HD video transmission and infotainment solutions. u-blox sells

1 standard compatible products in California and around the world.

2 **B. Sisvel**

3 21. Upon information and belief, Defendant Sisvel International S.A.
4 (“Sisvel SA”) is organized under the laws of Luxembourg, with its principal place of
5 business at 6, Avenue Marie Therese 2132, Luxembourg Grand Duchy of
6 Luxembourg.

7 22. Upon information and belief, Defendant Sisvel US, Inc. (“Sisvel US”)
8 is a Virginia corporation, with its principal place of business at 10250 Constellation
9 Blvd 2nd Floor, Los Angeles, CA 90067.

10 23. Upon information and belief, Defendant 3G Licensing is a wholly
11 owned subsidiary of Sisvel SA, and is located at 6, Avenue Marie-Thérèse, L-2132
12 Luxembourg Grand Duchy of Luxembourg.

13 24. Upon information and belief, on February 14, 2018, Sisvel SA
14 contributed its 3G patents (formerly owned by Nokia) to 3G Licensing’s 3G
15 licensing program.

16 25. Upon information and belief, Sisvel SA has and does dictate and
17 control the actions of Sisvel US and 3G Licensing as described herein.

18 26. Upon information and belief, Sisvel US has or had offices and
19 employees in California and/or regularly conducts business in California, including
20 an office at 10250 Constellation Blvd. 2nd Floor, Los Angeles, CA 90067, which
21 supports Sisvel SA’s patent licensing business.

22 27. Upon information and belief, Sisvel purports to own approximately
23 thousands of U.S. patents and non-U.S. patents spanning multiple jurisdictions and
24 telecommunication technologies related to 2G, 3G, and 4G cellular technology, and
25 provides brochures listing the patents in its portfolio on its website. *See* Exhibits 1-
26 3 (Sisvel’s 3G (MCP) patent list, Sisvel’s 4G patent Brochure, and 3G Licensing’s
27 3G Patent List Brochure).

28 28. Upon information and belief, Sisvel derives revenues primarily from

1 patent licensing and aggressively seeks to monetize its intellectual property
2 portfolio by targeting companies like u-blox that sell standards compatible products
3 in California and around the world.

4 29. Upon information and belief, Sisvel SA directs employees of Sisvel US
5 in California to negotiate patent licenses with potential licensors in California,
6 including u-blox, regarding the 2G, 3G, and 4G patents for which Sisvel SA owns,
7 manages, and/or controls and/or for which 3G Licensing owns, manages, and/or
8 controls.

9 30. Upon information and belief, Sisvel SA directs employees of Sisvel
10 and/or related companies to negotiate patent licenses with potential licensors in
11 California, including u-blox, regarding the 3G and 4G patents for which Sisvel SA
12 owns, and/or for which 3G Licensing owns, manages, and/or controls.

13 **JURISDICTION AND VENUE**

14 31. u-blox brings this action for damages, declaratory relief, injunctive
15 relief, costs of suit, and reasonable attorneys' fees arising under, *inter alia*, the
16 patent laws of the United States, 35 U.S.C. § 1 *et seq.*; Section 2 of the Sherman
17 Antitrust Act, 15 U.S.C. § 2; Section 7 of the Clayton Act, 15 U.S.C. § 18; and the
18 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Accordingly, this Court
19 has jurisdiction to hear this case pursuant to 28 U.S.C. § 1331 and Section 4 of the
20 Clayton Act, 15 U.S.C. § 15.

21 32. This Court has subject matter jurisdiction over u-blox's pendent state
22 law claim pursuant to 28 U.S.C. § 1367, because u-blox's state law claim arises
23 from the same factual nucleus as its federal law claims.

24 33. This Court has personal jurisdiction over Sisvel based on the antitrust
25 laws, and at least because Sisvel (1) committed intentional acts, including the
26 wrongful conduct described herein, that give rise to the causes of action herein in
27 this jurisdiction, (2) expressly aimed such acts at u-blox in San Diego, California,
28 among other places, and on information and belief at others in this State, and (3)

1 caused harm that Sisvel knew was likely to be suffered in this State, including the
2 harm to u-blox described herein.

3 34. For example and without limitation, Sisvel regularly and knowingly
4 directs its licensing business to this judicial district and other areas of California,
5 including through its Los Angeles, California office. As described herein, Sisvel's
6 licensing business includes demanding supra-FRAND royalties from u-blox,
7 including u-blox San Diego, and from others in this State, including u-blox's
8 customers for Sisvel's SEPs. Sisvel knew such demands would cause harm to u-
9 blox in San Diego, California. Sisvel's license negotiations and correspondence
10 with u-blox on behalf of Sisvel in connection with the license negotiations described
11 herein were knowingly and intentionally conducted with u-blox's representative in
12 San Diego, California by Sisvel's representative in California. Additionally, Sisvel
13 knowingly and intentionally caused harm to u-blox in San Diego, California by
14 seeking supra-FRAND rates for FRAND encumbered SEPs. u-blox's claims arise
15 from Sisvel's intentional conduct in and expressly aimed at California.

16 35. In addition, this Court has personal jurisdiction over Sisvel at least
17 because (1) Sisvel maintains an office in Los Angeles, California, (2) this office
18 supports or supported Sisvel's licensing business described herein, (3) the conduct
19 giving rise to the causes of action described herein includes conduct directed at u-
20 blox in San Diego, California by at least Sisvel and/or 3G Licensing's representative
21 based out of this office, and (4) Sisvel acted as a single entity with all Sisvel
22 subsidiaries and 3G Licensing when negotiating with u-blox in San Diego.

23 36. Venue is proper under Section 12 of the Clayton Act §12.

24 37. Venue is proper in this judicial district pursuant to 28 U.S.C.
25 §§ 1391(b) (2) as the licensing negotiations giving rise to the complaint were
26 directed at u-blox's employees in this judicial district.

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FACTUAL ALLEGATIONS

38. As explained below, u-blox brings this action because Sisvel and/or the prior owners breached their commitments to ETSI, 3GPP, their members and affiliates, and third party beneficiaries to these commitments — including u-blox — to timely disclose their alleged 2G, 3G and/or 4G SEPs to ETSI and to license these SEPs on FRAND terms and conditions.

Standard Setting Organizations and Intellectual Property Rules

39. SSOs, such as ETSI, are voluntary membership organizations whose participants engage in the development of industry standards for the benefit of their members and affiliates, third parties implementing the standards, and consumers.

40. SSOs and the standards they promulgate play an important role in the technology market by allowing companies to agree on common technology standards so that compliant products implementing the standards will work together. Standards also lower costs by increasing product manufacturing volume and inter-brand competition and by eliminating switching costs for consumers and/or manufacturers who want to switch from products, services, or components provided by one company to those provided by another company.

41. Compatibility standards are commonly adopted in industries in which complementary products or components, manufactured by different firms, must interoperate, interface, or communicate with each other. When many companies produce components that must interoperate in a complex system, the collaboration of industry participants is often the most efficient way to establish the requisite standards. This collaboration often takes place in the context of formal SSOs that promulgate standards and set participation rules for their members. The telecommunications industry has benefited from increased interoperability across devices and networks, and the 3G and 4G cellular communications standards at issue here are examples of compatibility standards.

42. While standards deliver economic benefits to innovators, firms that

1 implement the standards, and consumers, standards can also potentially impose
2 excessive and unfair costs on these same constituencies, some of which stem from
3 opportunistic behavior by owners of patents that cover or are declared to cover
4 various technologies necessary to practice a standard. As a result, SSOs have
5 adopted IPR policies to reduce those costs. When adhered to, these IPR policies
6 benefit all of the constituencies. Standard setting participants receive the
7 opportunity to have their technology incorporated into the standard and to receive
8 compensation for its use in a larger number of devices that operate using the
9 standard. As the standard becomes more widely adopted and used, the patent
10 holders receive greater total compensation. SSO participants also enjoy benefits
11 independent of potential royalty income, including recognition of leadership in the
12 technology, increased demand for participants' products, advantages flowing from
13 familiarity with the contributed technology potentially leading to shorter
14 development lead times, and improved product compatibility.

15 43. Firms that implement the standard receive assurance that they will
16 always have access to essential patents and will not be exploited by patent holders or
17 disadvantaged relative to other implementers if they invest in implementing the
18 standard or developing innovative products that may operate with the standard.
19 Likewise, consumers and businesses benefit from continued innovation, reduced
20 costs, and other efficiencies from widespread interoperability and economies of
21 scale and scope enabled by the standard.

22 44. By contrast, IPR policy breaches can chill standard-setting efforts, thus
23 denying to standard setting participants, implementers, and consumers the many
24 benefits of standard setting.

25 45. In addition, while there are many benefits to collaborative standard
26 setting, collaborative standard setting can also raise antitrust concerns, because, for
27 example, collaborative standard setting has the potential to empower any individual
28 firm that has IPR over one or more technologies that are essential to the standard to

1 block other firms from practicing the standard or to significantly raise their costs of
2 doing so. Outside of the standard setting context, the extent to which a patent holder
3 will be able to profit from an invention is limited by competition from alternative,
4 non-infringing technologies or products. Thus, even though a patent gives its owner
5 the right to exclude unauthorized users, it does not necessarily confer monopoly
6 power because other constraining, non-infringing alternatives may be available.
7 However, incorporating patented technology into a standard artificially removes
8 competition from those alternatives and provides the patent owner with incremental
9 market power that can be exploited. This incremental market power is due to the
10 elimination of alternatives once the patents are incorporated into the standard, not
11 the inherent technical value of the patents (*i.e.*, the contribution of the patented
12 technology relative to the alternatives — the *ex ante* value).

13 46. SEP owners gain the power to exclude or exploit because the process of
14 standardization transforms what may have been only marginally valuable IP into
15 essential IP needed by all firms that intend to manufacture, use, or sell standard-
16 based products. The U.S. Department of Justice and Federal Trade Commission
17 have recognized the potential for SEP owners to abuse the power gained through
18 standardization. The effect is that the competitive constraints on the SEP owner's
19 licensing behavior are eliminated after standardization. This elimination of
20 alternatives confers market power on SEP owners relative to the pre-standard
21 situation wherein alternatives (including the option of not including the relevant
22 functionality at all) are potentially available in the technology market(s) and can
23 constrain anticompetitive licensing behavior of the SEP owner.

24 47. Once a standard is set, and especially as manufacturers invest in and
25 begin manufacturing products that can use or operate with the standard, it can be
26 infeasible to revise the standard in order to avoid a SEP. Revising a standard can be
27 very costly to the industry implementing that standard because it may involve
28 breaking the compatibility and interoperability that the standard provides. Thus,

1 changing a standard to eliminate a SEP whose owner attempts to unfairly exercise
2 undue market power gained from standardization is generally not feasible. In sum,
3 once an industry has adopted a particular standard, there are no alternative
4 technologies that can implement a given functionality within the wording of the
5 standard. The *ex post* relaxation of competitive constraints on the SEP owner
6 through the elimination of alternatives, together with the *ex post* negotiation of
7 licenses, gives rise to the possibility that a SEP owner will act opportunistically and
8 “hold up” some or all standard implementers by extracting higher royalties *ex post*
9 than it could have bargained for *ex ante*.

10 48. To prevent the exploitation of the SEP owner’s market power in this
11 situation, there must be other constraints on the SEP owner’s licensing behavior,
12 such as obligations to license on FRAND terms. To this end, SSOs typically impose
13 IPR rules on their participants to protect against (or minimize the likelihood of)
14 opportunistic, anticompetitive behavior by SEP owners. Such opportunistic
15 behaviors expropriate at least a portion of an implementer’s returns from sunk
16 investments in innovation. If an implementer or potential implementer anticipates
17 that there is a material risk of opportunistic behavior, its incentives to engage in
18 innovative activities will be reduced or possibly even eliminated, particularly when
19 the opportunistic SEP holder seeks to hold up the implementer for all or a large part
20 of the profits from the implementer’s innovations, complementary products, or
21 services. By protecting against opportunistic behavior, SSO rules pertaining to IPR
22 are intended to provide an environment that promotes investment, innovation, and
23 technological progress. These IPR rules typically call for SSO participants to
24 identify through timely declaration any potential SEPs covering the proposed
25 standard and agree to license all implementers of the standard on fair, reasonable,
26 and non-discriminatory terms.

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ETSI's IPR Policy

49. ETSI is an independent, non-profit SSO that is responsible for the standardization of information and communication technologies, including mobile cellular technologies, for the benefit of its members and affiliates.

50. 3GPP is a collaborative project that develops standards in partnership with a group of recognized SSOs in the information and communication industry, including ETSI.

51. ETSI, in partnership with 3GPP, has been involved in standardizing a number of 2G, 3G, and 4G mobile cellular technologies.

52. The ETSI IPR Policy¹ requires its members to disclose on a timely, bona fide basis all intellectual property rights that they are aware of and believe may be or may become essential during the development of an ETSI standard. The ETSI IPR Policy, Clause 4.1 provides that: “each MEMBER shall use its reasonable endeavours [sic] to timely inform ETSI of ESSENTIAL IPRs it becomes aware of. In particular, a MEMBER submitting a technical proposal for a STANDARD 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.” This obligation to disclose extends to members’ affiliates as well. In other words, if a member is going to receive an economic benefit from having technology covered by its intellectual property included in the standard, other ETSI members should be informed of this *before* making their final decision to adopt such technology into the standard, and in particular where such technology was submitted in a technical proposal by the IPR holder.

53. Additionally, ETSI’s IPR Policy requires that participants disclose their relevant IPR during the development of a standard so that ETSI may request that members owning patents potentially essential for the practice of a standard

¹ See ETSI IPR policy at <https://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf>, last visited March 12, 2020, which has remained substantively similar since 1994.

1 irrevocably commit to license those patents on FRAND terms and conditions to
2 anyone practicing the standard. Specifically, clause 6 of ETSI's IPR Policy states:

3 When an ESSENTIAL IPR relating to a particular STANDARD is
4 brought to the attention of ETSI, the Director of ETSI shall
5 immediately request the owner to give within three months an
6 undertaking in writing that it is prepared to grant irrevocable licenses
7 on fair, reasonable and non-discriminatory [FRAND] terms and
8 conditions under such IPR... The above undertaking may be made
9 subject to the condition that those who seek licenses agree to
10 reciprocate.

ETSI IPR Policy, § 6.1.

11 54. Clause 6.1 lists "MANUFACTURE, including the right to make or
12 have made customized components and sub-systems to the licensee's own design
13 for use in MANUFACTURE," as among the uses for which SEP holders must make
14 mandatory FRAND licensing commitments. *Id.*

15 55. FRAND commitments, pursuant to Clause 6 of the ETSI IPR Policy,
16 "shall be interpreted as encumbrances that bind all successors-in-interest."

17 56. ETSI defines "essential" as follows:

18 "ESSENTIAL" as applied to IPR means that it is not possible on
19 technical but not commercial grounds, taking into account normal
20 technical practice and the state of the art generally available at the time
21 of standardization, to make, sell, lease, otherwise dispose of, repair, use
22 or operate EQUIPMENT or METHODS which comply with a
23 STANDARD without infringing that IPR. For the avoidance of doubt
24 in exceptional cases where a STANDARD can only be implemented by
25 technical solutions, all of which are infringements of IPRs, all such
26 IPRs shall be considered ESSENTIAL.

ETSI IPR Policy, Annex 6.

27 57. Although ETSI defines the term "essential," it does not make any
28 attempt (nor, in general, do any SSOs) to ascertain whether the patents declared as
29 potentially "essential" to a standard are valid and enforceable, or whether they are,
30 in fact, technically essential. Which patents are deemed potentially "essential" to a

1 particular standard is self-proclaimed by the declaring SSO member.

2 58. If the essential IPR owner refuses to undertake the requested
3 commitment and informs ETSI of that decision, the ETSI General Assembly must
4 “review the requirement for that STANDARD or TECHNICAL SPECIFICATION
5 and satisfy itself that a viable alternative technology is available for the
6 STANDARD or TECHNICAL SPECIFICATION” that is not blocked by that IPR
7 and satisfies ETSI’s requirements. ETSI IPR Policy, § 8.1.1. Absent such a viable
8 alternative, the ETSI IPR Policy requires that “work on the STANDARD or
9 TECHNICAL SPECIFICATION shall cease.” *Id.*, § 8.1.2. In other words, ETSI
10 will not agree to incorporate a member’s technology into a standard under
11 consideration unless the member irrevocably binds itself to granting licenses on
12 FRAND terms.

13 59. Additionally, Section 8.2 of the ETSI IPR Policy describes the
14 procedure for addressing the non-availability of a license after the publication of a
15 standard or technical specification. *Id.*, § 8.2. Had Sisvel submitted an IPR and
16 disclosed to ETSI that it was actually not going to commit to FRAND rates (which
17 is akin to a license not being available), ETSI could have used its built-in procedure
18 for finding a solution to the issue, or in other words, finding an alternative to the
19 standard technology which could have been adopted in the next version of the
20 standard.

21 **Prior Owners’ and Sisvel’s IPR Declarations**

22 60. As an ETSI member and a participant in ETSI and/or 3GPP
23 standardization, in conjunction with the adoption of the 2G, 3G, and/or 4G
24 standards, the prior owners, such as, for example, Nokia, Research in Motion,
25 Orange, KPN and Mitsubishi, made submissions to the technical bodies within ETSI
26 and/or 3GPP, declaring that certain patents or patent applications may be or may
27 become essential to the standards under consideration.

28 61. For at least some of Sisvel’s patents, the prior owners, e.g., Nokia and

1 others, proposed technology related to the filed patent applications which were then
 2 adopted as the standard. However, those prior owners failed to disclose that they
 3 had filed patent applications relating to the standards they proposed and which were
 4 adopted until more than a year later when they finally filed a declaration disclosing
 5 IPR related to the adopted technology. It is well known that ETSI members are
 6 incentivized to choose technical solutions that are free of licensing costs, and that
 7 there is a reasonable possibility that knowing an entity owned IPR related to a
 8 proposed technology could have dissuaded ETSI members to implement that
 9 technology. *See Conversant Wireless Licensing S.A.R.L. v. Apple, Inc.*, No. 15-cv-
 10 05008-NC, Dkt. 547, at 10 (N.D. Cal. May 10, 2019).

11 62. Additionally, after Sisvel acquired some of its patent portfolio, Sisvel
 12 also submitted IPR declarations for some of the patents, and agreed to enter into an
 13 irrevocable undertaking to grant licenses to its disclosed essential patents on
 14 FRAND terms and conditions.²

15 **Overview of Cellular Standards**

16 63. Sisvel's unlawful and anticompetitive behavior pertains to patents that
 17 it claims are essential to the 2G, 3G, and/or 4G cellular standards, which are
 18 described below.

19 **Early Cellular Standards**

20 64. The first widespread use of mobile phones began in the late 1970s and
 21 into early 1980s with analog systems, generally referred to as "1G." The 1G system
 22 most widely deployed and most successful in the U.S. in the 1980's was AMPS

23 ² u-blox does not accept Sisvel's or the prior owners' representation that any (or all)
 24 of the patents identified as potentially "essential" are, in fact, necessary for the
 25 compliant implementations of 2G, 3G, and/or 4G technologies; nor does u-blox
 26 concede that the particular implementations of such technologies in its products
 27 practice any of Sisvel's patents, including those identified by Sisvel in relation to
 28 these technologies. Nonetheless, u-blox, and the entire cellular technology industry,
 has relied upon the prior owners' and Sisvel IPR declarations with FRAND
 commitments.

1 (Advanced Mobile Phone System). However, there were many other regional and
2 national systems in operation around the world at that time, leading to a fragmented
3 market with individual regions having their own vendors and standards that were
4 incompatible with one another.

5 65. In the late 1980s, the cellular industry moved towards a second
6 generation of mobile telephony, based on digital technology. Such systems
7 introduced a number of important benefits over the previous analog 1G systems,
8 such as improved voice quality, increased system capacity, increased system
9 security, and the ability to integrate voice and data services.

10 66. For the first time, SMS (Short Messaging Service, *i.e.*, “texting” or
11 “texts”) and basic data services became available. But there were divergent views
12 on how to effectuate these benefits. Thus, there were a number of different
13 standards considered to be 2G.

14 67. In Europe, a system called Global System for Mobile Communications
15 (“GSM”), originally referred to as Groupe Spécial Mobile, evolved to become the
16 dominant worldwide 2G standard.

17 68. GSM and these newer variants are still in use today. They can support
18 voice service and user data rates with low to moderate data transmission speed.
19 However, despite the availability and widespread, global adoption of GSM, the
20 technology was not initially widely commercialized in the United States. In the
21 United States, a different 2G technology, based on a different wireless air interface
22 named Code Division Multiple Access (“CDMA”), was being strongly championed
23 by Qualcomm.

24 69. At a very basic level, CDMA operates by assigning each user a unique
25 identifier, a “spreading code,” which is used to “spread” all the digital data
26 transmitted to or from that user. Because each user has a unique spreading code, a
27 user need not be assigned a specified time slot as is required with other more
28 onerous technologies. With CDMA, multiple users can communicate at the same

1 time (*i.e.*, simultaneously) using the same frequency by transmitting messages that
2 have been spread using different “spreading codes.”

3 **3G Standards**

4 70. In the mid to late 1990s, the cellular industry started a push towards a
5 newer, more advanced system, able to support more users with improved reliability
6 and better handling of data services.

7 71. Originally the hope was to adopt a single, global standard. However,
8 over time, it became apparent that diverging regional interests would prevent a
9 single system from being adopted. On the one hand, supporters of the GSM-based
10 standards pushed to have a system based on the GSM core network, but with an
11 enhanced Radio Access Network incorporating a new CDMA-based air interface
12 known as Wideband CDMA (“WCDMA”). This standard is known as Universal
13 Mobile Telecommunications System, or “UMTS.” On the other hand, supporters of
14 the IS-95 family of standards pushed to enhance the existing IS-95 core network and
15 CDMA air interface, to develop a new standard known as CDMA2000.

16 72. The first UMTS standard developed by 3GPP was called Release 99,
17 and was followed by a minor “cleanup” revision called Release 4. The first major
18 upgrade came in 2002 with Release 5, including a new feature called High Speed
19 Downlink Packet Access (“HSDPA”), which was followed by Release 6 in and
20 around early 2005 that introduced High Speed Uplink Packet Access (“HSUPA”).
21 Together HSDPA and HSUPA (collectively known as High Speed Packet Access or
22 “HSPA”) enhanced the download and upload speeds as compared to the original
23 baseline specification. In 2007, Release 7 included an enhancement named High
24 Speed Packet Access Evolution (“HSPA+”), which includes a number of technical
25 modifications to support even higher data rates. More recent releases have further
26 improved functionality.

27 73. UMTS, as improved through the various releases, remains in
28 widespread use around the world today.

The 4G Standard

74. For the first time in the evolution of cellular standards, the global cellular industry converged to a single wireless standard for use worldwide in the late 2000s: Long Term Evolution (“LTE”). This standard was developed by 3GPP, and it provides a natural evolutionary path for both UMTS and CDMA2000 network operators and their customers. Similar to the earlier generations, LTE also continues to evolve, including advances such as LTE-Advanced.

75. Work began in earnest on developing LTE around 2006, under the leadership of 3GPP. The first technical specifications, known as Release 8, were published in 2008. Release 8 includes functionality that theoretically supports downlink data rates of about 300 Mbps and uplink data rates of about 75 Mbps.

76. In 2011, an upgrade to LTE was published, referred to as Release 10, incorporating many features of what is known as LTE-Advanced. This upgrade includes a number of major technical enhancements to considerably increase LTE functionality. Commercial deployments of LTE-Advanced are in progress today.

77. Development of the LTE standard continued beyond Release 10 with incremental improvements to the standard, including many relevant to u-blox’s cellular modules.

78. In Release 12, 3GPP specified low-price machine-communication terminals as LTE terminal Category 0. These terminals feature a maximum data rate of 1Mbps, support for frequency division duplex and half duplex, and support for single antenna reception.

79. In Release 13, 3GPP defined two new terminal categories. Category M1 includes the features of Category 0, with the transceiver bandwidth limited to 1.08 MHz and support for coverage extension of approximately 15db. These limitations have cost reduction effects for chipsets compared to Category 0. Second, Release 13 defined the Narrowband IoT (“NB-IoT”) category of devices. NB-IoT is a subset of the LTE standard focused on indoor coverage, low cost, long battery life,

1 and high connection density. The NB-IoT category features transceiver bandwidth
2 limited to 180kHz and support for coverage extension greater than 20db.

3 80. As of Release 13, the LTE standard defines 19 separate categories of
4 user equipment (“UE”). These categories depend on maximum peak data rate and
5 MIMO capabilities supported by the UE.

6 81. Cellular products and components implementing LTE are not required
7 to practice every release of the LTE standard. For example, u-blox’s components
8 that use low-speed LTE category standards do not need to incorporate all the
9 technology needed in high-speed LTE category standards. Thus, given the variation
10 of LTE category implementations, not every u-blox product needs a license to all the
11 same LTE (4G) patents.

12 **Hold-up and Royalty Stacking**

13 82. Despite SSOs adopting IPR Policies incorporating FRAND
14 commitments, some SEP owners have attempted to exploit their monopoly power to
15 extract supra-competitive royalty rates after implementers are locked into the
16 standardized technology.

17 83. The exploitation of SEPs to extract unreasonable or discriminatory
18 royalties is referred to as patent “hold-up.” The cumulative royalty burden required
19 to satisfy all SEP holders is referred to as a royalty stack.

20 84. Hold-up harms competition and impedes implementation of standards,
21 diminishing any benefits that flow from widespread adoption of the standard. The
22 anticompetitive effects of hold-up are magnified when the total aggregate royalty
23 stack is analyzed. The total royalty stack must be reasonable when viewed in the
24 aggregate. The demands of individual SEP owners must be assessed in light of the
25 total number of SEPs included in the standard and their relative technical
26 contributions.

27 85. A number of cases that have been litigated in U.S. courts demonstrate
28 that patent hold-up is a widespread problem, with SEP owners violating their

FRAND commitments by making royalty demands significantly above the adjudicated FRAND rates. *See, e.g., In re Innovatio IP Ventures, LLC Patent Litig.*, 2013 WL 5593609, at *43 (N.D. Ill. Oct. 3, 2013) (for 19 asserted patents, assessing damages of \$0.0956 per unit as compared to the proposed royalty of \$16.17 per unit for tablet computers); *Microsoft Corp. v. Motorola, Inc.*, 2013 WL 2111217, at *100 (W.D. Wash. Apr. 25, 2013) (determining FRAND rate of \$0.03471 per Microsoft's xBox unit, as compared to Motorola's initial demand of \$6-\$8 per xBox unit).

86. Courts, regulators, and economists have also made clear that to be effective, the FRAND commitments in ETSI's IPR policy should: (a) limit royalties to the value that the SEP(s) had prior to inclusion in the ETSI standard and in light of other patented and unpatented technology essential to the standard; (b) prohibit charging royalties that are higher based upon the technology being written into the standard or that capture the value of the standard itself; and (c) require non-discriminatory treatment of licensees and potential licensees.

87. As explained below, and like the SEP owners from the aforementioned cases, an analysis of Sisvel's non-FRAND offers to u-blox for a license demonstrates that Sisvel is attempting to abuse its monopoly power to extract the hold-up value of its alleged SEPs. Sisvel's licensing offer to u-blox is completely untethered to the *ex ante* value of Sisvel's alleged SEPs, and would create an unsustainable royalty stack. In light of Sisvel's continued unreasonable demands for a license, and related conduct, u-blox has no choice but to seek a judicial determination of the terms for a fair, reasonable, and non-discriminatory license Sisvel's 2G, 3G, and 4G patents.

Sisvel's Refusal to Offer u-blox a License on FRAND Terms

88. As explained above, Sisvel and/or the prior owners committed to license the essential patents Sisvel holds consistent, in all respects, with the binding commitments to ETSI, 3GPP, and participants and implementers of the applicable standards. Additionally, the prior owners' FRAND commitments are binding on

1 Sisvel. However, in disregard of its binding obligations, Sisvel is refusing to license
2 its alleged SEPs to u-blox on FRAND terms and conditions.

3 89. In December 2016, Chuck Hausman of Sisvel US approached u-blox's
4 customer Xirgo, of Camarillo, California on behalf of Sisvel UK Limited, Sisvel SA
5 and 3G Licensing. Sisvel demanded that Xirgo license Sisvel SA and 3G
6 Licensing's wireless patent portfolio, part of which was allegedly essential to the
7 2G, 3G, and 4G wireless standards. In January 2017, in response to these demands,
8 u-blox reached out to Chuck Hausman of Sisvel US, seeking a license to the patents
9 identified in the Xirgo demand letters. However, after exchanging correspondence,
10 Sisvel maintained that it was free to choose to license its patents only "at the end
11 user product level, and not to chipsets or other components," and no license was
12 concluded.

13 90. In July 2017, u-blox was informed by its customer Bosch, through
14 Bosch's downstream customer Daimler, that Daimler had been approached by
15 Sisvel to "license Standard Essential Patents" for products incorporating u-blox
16 products that are compatible with the 2G, 3G, and 4G standards.

17 91. From October to December 2017, Kent Baker of u-blox in San Diego,
18 California, reached out to Thomas Rosseler of Sisvel SA and Chuck Hausman of
19 Sisvel US, again seeking a license to Sisvel and 3G Licensing's 2G, 3G, and 4G
20 wireless portfolio. Mr. Hausman finally responded on December 1, 2017.

21 92. From December 2017 through June 2018, the parties communicated
22 regularly and an in-person meeting was held in July 2018 where u-blox provided
23 Sisvel with detailed information regarding its business, typical markets, and
24 financial realities of u-blox's business, such as sales price of its modules, profit
25 margins, and indemnity obligations.³ This information was exchanged in good faith
26

27 ³ Upon information and belief, Sisvel was well aware of u-blox's obligations
28 regarding indemnity obligations to customers for the cost of a FRAND rate paid for
using its components. For example, u-blox's general counsel Jan Schnitzer had

1 with Sisvel in order to explain why u-blox needed a license, and that a FRAND
2 royalty rate must take this information into account, otherwise it could have a
3 devastating effect on the business.

4 93. In April 2018, Sisvel sent u-blox claim charts purporting to show how
5 some of Sisvel's patents cover portions of the standard.

6 94. In November 2018, Sisvel made an licensing offer to u-blox, but the
7 offer far exceeded a FRAND royalty rate for u-blox's products, wholly disregarded
8 u-blox business case presented at the meeting, and did not incorporate any particular
9 u-blox circumstances, including, for example, profit margins.

10 95. On June 20, 2019, Sisvel SA filed a patent infringement lawsuit against
11 Xirgo in the District of Delaware, Case No. 1:19-cv-01145. In its complaint, Sisvel
12 asserts that Xirgo infringes U.S. Patent Nos. 6,529,561; 7,274,933; 7,433,698;
13 7,460,868; 7,596,375; 7,751,803; 7,894,443; 8,275,374; 8,364,196; 8,472,955;
14 8,879,503; and 8,948,756.

15 96. On August 9, 2019, Mr. Baker sent Sisvel a counter-offer term sheet on
16 behalf of u-blox, along with a detailed cover letter explaining u-blox's counter-offer,
17 how the royalty rate was calculated, and why it was FRAND given u-blox business
18 circumstances, the price of its products, and a typical profit margin.

19 97. Sisvel has since refused to provide u-blox with a counteroffer, refused
20 to explain why it believes u-blox's royalty calculation was not FRAND, and refused
21 to engage in negotiations of a FRAND license.

22 98. u-blox is, and has always been, ready, willing, and able to enter into a
23 license to Sisvel's 2G, 3G, and 4G SEPs on FRAND terms and conditions.

24 99. However, Sisvel has no intention of granting u-blox a license to its
25 allegedly essential 2G, 3G, and 4G patents on FRAND terms and conditions.

26 100. Instead, Sisvel is incentivized to offer non-FRAND rates to u-blox,

27
28 conversations with another Sisvel representative, Valentina Piola, where they
discussed u-blox's indemnification obligations.

1 knowing that that u-blox cannot accept the offer, so that Sisvel can pursue a license
2 from u-blox's downstream customers where it can demand a royalty based on
3 products that incorporate the u-blox component and have higher average selling
4 prices. As such, u-blox is confronted with an entirely unfair Hobson's choice:
5 refuse to capitulate to Sisvel's unreasonable demands and risk losing its customers
6 and business or agree to a license containing terms and conditions including an
7 unreasonable royalty rate that are not FRAND. Given these clear hold-up
8 conditions, u-blox had no choice but to file this action.

9 **The Harm to u-blox and Industry Competition**

10 101. In justifiable reliance upon Sisvel's and the prior owners' promises that
11 they would license their SEPs to u-blox and others on FRAND terms, u-blox has
12 made significant monetary investments into the research, development, production,
13 and marketing of its cellular modules.

14 102. Sisvel also injures competition by intentionally aggregating patents
15 fractured off larger SEP holder's portfolios acquired from prior owners. Sisvel
16 knowingly and intentionally seeks to acquire these patents and charge supra-
17 FRAND rates on a far higher per-patent basis than for what the prior owners could
18 have obtained when licensed with the entire portfolio.

19 103. Additionally, Sisvel's licensing campaign introduces new and uncertain
20 costs to suppliers of electronics compatible with the standards—which were
21 implemented prior to the entry of these new non-practicing entity licensors into the
22 Relevant Markets. These new and unexpected costs of negotiating and/or defending
23 litigation due to the unanticipated demands of supra-FRAND rates Sisvel seeks from
24 suppliers, were not, and could not have been calculated into deciding whether to
25 invest millions of dollars into research and development of its components, or in
26 determining their pricing—made years prior. Therefore, Sisvel's licensing
27 campaign undermines competition and dampens innovation by causing less
28 investment into new products, and consequently harms the end consumer as

1 suppliers need to charge higher prices for their products.

2 104. Based on the foregoing, u-blox seeks, *inter alia*: (i) a judicial
3 declaration that Sisvel and the prior owners' promises to ETSI, 3GPP, and their
4 respective members and affiliates to license their SEPs on FRAND terms and
5 conditions constitute contractual obligations with u-blox and other implementers as
6 intended third party beneficiaries; (ii) a judicial declaration that Sisvel has breached
7 these obligations by demanding excessive, unfair, unreasonable, and discriminatory
8 royalties from u-blox; (iii) a judicial decree enjoining Sisvel from further demanding
9 excessive royalties from u-blox and u-blox's customers that are not consistent with
10 Sisvel's FRAND obligations; (iv) a judicial accounting of what constitutes a
11 FRAND royalty rate going forward in all respects consistent with Sisvel's
12 commitment to license its patents identified as (or alleged to be) potentially or
13 actually "essential" to the 2G, 3G and/or 4G standards; (v) a judicial determination
14 that Sisvel's refusal to agree to a FRAND license is a breach of Sisvel's
15 commitments to ETSI; (vi) a judicial determination that Sisvel's deceptive and
16 deliberately false declarations to ETSI, and the disclosure misconduct of the prior
17 owners (either alone or in combination), constitute violations of Section 2 of the
18 Sherman Act; (vii) a judicial determination that Sisvel's acquisition and use of SEPs
19 violates Section 7 of the Clayton Act; (viii) a declaration that patents associated with
20 the disclosure misconduct of one or more of the prior owners' are not enforceable;
21 and (x) all other relief to which u-blox may be entitled.

22
23 **CLAIMS FOR RELIEF**
24 **FIRST CAUSE OF ACTION**
 (Breach Of Contract)

25 105. u-blox re-alleges and incorporates by reference the allegations set forth
26 in the foregoing paragraphs.

27 106. Sisvel and/or its predecessors-in-interest, *i.e.*, the prior owners, entered
28 into contractual commitments with ETSI, 3GPP and their respective members,

1 participants, and implementers relating to the 2G, 3G, and 4G standards. As ETSI
2 members, and to comply with ETSI's IPR Policy, Sisvel and/or the prior owners
3 made binding commitments to ETSI, ETSI members, and third party implementers
4 to disclose intellectual property rights relevant to the 2G, 3G, and 4G standards, and
5 to grant irrevocable licenses to the alleged SEPs at issue on FRAND terms and
6 conditions.

7 107. The ETSI IPR Policy provides that the prior owners' obligations and
8 commitments to ETSI and/or its members and third party beneficiaries are
9 transferred with the relevant patents to Sisvel. *See* Clause 6 of the ETSI IPR Policy
10 (providing that it "shall be interpreted as encumbrances that bind all successors-in-
11 interest").

12 108. The ETSI membership and standards setting activities affirmed by
13 Sisvel and/or the prior owners, including the IPR declarations both the prior owners
14 and Sisvel made to comply with ETSI's IPR policy with respect to the alleged SEPs
15 Sisvel is purporting to license, created an express and/or implied contract with ETSI
16 and/or ETSI members, including an agreement that Sisvel would license those
17 patents on FRAND terms and conditions. ETSI's IPR Policy does not limit the right
18 to obtain a license on FRAND terms and conditions to ETSI members; third parties
19 that are not ETSI members also have the right to be granted licenses under those
20 patents on FRAND terms and conditions. Each and every party with products that
21 implement the 2G, 3G, and/or 4G standards promulgated by ETSI is an intended
22 third-party beneficiary of these contractual commitments, including u-blox, its
23 suppliers, its customers, and their downstream manufacturers.

24 109. However, despite u-blox's good faith efforts to negotiate a license to
25 Sisvel's alleged SEPs, Sisvel is refusing to offer u-blox a license on FRAND terms
26 and conditions.

27 110. Sisvel has breached its FRAND obligations by refusing to license its
28 SEPs to u-blox at reasonable rates, with reasonable terms, and on a non-

1 discriminatory basis.

2 111. As a result of Sisvel's contractual breach, u-blox has been injured in its
3 business or property and is threatened with loss of profits, loss of customers and
4 potential customers, and loss of goodwill and product image.

5 112. u-blox has suffered and will continue to suffer injury by reason of the
6 acts, practices, and conduct of Sisvel alleged herein until and unless the Court
7 enjoins such acts, practices, and conduct.

8
9 **SECOND CAUSE OF ACTION**
10 **(Declaratory Judgment)**

11 113. u-blox re-alleges and incorporates by reference the allegations set forth
12 in the foregoing paragraphs.

13 114. Sisvel is contractually obligated to license its 2G, 3G, and 4G SEPs on
14 FRAND terms and conditions. There is a dispute between the parties concerning
15 whether Sisvel has offered u-blox a license to its SEPs on FRAND terms and
16 conditions consistent with Sisvel's and/or the prior owners' irrevocable
17 commitments in declarations to ETSI and the referenced IPR policy of ETSI and/or
18 3GPP.

19 115. Sisvel has sued u-blox's customer Xirgo for patent infringement based
20 on its products that use u-blox products, for at least some of the patents to be
21 included in the license that Sisvel and u-blox are negotiating.

22 116. As a result of the acts described herein, there exists a definite and
23 concrete, real and substantial, justiciable controversy between u-blox and Sisvel
24 regarding what constitutes FRAND terms and conditions for a license to Sisvel's
25 2G, 3G, and 4G SEPs with respect to u-blox's products. This dispute is of sufficient
26 immediacy and reality to warrant the issuance of a declaratory judgment.

27 117. u-blox is entitled to a declaratory judgment that Sisvel has not offered
28 license terms to u-blox conforming to applicable legal requirements, including

1 failing to offer u-blox a license to its 2G, 3G, and/or 4G SEPs on FRAND terms and
 2 conditions. Moreover, u-blox is entitled to a declaratory judgment that sets the
 3 FRAND terms and conditions, including but not limited to the FRAND royalty rate,
 4 for a license to Sisvel's 2G, 3G, and 4G SEPs.

5
 6 **THIRD CAUSE OF ACTION**
 7 **(Antitrust Violations Of Section 2 Of The Sherman Act, 15 U.S.C. § 2, and**
 8 **Section 7 of the Clayton Act, 15 U.S.C. § 18)**

9 118. u-blox re-alleges and incorporates by reference the allegations set forth
 10 in the foregoing paragraphs.

11 **Relevant Markets**

12 119. For the purposes of u-blox's antitrust claim, the relevant markets are
 13 the technologies covered by the Sisvel ETSI-declared essential patents — inclusive
 14 of those issued in the United States and elsewhere — that Sisvel has purported to
 15 offer to license to u-blox for products that implement the 2G, 3G, and 4G standards,
 16 together with all other alternative technologies to the Sisvel technologies that could
 17 have been incorporated into the standards (collectively, the "Relevant Technology
 18 Markets"). Sisvel holds monopoly power in the various Relevant Technology
 19 Markets for the various functions claimed to be covered by their declared SEPs,
 20 because formerly viable alternative technologies are no longer viable because of the
 21 lock-in effect of standards.

22 120. The technologies that perform each of the 2G, 3G, and/or 4G functions
 23 are essential inputs into the manufacture and supply of products and services that
 24 support the standards. If a technology selected for inclusion in the standard is
 25 protected by patents, the patent owner controls the supply of that particular input
 26 technology for the standard. This is true for each function comprising the standard
 27 for which patented technology was selected. The functionality of the standards
 28 associated with each input technology also comprises a relevant market for antitrust
 purposes (the "Input Technology Markets"). Sisvel holds monopoly power in the

1 various Input Technology Markets for the various functions claimed to be covered
2 by their declared SEPs, because formerly viable alternative technologies are no
3 longer viable because of the lock-in effect of standards.

4 121. The relevant markets have high barriers to entry because the
5 standardization process eliminates the viability of alternative technologies as
6 substitutes.

7 **SSO's Adoption of Technology to a Standard**

8 122. In the ETSI standard-setting environment, ETSI members gather
9 together various technology in a consensus-oriented setting, to decide which
10 technology should be adopted into the standard.

11 123. Under the ETSI IPR policy, “[d]uring the proposal or development of a
12 standard, ETSI members must inform the Director General in a timely fashion if
13 they are aware that they hold any patent that might be essential.”⁴

14 124. The ETSI IPR policy is designed as such to allow its members deciding
15 which technology should be adopted into the standard to analyze whether or not the
16 technology will be subject to a FRAND commitment, in order to weigh the costs
17 and benefits of implementing the potential technology. Without timely disclosure of
18 IPRs, a technology holder would obtain an unfair business advantage through the
19 patents they obtain if they are essential to the standard.

20 125. Once ETSI adopts technology for a mobile standard, the owner of each
21 essential patent that covers technology incorporated into that standard obtains
22 monopoly power in a Relevant Technology Market. This is because when patented
23 technology is incorporated in a standard, adoption of the standard eliminates
24 alternatives to the patented technology, and companies wanting to market devices
25 that comply with the standard are locked in and must use the patented technology.

26 126. As previously discussed, as members of ETSI the prior owners were

27
28 ⁴ ETSI IPR Policy, Section 4.1 at 1; *see also* ETSI website at
<https://www.etsi.org/intellectual-property-rights>.

1 required to timely disclose their IPRs in order for ETSI and its other members to
2 consider when determining which technology to adopt in the standards. This is
3 particularly true where the prior owner has proposed that technology covered by its
4 IPRs should be included in a standard. However, as explained below, some of the
5 prior owners failed to timely disclose their IPR.

6 127. Likewise, Sisvel and/or the prior owners have declared many of their
7 patents to be potentially essential to one or more of the standards and made
8 irrevocable undertakings to license such patents that are or become and remain
9 essential on FRAND terms and conditions.

10 128. Before the adoption of the standards, competitors in the Relevant
11 Technology Markets included companies with technology capable of performing the
12 same or equivalent functions that ETSI and its members could have adopted. These
13 additional competitors include the companies that offered technologies that could
14 have been used in alternative mobile standards that were foreclosed once ETSI
15 members adopted a standard that included Sisvel's and/or a prior owners'
16 technologies. Because of the lock-in effect described above, Sisvel and/or the prior
17 owners became the only commercially viable sellers inside and outside the United
18 States in each of the Relevant Technology Markets.

19 129. After the standards were set, u-blox and other manufacturers invested
20 significant revenue and other resources developing products that practice the
21 standards. Those investments were made in reliance on the FRAND commitments
22 made by prior owners and/or Sisvel. Likewise, as the standards evolved and
23 additional versions of the standards were adopted, ETSI and its members relied on
24 the FRAND commitments to keep the prior technology—because had the
25 technologies holders affirmatively stated that they would not offer FRAND rates,
26 the ETSI members could have worked on implementing a design around in later
27 versions.

28 130. u-blox and the other implementers in the Relevant Technology Markets

1 were effectively locked in to practicing Sisvel’s patented technologies when they
2 were allegedly adopted into the standard. As a result, alternatives to such
3 technologies no longer constrained Sisvel’s ability to demand royalty rates far in
4 excess of the value that the patented technologies would have prior to the adoption
5 of the standard, when alternatives were available (“*ex ante*”).

6 **Sisvel’s Misconduct**

7 131. Courts, regulators, and economists have made clear that to be effective,
8 the FRAND commitments in ETSI’s IPR policy should: (a) limit royalties to the
9 value that the SEP(s) had prior to inclusion in the ETSI standard and in light of other
10 patented and unpatented technology essential to the standard; (b) prohibit charging
11 royalties that are higher based upon the technology being written into the standard
12 or that capture the value of the standard itself; and (c) require non-discriminatory
13 treatment of licensees and potential licensees.

14 132. ETSI’s FRAND commitment grants implementers the right to practice
15 claimed SEPs. Participants in standards development and third-party implementers
16 in the Relevant Technology Markets rely on these irrevocable contractual
17 undertakings to ensure that the widespread adoption of the standard will not be
18 hindered by SEP owners attempting to extract unreasonable royalties and terms
19 from those implementing the standard.

20 133. However, Sisvel has engaged in an unlawful scheme to exploit its
21 undue market power over technologies necessary for implementers, including u-
22 blox, to practice the 2G, 3G, and/or 4G standards. Sisvel’s market power is due
23 solely to its and/or its prior owners’ intentionally false commitments to license their
24 alleged SEPs on FRAND terms and conditions, which commitments were necessary
25 to keep the technology allegedly covered by the relevant SEPs in the standard(s) and
26 to get such technology into the standards in the first instance.

27 134. Participants in the 2G, 3G, and/or 4G standardization, including all
28 ETSI members and u-blox in particular, relied on Sisvel’s and/or the prior owners’

1 intentionally false promises to license their alleged SEPs on FRAND terms and
2 conditions in choosing to incorporate those allegedly essential patented technologies
3 into the standards and/or to keep such technologies in the standards.

4 135. As a result of Sisvel's false FRAND commitments, technology
5 allegedly covered by its SEPs was included and/or kept in the standards to the
6 exclusion of alternative technologies. Through its deceptive acts and practices,
7 Sisvel is unlawfully monopolizing the Relevant Technology Markets.

8 136. Therefore, u-blox asserts this claim to obtain a FRAND license and
9 enjoin Sisvel from continuing its abusive licensing practices and Sisvel's unlawful
10 monopolization in certain relevant markets for 2G, 3G, and/or 4G cellular
11 technologies.

12 **Standards Setting Misconduct of the Prior Owner Adopted by Sisvel**
13

14 137. U.S. Patent No. 7,433,698 ("the '698 Patent"), attached hereto as
15 Exhibit 4, titled "Cell Reselection Signaling Method," was filed on July 12, 2002,
16 and was based on a PCT application filed on January 17, 2000. U.S. Patent and
17 Trademark Office ("USPTO") records indicate that Sisvel is the assignee of the '698
18 Patent. U.S. Patent No. 8,364,196 ("the '196 Patent"), attached hereto as Exhibit 5,
19 titled "Cell Reselection Signaling Method," was filed on August 19, 2008, and is a
20 continuation application of the '698 Patent. USPTO records indicate that Sisvel is
21 the assignee of the '196 Patent.

22 138. There is a dispute between the parties concerning whether certain u-
23 blox products infringe one or more claims of the '698 Patent and/or the '196 Patent.
24 During the course of licensing negotiations, Sisvel asserted that u-blox products
25 infringe one or more of the '698 and '196 Patent claims by virtue of practicing the
26 3G UMTS standard. Sisvel provided u-blox with a claim chart alleging that the
27 '698 and '196 Patents are essential to the UMTS standard.

28 139. The '698 and '196 Patents are subject to all preexisting legal and/or

1 equitable encumbrances that Sisvel assumed upon transfer of these patents from
2 Nokia, a prior owner, and are subject to all legal and/or equitable consequences
3 arising therefrom. These encumbrances include Nokia's obligation to license the
4 '698 and '196 Patents on fair, reasonable, and non-discriminatory terms and
5 conditions.

6 140. Additionally, Nokia had an obligation to ETSI and its members to
7 timely disclose the IPRs associated with the '698 and '196 Patents (or patents or
8 patent applications within the same family) in accordance with the requirements of
9 the ETSI IPR Policy. Clause 4.1 of the IPR Policy required, as early as 1994, that
10 "[e]ach MEMBER shall use its reasonable endeavours [sic] to timely inform ETSI
11 of ESSENTIAL IPRs it becomes aware of. In particular, a MEMBER submitting a
12 technical proposal for a STANDARD shall, on a bona fide basis, draw the attention
13 of ETSI to any of that MEMBER's IPR which might be ESSENTIAL if that
14 proposal is adopted." Nokia was bound by the ETSI IPR Policy during its
15 participation at ETSI and also at 3GPP, of which ETSI is an organizational member.

16 141. Nonetheless, Nokia failed to disclose the existence of its claimed IPRs
17 during the standardization of the relevant cellular standards at ETSI and 3GPP,
18 while at the same time advocating for the adoption of technology into those
19 standards that Sisvel asserts is covered by the '698 and '196 Patents.

20 142. Nokia's misconduct in failing to timely disclose IPRs, while urging that
21 such technology be adopted into the standards, constitutes at least a waiver and/or
22 estoppel of its rights to enforce any claimed essential patents against any entity
23 practicing the standard and renders the patents unenforceable. The timeline for the
24 late disclosure of the '698 and the '196 Patents is described below.

25 143. On January 17, 2000, Nokia filed Finnish Patent Application No.
26 20000090. On July 12, 2002, Pekka Marjelund, Juha Turunen, Kaisu Iisakkila, and
27 Oscar Salonaho filed U.S. Patent Application No. 10/181,078 (later assigned to
28 Nokia Corporation), which issued as the '698 Patent on October 7, 2008. The '698

1 Patent claims priority to Finish Patent Application No. 200000090. Based off the
2 same application, the '196 Patent was filed on August 19, 2008, and is a
3 continuation application of the '698 Patent.

4 144. Sisvel has represented that the '698 and '196 Patents are essential to
5 practicing 3GPP Technical Specification ("TS") 25.331, as it relates to UMTS (u-
6 blox disputes that these patents are actually essential or infringed). Nokia
7 employees participated in the standardization of TS 25.331, including by submitting
8 technical proposals and change requests to 3GPP. Namely, between January 17 and
9 20, 2000, Nokia submitted document R2-000067, titled "Redirection of RRC
10 Connection Setup," and document R2-000238, with the subject "Redirection of
11 RRC connection setup," to 3GPP during working group meetings in San Diego,
12 California. Nokia's submissions were accepted and incorporated into Version 3.2.0
13 of TS 25.331, which was published March 15, 2000.

14 145. Nokia did not disclose the Finnish Application No. 200000090, or any
15 other application or patent in the family of the '698 and '196 Patents, to ETSI or to
16 3GPP at any time (1) after submitting documents R2-000067 and R2-000238 to
17 3GPP and advocating for the adoption of the technology proposed therein, or (2)
18 before Version 3.2.0 of TS 25.331 was published. In fact, Nokia waited until
19 December 21, 2001 to first declare that any member of the '698 and '196 Patent
20 family was potentially essential to TS 25.331 or any other ETSI or 3GPP standard
21 — *i.e.*, nearly two years after Nokia's submissions to 3GPP and after Version 3.2.0
22 of TS 25.331 was published.

23 146. Nokia's failure to disclose its IPRs to ETSI while submitting at least
24 one proposal that was later adopted into the standard injured competition by
25 excluding alternative technologies which could have been included in the standard.

26 147. When Sisvel acquired the '698 and '196 Patents from Nokia, Sisvel
27 stepped into Nokia's shoes, and Nokia's standard setting misconduct transferred to
28 Sisvel with the patents. When Sisvel acquired these patents, Sisvel either knew or

1 should have known by performing its due diligence on the patents, that Nokia failed
2 to timely disclose its IPR to ETSI prior to its proposal being adopted into the
3 standard. Yet, Sisvel filed an supplemental IPR declaration for these patents, and
4 indicated additional sections to which the IPR was relevant. Sisvel continues to
5 assert the patents against implementers of the standards, including u-blox and its
6 customer Xirgo, and seeks non-FRAND royalty rates, even though Sisvel knew or
7 should have known that Nokia waived its right to enforce these patents. As a direct
8 and proximate consequence of Sisvel's unlawful monopolization of the technology
9 allegedly covered by the '698 and '196 Patents, customers of the Relevant
10 Technology Markets (implementers of the standards such as u-blox) face drastically
11 higher costs for access to cellular technologies necessary for the manufacture of
12 standard-compliant products than they would have paid in a competitive
13 marketplace.

14 **Sisvel's Antitrust Violations**

15 148. Sisvel's wrongful conduct prevents u-blox from obtaining access to
16 alternative technologies in the Relevant Technology Markets. The antitrust injury
17 associated with Sisvel's unlawful monopolization also extends to consumers in the
18 downstream market for the technology, such as u-blox's cellular modules, in the
19 form of higher prices, reduced innovation, and more limited choice for such
20 standard-compliant products. Indeed, the necessary result of raising costs to some
21 competing manufacturers in the marketplace for standard-compliant products and
22 diverting resources that otherwise would have fueled additional innovation is to
23 limit consumer choices in complementary technologies and other technology used in
24 standard-compliant products.

25 149. Sisvel has leverage over manufacturers of standard-compliant products
26 that it would not possess but for Nokia's standards setting misconduct and/or
27 Sisvel's false promises to ETSI to license its alleged SEPs on FRAND terms and
28 conditions, and Sisvel's unlawful acquisition of monopoly power in the '698 and

1 '196 Patents and the Relevant Technology Markets. As a result of said leverage,
 2 manufacturers of standard-compliant products, including u-blox, must either
 3 capitulate to Sisvel's demand for supra-competitive royalty rates or face the costs
 4 and risks of protracted patent litigation on a global scale and/or interference with
 5 customer relationships.

6 150. Sisvel knowingly acquired patents from prior owners with a false
 7 promise to license the patents on FRAND terms and with the intent to seek supra-
 8 FRAND rates on a far higher per-patent basis than for what the prior owners could
 9 have obtained when licensed with the entire portfolio. Sisvel likewise aggregated
 10 weak patents together from various prior owners to acquire a monopoly in SEPs
 11 related to 2G, 3G, and 4G patents. Moreover, Sisvel knew or should have known of
 12 the disclosure misconduct by prior owner(s), and intentionally sought a non-
 13 FRAND license for patents that should be deemed unenforceable.

14 151. After acquiring its unlawful monopolization of the Relevant
 15 Technology Markets and Input Technology Markets, Sisvel has exploited this ill-
 16 gotten power against u-blox by refusing to offer a license on FRAND terms, by
 17 among other things:

- 18 • Refusing to honor its obligation to license its alleged SEPs on
- 19 FRAND terms and conditions;
- 20 • Seeking supra-competitive royalty rates from u-blox for a license
- 21 to Sisvel's 2G, 3G, and 4G patents;
- 22 • Demanding u-blox pay royalties for alleged SEPs covering
- 23 portions of the standards not practiced by u-blox's products;
- 24 • Demanding u-blox pay royalties for expired patents or patents
- 25 that will expire during the course of the proposed license; and
- 26 • Demanding u-blox pay royalties for patents that Sisvel knew or
- 27 should have known were not enforceable due to a prior owners'
- 28 untimely disclosure of their IPR to ETSI/3GPP.

1 152. Sisvel's and/or the prior owner's actions injure competition by
2 excluding alternate technologies which could have been included in the standard.
3 As a direct and proximate consequence of Sisvel's unlawful monopolization,
4 customers of the Relevant Technology Markets and/or Input Technology Markets
5 (e.g., implementers of the standards such as u-blox and/or u-blox's customers) face
6 drastically higher costs for access to cellular technologies necessary for the
7 manufacture of standard-compliant products than they would have paid in a
8 competitive marketplace.

9 153. Absent Sisvel's and/or the prior owner's wrongful conduct, which
10 resulted in alternate technologies being excluded from the relevant standards, u-blox
11 and other implementors would be able to obtain a license to access necessary
12 technology in the Relevant Technology Markets on fair, reasonable, and non-
13 discriminatory terms.

14 154. Therefore, to prevent harm to u-blox's business and property, including
15 its cellular module products, and further harm to competition more generally in the
16 Relevant Technology Markets, u-blox brings this action for treble damages,
17 declaratory relief, and injunctive relief under Sections 4 and 16 of the Clayton Act,
18 15 U.S.C. §§ 15, 26.

19 155. As a member of ETSI and an active participant in 2G, 3G, and/or 4G
20 consensus standardization efforts through 3GPP, Sisvel and/or the prior owners
21 were obligated to comply with the ETSI IPR Policy. That policy requires the owner
22 of patents that might be essential to a standard to file an IPR disclosure statement
23 that among other things contains an irrevocable commitment to be prepared to
24 license the disclosed IPRs on FRAND terms and conditions to those who implement
25 the relevant standards, should those IPRs be or become and remain essential.

26 156. Over time, to secure inclusion of its own proposed technology in the
27 evolving 2G, 3G, and/or 4G standards, as well as other technology allegedly
28 covered by its patents, Sisvel and/or the prior owners submitted IPR Declarations in

1 which they promised to license their patents on FRAND terms and conditions. As a
2 result of these IPR disclosures, their patented technologies that were allegedly
3 incorporated into and/or remained incorporated in the standards, and other
4 alternative technologies that would otherwise have been considered for inclusion in
5 the standard were not adopted.

6 157. Sisvel's and/or its prior owner's promises to license the allegedly
7 essential patents on FRAND terms and conditions were intentionally false and
8 misleading. Sisvel had no intention of licensing its alleged SEPs on FRAND terms
9 and conditions. Additionally, some of the prior owners' promises to timely disclose
10 their IPRs, and in particular when proposing their own technologies for adoption
11 into the standard, were intentionally false and misleading. Some of the prior owners
12 had no intention of disclosing their IPRs prior to the adoption and/or publication of
13 the relevant standards.

14 158. Indeed, as explained above, with u-blox, Sisvel is attempting to exploit
15 its undue monopoly power by attempting to extract supra-competitive royalty rates,
16 to force u-blox to pay royalties on expired patents, and to charge u-blox the same
17 royalty rates for components that may not even practice Sisvel's alleged SEPs
18 because they use low-speed LTE category standards instead of using high-speed
19 LTE category standards – among other FRAND violations.

20 159. As a result of the incorporation of technologies into the 2G, 3G, and/or
21 4G standards that Sisvel asserts its patents cover, Sisvel has monopoly power in the
22 markets for those technologies. Because such technologies have been incorporated
23 into the standards, products that are designed to comply with the 2G, 3G, and/or 4G
24 standards are locked in to those technologies, and cannot use alternative
25 technologies. As a result, Sisvel has the power to extract supra-competitive prices
26 for licenses to these technologies. Accordingly, Sisvel has a dominant market share
27 in the markets for these technologies and the markets have significant barriers to
28 entry post-standardization.

1 160. Sisvel has obtained and maintained its market power in these
2 technology markets willfully and not as a consequence of a superior product,
3 business acumen, or historic accident. Sisvel and/or the prior owners excluded
4 competition through their intentional non disclosures and/or false promises to
5 license patents covering the relevant technologies on FRAND terms. ETSI and its
6 members relied on these promises in choosing to incorporate technologies allegedly
7 related to Sisvel's SEPs and/or advocating for such technologies to remain in the
8 standards.

9 161. Sisvel's and/or the prior owners' deceptive conduct induced 3GPP and
10 ETSI, through the voluntary consensus driven processes they use, to incorporate
11 technology into the 2G, 3G, and/or 4G standards or to keep technology in those
12 standards that they would not have incorporated or kept absent a FRAND
13 commitment.

14 162. Sisvel's actions show that it never intended to comply with its promises
15 to license its allegedly essential patents on FRAND terms and conditions. Sisvel
16 refuses to engage with u-blox's good faith efforts to obtain a license under fair,
17 reasonable, and non-discriminatory terms and conditions. Instead, Sisvel is insisting
18 that u-blox pay royalty rates that are several times higher than justified by the value
19 or strength of Sisvel's portfolio. Additionally, Sisvel is demanding these
20 unjustifiably high royalty rates on patents that it either knew, or should have known,
21 are unenforceable due to the prior owners' disclosure misconduct. Furthermore, the
22 prior owners' disclosure misconduct shows that they had never intended to comply
23 with their obligation to disclose their IPR prior to the publication or adoption of the
24 relevant standards, in particular, where they specifically proposed their IPR to be
25 included in the standards.

26 163. These anticompetitive acts are an abuse of Sisvel's monopoly power in
27 the relevant worldwide markets and establish a violation of Section 2 of the
28 Sherman Act.

1 164. Additionally, Sisvel has wrongfully acquired numerous patents (or
2 interests in patents) which are assets under Section 7 of the Clayton Act. Those
3 anticompetitive acquisitions include those listed in the Sisvel LTE and 3G Licensing
4 Brochures. Ex. 1—Ex. 2. The effects of these acquisitions, and the control that
5 Sisvel SA has over 3G Licensing have been to lessen competition substantially, and
6 tend to create market power, including in the Relevant Market. Among other harms,
7 Sisvel’s acquisitions have significantly enhanced Sisvel’s ability and incentives to
8 harm competition, evading constraints on patent assertion, and creating incentives to
9 assert patents aggressively and thus increasing the cost and likelihood of litigation.

10 165. Sisvel’s acquisitions have been for an anticompetitive purpose—to
11 allow it to assert hold-up values that exceed the values of the SEPs.

12 166. As a direct, proximate, and foreseeable result of Sisvel’s unfair and
13 wrongful conduct, as alleged above, there is a significant threat of harm to
14 consumers, including through the inevitable passing on to customers the inflated
15 royalties demanded for Sisvel’s alleged SEPs. The anticompetitive acquisitions
16 have thus harmed consumers for cellular components, such as those sold by u-blox.

17 167. As a direct, proximate, and foreseeable result of the unlawful patent
18 acquisitions, u-blox has suffered or will suffer harm to its business and property, and
19 absent an injunction and rescission of these transactions, u-blox will continue to
20 suffer from these effects. u-blox’s past and continuing harm include the risk of
21 supra-competitive licensing rates, business uncertainty, litigation costs, and business
22 resources lost in dealing with the consequences of Sisvel’s unlawfully-acquired
23 patents.

24
25 **FOURTH CAUSE OF ACTION**
26 **(Declaratory Judgment of Unenforceability of U.S. Patent No. 7,433,698)**

27 168. u-blox re-alleges and incorporates by reference the allegations set forth
28 in the foregoing paragraphs.

1 169. The Federal Circuit has found that even when a patent is otherwise
2 valid, a member of an open standard setting organization may have impliedly
3 waived its right to assert infringement claims against standard-compliant products or
4 components due to disclosure misconduct, thereby making the patent unenforceable.
5 *See Core Wireless Licensing S.A.R.L. v. Apple, Inc.*, 899 F.3d 1356 (Fed. Cir. 2018);
6 *Hynix Semiconductor Inc. v. Rambus Inc.*, 645 F.3d 1336, 1347–48 (Fed. Cir. 2011)
7 (quoting *Qualcomm Inc. v. Broadcom Corp.* (“*Qualcomm II*”), 548 F.3d 1004, 1019
8 (Fed. Cir. 2008)). In particular, “[i]f the patentee obtained ‘an unjust advantage’ or
9 ‘an undeserved competitive advantage,’ the implied waiver doctrine may justify a
10 sanction of unenforceability of the patent at issue.” *Conversant Wireless Licensing*
11 *S.A.R.L. v. Apple, Inc.*, No. 15-cv-05008-NC, slip op., Dkt. 547, at 8 (N.D. Cal. May
12 10, 2019) (citing *Therasense*, 649 F.3d at 1292). A patent owner can obtain such an
13 unfair advantage by failing to timely disclose an essential patent that covers
14 technology proposed to a standard. *Id.*

15 170. The ’698 Patent is subject to all preexisting legal and/or equitable
16 encumbrances that Sisvel assumed upon transfer of these patents from Nokia and is
17 subject to all legal and/or equitable consequences arising therefrom. *See ¶¶* 140–
18 147.

19 171. There is a dispute between the parties concerning whether certain u-
20 blox products infringe one or more claims of the ’698 Patent. Sisvel has asserted
21 that u-blox products infringe one or more of the ’698 Patent claims by virtue of
22 practicing the 3G UMTS standard.

23 172. u-blox alleges that the ’698 Patent is unenforceable due to Nokia’s
24 disclosure misconduct. Namely, Nokia (a prior owner of the ’698 Patent) had a duty
25 to disclose to ETSI and/or 3GPP its IPR prior to the standard being adopted, and in
26 particular where Nokia provided a proposal that “might” be essential to the standard
27 if adopted. Nokia breached this duty by first, in January 2000, submitting technical
28 proposals for technology to be included in the TS 25.331 standard, where Nokia had

1 filed a patent relating to such proposals in 1999, and then waiting until December
 2 21, 2001 to first declare that any member of the '698 Patent family was potentially
 3 essential to TS 25.331 or any other ETSI or 3GPP standard—i.e., nearly two years
 4 after making its submissions to 3GPP and after Version 3.2.0 of TS 25.331 was
 5 published—which is when the relevant version of the standard was adopted.
 6 Nokia's misconduct in failing to timely disclose IPRs, while urging that technology
 7 allegedly covered by such IPRs be adopted into the standards, constitutes at least a
 8 waiver of its rights to enforce any claimed essential patents against any entity
 9 practicing the standard and renders the '698 Patent unenforceable.

10 173. Moreover, Nokia, and therefore Sisvel, received an unfair competitive
 11 advantage, in the form of the right to assert an allegedly standard essential patent
 12 and extract royalties from industry participants for the '698 Patent. *See Core*
 13 *Wireless*, 899 F.3d at 1368 (quoting *Therasense, Inc. v. Becton, Dickinson & Co.*,
 14 649 F.3d 1276, 1292 (Fed. Cir. 2011) (en banc)); *Conversant*, No. 15-cv-05008-NC,
 15 Dkt. 547, at 8.

16 174. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
 17 *seq.*, u-blox requests a declaration of the Court that that the '698 Patent is
 18 unenforceable.

19 **FIFTH CAUSE OF ACTION**
 20 **(Declaratory Judgment of Unenforceability of U.S. Patent No. 8,364,196)**

21 175. u-blox re-alleges and incorporates by reference the allegations set forth
 22 in the foregoing paragraphs.

23 176. As patent may be unenforceable due to disclosure misconduct in a
 24 standards setting organization. *See supra* ¶169.

25 177. As described above, the '196 Patent is subject to all preexisting legal
 26 and/or equitable encumbrances that Sisvel assumed upon transfer of these patents
 27 from Nokia and is subject to all legal and/or equitable consequences arising
 28 therefrom. *See* ¶¶ 140-147.

1 178. There is a dispute between the parties concerning whether certain u-
2 blox products infringe one or more claims of the '196 Patent. Sisvel has asserted
3 that u-blox products infringe one or more of the '196 Patent claims by virtue of
4 practicing the 3G UMTS standard.

5 179. u-blox alleges that the '196 Patent is unenforceable due to Nokia's
6 disclosure misconduct. Namely, Nokia (a prior owner) had a duty to disclose to
7 ETSI and/or 3GPP its IPR related to the '196 Patent prior to the standard being
8 adopted, and in particular where Nokia provided a proposal that "might" be essential
9 to the standard if adopted. Nokia breached this duty by first, in January 2000,
10 submitting technical proposals for technology to be included in the TS 25.331
11 standard, where Nokia had filed a patent relating to such proposals in 1999, and then
12 waiting until December 21, 2001 to first declare that any member of the '196 Patent
13 family was potentially essential to TS 25.331 or any other ETSI or 3GPP standard—
14 i.e., nearly two years after making its submissions to 3GPP and after Version 3.2.0
15 of TS 25.331 was published—which is when the relevant version of the standard
16 was adopted. Nokia's misconduct in failing to timely disclose IPRs, while urging
17 that technology allegedly covered by such IPRs be adopted into the standards,
18 constitutes at least a waiver of its rights to enforce any claimed essential patents
19 against any entity practicing the standard and renders the '196 Patent unenforceable.

20 180. Moreover, Nokia, and therefore Sisvel, received an unfair competitive
21 advantage, in the form of the right to assert an allegedly standard essential patent
22 and extract royalties from industry participants for the '196 Patent. *See Core*
23 *Wireless*, 899 F.3d at 1368 (quoting *Therasense, Inc. v. Becton, Dickinson & Co.*,
24 649 F.3d 1276, 1292 (Fed. Cir. 2011) (en banc)); *Conversant*, No. 15-cv-05008-NC,
25 Dkt. 547, at 8.

26 181. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
27 *seq.*, u-blox requests the declaration of the Court that the '196 Patent is
28 unenforceable.

PRAYER FOR RELIEF

WHEREFORE, u-blox prays for relief as follows:

A. Adjudge and decree that Sisvel is liable for breach of its contractual commitments to ETSI;

B. Adjudge and decree that Sisvel has not offered u-blox a license to its 2G, 3G, and/or 4G SEPs under fair and reasonable rates, with fair and reasonable terms and conditions that are demonstrably free of any unfair discrimination;

C. Adjudge, set, and decree the FRAND terms and conditions that u-blox is entitled to for a license to Sisvel's 2G, 3G, and/or 4G SEPs;

D. Enjoin Sisvel from demanding excessive royalties from u-blox that are not consistent with Sisvel's FRAND obligations;

E. Adjudge and decree that u-blox is entitled to a license from Sisvel for any and all patents that Sisvel deems "essential" and/or has declared potentially "essential" to the 2G, 3G, and/or 4G standards under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination;

F. Enjoin Sisvel from enforcing its 2G, 3G, and/or 4G SEPs against u-blox and/or any of its downstream manufactures or customers;

G. Enjoin Sisvel from forcing u-blox to take a bundled license to Sisvel's SEPs that are not implemented by the portions of the 2G, 3G, and/or 4G standards practiced by u-blox's products;

H. Adjudge and decree that Sisvel has violated Section 2 of the Sherman Act and enjoin Sisvel from further violations of that statute;

I. Adjudge and decree that Sisvel has violated Section 7 of the Clayton Act, 15 U.S.C. § 18 and declare void all contracts or agreements that Sisvel entered into in violation of the Clayton Act and the patents improperly acquired by Sisvel be transferred back to the transferors;

J. That all patents transferred to Sisvel in violation of the Sherman Act or

1 Clayton Act be declared unenforceable;

2 K. Adjudge and decree that the '698 Patent is unenforceable;

3 L. Adjudge and decree that the '196 Patent is unenforceable;

4 M. Enter a judgment awarding u-blox its expenses, costs, and attorneys'
5 fees with interest, under applicable laws;

6 N. For such other and further relief as the Court deems just and proper.
7

8 Dated: March 16, 2020

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
10

11 By /s/ Stephen S. Korniczky

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