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9 *Attorneys for Plaintiff*
VDPP LLC,

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 VDPP, LLC,
15 Plaintiff,
16 v.

17 XIAOMI USA LLC,
18 Defendant,

Case No.: 5:24-cv-01783-VKD

**PLAINTIFF’S FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT**

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

21
22 VDPP LLC (“Plaintiff” or “VDPP”) files this First Amended Complaint and
23 demand for jury trial seeking relief from patent infringement of the claims of U.S.
24 Patent No. 9,948,922 (“the ’922 patent”) and U.S. Patent No. 10,021,380 (“the ’380
25 patent”) (referred to as the “Patents-in-Suit”) by Xiaomi USA LLC, (“Defendant” or
26 “Xiaomi”). This First Amended Complaint is filed by agreement of the parties.
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1 **I. THE PARTIES**

2 1. Plaintiff is a company organized under the laws of Oregon with a principal
3 place of business located in Corvallis, Oregon.

4
5 2. On information and belief, Defendant is an incorporation organized and
6 existing under the laws of the State of California. On information and belief,
7 Defendant has an established place of business in this District at 97 E Brokaw Rd Ste
8 310 San Jose, CA, 95112. Defendant has been served.

9
10 **II. JURISDICTION AND VENUE**

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12 3. This Court has original subject-matter jurisdiction over the entire action
13 pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff’s claim arises under an
14 Act of Congress relating to patents, namely, 35 U.S.C. § 271.

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16 4. This Court has personal jurisdiction over Defendant because: (i) Defendant is
17 present within or has minimum contacts within the State of California and this judicial
18 district; (ii) Defendant has purposefully availed itself of the privileges of conducting
19 business in the State of California and in this judicial district; and (iii) Plaintiff’s cause
20 of action arises directly from Defendant’s business contacts and other activities in the
21 State of California and in this judicial district.

22
23
24 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).
25 Defendant has committed acts of infringement and have a regular and established
26 place of business in this District. Further, venue is proper because Defendant
27 conducts substantial business in this forum, directly or through intermediaries,
28

1 including: (i) at least a portion of the infringements alleged herein; and (ii) regularly
2 doing or soliciting business, engaging in other persistent courses of conduct and/or
3 deriving substantial revenue from goods and services provided to individuals in
4 California and this District.
5

6 **III. INFRINGEMENT OF THE '922 PATENT**
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8 6. On April 17, 2018, U.S. Patent No. 9,948,922 (“the '922 patent”, included as
9 Exhibit A) entitled “Faster State Transitioning for Continuous Adjustable 3Deeps
10 Filter Spectacles Using Multi-Layered Variable Tint Materials” was duly and legally
11 issued by the U.S. Patent and Trademark Office. Plaintiff owns the '922 patent by
12 assignment.
13

14 7. The '922 patent relates to a system called 3Deeps that will allow almost any
15 motion picture filmed in 2D (single image) to be viewed with the visual effect of 3-
16 dimensions.
17

18 8. Defendant maintains, operates, and administers systems, products, and services
19 in the field of motion pictures that infringes one or more of claims of the '922 patent,
20 including one or more of claims 1-12, literally or under the doctrine of equivalents.
21 Defendant puts the inventions claimed by the '922 Patent into service (i.e., used
22 them); but for Defendant’s actions, the claimed-inventions embodiments involving
23 Defendant’s products and services would never have been put into service.
24 Defendant’s acts complained of herein caused those claimed-invention embodiments
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1 as a whole to perform, and Defendant’s procurement of monetary and commercial
2 benefit from it.

3
4 9. Defendant has caused Plaintiff damage by direct infringement of the claims of
5 the ’922 patent.

6 **IV. INFRINGEMENT OF THE ’380 PATENT**

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8 10. On July 10, 2018, U.S. Patent No. 10,021,380 (“the ’380 patent”, included as
9 Exhibit C and part of this complaint) entitled “Faster State Transitioning for
10 Continuous Adjustable 3Deeps Filter Spectacles Using Multi-Layered Variable Tint
11 Materials” was duly and legally issued by the U.S. Patent and Trademark Office.
12
13 Plaintiff owns the ’380 patent by assignment.

14 11. The ’380 patent relates to methods and systems for modifying an image.

15
16 12. Defendant maintains, operates, and administers systems, products, and services
17 in the field of automotive manufacture that infringes one or more of claims of the ’380
18 patent, including one or more of claims 1-30, literally or under the doctrine of
19 equivalents. Defendant puts the inventions claimed by the ’380 patent into service
20 (i.e., used them); but for Defendant’s actions, the claimed-invention embodiments
21 involving Defendant’s products and services would never have been put into service.
22 Defendant’s acts complained of herein caused those claimed-invention embodiments
23
24 as a whole to perform, and Defendant’s procurement of monetary and commercial
25 benefit from it.
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1 13.Support for the allegations of infringement may be found in the preliminary
2 exemplary table attached as Exhibit D. These allegations of infringement are
3 preliminary and are therefore subject to change.
4

5 14.Defendant has caused Plaintiff damage by direct infringement of the claims of
6 the '380 patent.
7

8 **V. CONDITIONS PRECEDENT**

9 15. Plaintiff has never sold a product. Upon information and belief, Plaintiff
10 predecessor-in-interest has never sold a product. Plaintiff is a non-practicing entity,
11 with no products to mark. Plaintiff has pled all statutory requirements to obtain pre-
12 suit damages. Further, all conditions precedent to recovery are met. Under the rule
13 of reason analysis, Plaintiff has taken reasonable steps to ensure marking by any
14 licensee producing a patented article.
15

16
17 16. Plaintiff and its predecessors-in-interest have entered into settlement
18 licenses with several defendant entities, but none of the settlement licenses were to
19 produce a patented article, for or under the Plaintiff's patents. Duties of confidentiality
20 prevent disclosure of settlement licenses and their terms in this pleading but discovery
21 will show that Plaintiff and its predecessors-in-interest have substantially complied
22 with Section 287(a). Furthermore, each of the defendant entities in the settlement
23 licenses did not agree that they were infringing any of Plaintiff's patents, including
24 the Patents-in-Suit, and thus were not entering into the settlement license to produce
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1 a patented article for Plaintiff or under its patents. Further, to the extent necessary,
2 Plaintiff will limit its claims of infringement to method claims and thereby remove
3 any requirement for marking.
4

5 17. To the extent Defendant identifies an alleged unmarked product
6 produced for Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in
7 discovery to either show that the alleged unmarked product does not practice the
8 Patents-in-suit and that Plaintiff has substantially complied with the marking statute.
9 Defendant has failed to identify any alleged patented article for which Section 287(a)
10 would apply. Further, Defendant has failed to allege any defendant entity produce a
11 patented article.
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14 18. The policy of § 287 serves three related purposes: (1) helping to avoid
15 innocent infringement; (2) encouraging patentees to give public notice that the article
16 is patented; and (3) aiding the public to identify whether an article is patented.
17 These policy considerations are advanced when parties are allowed to freely settle
18 cases without admitting infringement and thus not require marking. All settlement
19 licenses were to end litigation and thus the policies of §287 are not violated. Such a
20 result is further warranted by 35 U.S.C. §286 which allows for the recovery of
21 damages for six years prior to the filing of the complaint.
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25 19. For each previous settlement license, Plaintiff understood that (1) the
26 settlement license was the end of litigation between the defendant entity and Plaintiff
27 and was not a license where the defendant entity was looking to sell a product under
28

1 any of Plaintiff's patents; (2) the settlement license was entered into to terminate
2 litigation and prevent future litigation between Plaintiff and defendant entity for
3 patent infringement; (3) defendant entity did not believe it produced any product that
4 could be considered a patentable article under 35 U.S.C. §287; and, (4) Plaintiff
5 believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for
6 each prior settlement license.
7

8
9 20. Each settlement license that was entered into between the defendant
10 entity and Plaintiff was negotiated in the face of continued litigation and while
11 Plaintiff believes there was infringement, no defendant entity agreed that it was
12 infringing. Thus, each prior settlement license reflected a desire to end litigation and
13 as such the policies of §287 are not violated.
14

15
16 **VI. JURY DEMAND**

17 Plaintiff hereby requests a trial by jury on issues so triable by right.
18

19 **VII. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for relief as follows:

- 21 a. enter judgment that Defendant has infringed the claims of the '922 and '380
22 patents;
23
24 b. award Plaintiff damages in an amount sufficient to compensate it for
25 Defendant's infringement of the Patents-in-Suit in an amount no less than a
26 reasonable royalty or lost profits, together with pre-judgment and post-
27 judgment interest and costs under 35 U.S.C. § 284;
28

- 1 c. award Plaintiff an accounting for acts of infringement not presented at trial and
2 an award by the Court of additional damage for any such acts of infringement;
3
4 d. declare this case to be “exceptional” under 35 U.S.C. § 285 and award Plaintiff
5 its attorneys’ fees, expenses, and costs incurred in this action;
6
7 e. declare Defendant’s infringement to be willful and treble the damages,
8 including attorneys’ fees, expenses, and costs incurred in this action and an
9 increase in the damage award pursuant to 35 U.S.C. § 284; and,
10
11 f. award Plaintiff such other and further relief as this Court deems just and proper.
12

13 Dated: July 25, 2024

Respectfully submitted,

14 RAMEY LLP

15
16 /s/ Susan S.O. Kalra

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