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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 VDPP, LLC,
12 Plaintiff,
13 v.
14 VIEWSONIC CORPORATION,
15 Defendant.

Case No.: 8:24-cv-00616-JWH-ADS

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

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

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

20 VDPP LLC (“Plaintiff” or “VDPP”) files this Second Amended Original
21
22 Complaint and demand for jury trial seeking relief from patent infringement of the
23 claims of 10,021,380 (“the ’380 patent”), 10,951,881 (“the ’881 patent”) 9,948,922
24 (“the ’922 patent”), and 9,426,442 (“the ’442 patent), (referred to as the “Patents-in-
25
26 Suit”) by ViewSonic Corporation (“Defendant” or “ViewSonic”).
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1 **I. THE PARTIES**

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

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5 2. On information and belief, Defendant is a corporation organized and existing
6 under the laws of the State of Delaware, with a regular and established place of
7 business located at 10 Pointe Drive, Brea, California 92821. On information and
8 belief, Defendant sells and offers to sell products and services throughout California,
9 including in this judicial district, and introduces products and services that perform
10 infringing methods or processes into the stream of commerce knowing that they
11 would be sold in California and this judicial district. Defendant has been served.

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14 **II. JURISDICTION AND VENUE**

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

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20 4. This Court has personal jurisdiction over Defendant because: (i) Defendant is
21 present within or has minimum contacts within the State of California and this judicial
22 district; (ii) Defendant has purposefully availed itself of the privileges of conducting
23 business in the State of California and in this judicial district; and (iii) Plaintiff’s cause
24 of action arises directly from Defendant’s business contacts and other activities in the
25 State of California and in this judicial district.
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1 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).
2 Defendant has committed acts of infringement and has a regular and established place
3 of business in this District. Further, venue is proper because Defendant conducts
4 substantial business in this forum, directly or through intermediaries, including: (i) at
5 least a portion of the infringements alleged herein; and (ii) regularly doing or
6 soliciting business, engaging in other persistent courses of conduct and/or deriving
7 substantial revenue from goods and services provided to individuals in California and
8 this District.
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12 **III. Infringement of the '380 Patent**

13 6. On July 10, 2018, U.S. Patent No. 10,021,380 (“the '380 patent”, included as
14 Exhibit A and part of this complaint) entitled “Faster State Transitioning for
15 Continuous Adjustable 3Deeps Filter Spectacles Using Multi-Layered Variable Tint
16 Materials” was duly and legally issued by the U.S. Patent and Trademark Office.
17 Plaintiff owns the '380 patent by assignment.
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20 7. The '380 patent relates to methods and systems for modifying an image.

21 8. Defendant maintains, operates, and administers systems, products, and services
22 in the field of automotive manufacture that infringes one or more of claims of the '380
23 patent, including one or more of claims 1-30, literally or under the doctrine of
24 equivalents. Defendant put the inventions claimed by the '380 patent into service (i.e.,
25 used them); but for Defendant’s actions, the claimed-inventions embodiments
26 involving Defendant’s products and services would never have been put into service.
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1 Defendant's acts complained of herein caused those claimed-invention embodiments
2 as a whole to perform, and Defendant's procurement of monetary and commercial
3 benefit from it.
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5 9. Support for the allegations of infringement may be found in the preliminary
6 exemplary table attached as Exhibit B. These allegations of infringement are
7 preliminary and are therefore subject to change.
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9 10. Defendant has caused Plaintiff damage by direct infringement of the claims of
10 the '380 patent.
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12 **IV. Infringement of the '881 Patent**

13 11. On March 16, 2021, U.S. Patent No. 10,951,881 ("the '881 patent", included
14 as Exhibit C and part of this complaint) entitled "Faster State Transitioning for
15 Continuous Adjustable 3Deeps Filter Spectacles Using Multi-Layered Variable Tint
16 Materials" was duly and legally issued by the U.S. Patent and Trademark Office.
17 Plaintiff owns the '881 patent by assignment.
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20 12. The '881 patent relates to an electrically controlled spectacle frame and
21 optoelectronic lenses housed in the frame.
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23 13. Defendant maintains, operates, and administers systems, products, and
24 services in the field of automotive manufacture that infringe one or more of claims of
25 the '881 patent, including one or more of claims 1-2, literally or under the doctrine of
26 equivalents. Defendant put the inventions claimed by the '881 Patent into service (i.e.,
27 used them); but for Defendant's actions, the claimed-inventions embodiments
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1 involving Defendant’s products and services would never have been put into service.
2 Defendant’s acts complained of herein caused those claimed-invention embodiments
3 as a whole to perform, and Defendant’s procurement of monetary and commercial
4 benefit from it.
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6 14. Support for the allegations of infringement may be found in the preliminary
7 exemplary table attached as Exhibit D. These allegations of infringement are
8 preliminary and are therefore subject to change.
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10 15. Defendant has caused Plaintiff damage by direct infringement of the claims of
11 the ’881 patent.
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13 **V. Infringement of the ’922 Patent**
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15 16. On April 17, 2018, U.S. Patent No. 9,948,922 (“the ’922 patent”, included as
16 Exhibit E) entitled “Faster State Transitioning for Continuous Adjustable 3Deeps
17 Filter Spectacles Using Multi-Layered Variable Tint Materials” was duly and legally
18 issued by the U.S. Patent and Trademark Office. Plaintiff owns the ’922 patent by
19 assignment.
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21 17. The ’922 patent relates to a system called 3Deeps that will allow almost any
22 motion picture filmed in 2D (single image) to be viewed with the visual effect of 3-
23 dimensions.
24

25 18. Defendant maintains, operates, and administers systems, products, and
26 services in the field of motion pictures that infringes one or more of claims of the ’922
27 patent, including one or more of claims 1-12, literally or under the doctrine of
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1 equivalents. Defendant put the inventions claimed by the '922 Patent into service (i.e.,
2 used them); but for Defendant's actions, the claimed-inventions embodiments
3 involving Defendant's products and services would never have been put into service.
4 Defendant's acts complained of herein caused those claimed-invention embodiments
5 as a whole to perform, and Defendant's procurement of monetary and commercial
6 benefit from it.
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9 19. Support for the allegations of infringement may be found in the preliminary
10 exemplary table attached as Exhibit F. These allegations of infringement are
11 preliminary and are therefore subject to change.
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13 20. Defendant has caused Plaintiff damage by direct infringement of the claims of
14 the '922 patent.
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16 **VI. Infringement of the '442 Patent**

17 21. On August 23, 2016, U.S. Patent No. 9,426,442 ("the '442 patent", included
18 as Exhibit G) entitled "Continuous Adjustable 3Deeps Filter Spectacles for Optimized
19 3Deeps Stereoscopic Viewing, Control Method and Means Therefor, and System and
20 Method of Generating and Displaying a Modified Video" was duly and legally issued
21 by the U.S. Patent and Trademark Office. Plaintiff owns the '442 patent by
22 assignment.
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25 22. The '442 patent relates to a system called 3Deeps that will allow almost any
26 motion picture filmed in 2D (single image) to be viewed with the visual effect of 3-
27 dimensions.
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1 23. Defendant maintains, operates, and administers systems, products, and
2 services in the field of motion pictures that infringes one or more of claims of the '442
3 patent, including one or more of claims 1-9, literally or under the doctrine of
4 equivalents. Defendant put the inventions claimed by the '442 Patent into service (i.e.,
5 used them); but for Defendant's actions, the claimed-inventions embodiments
6 involving Defendant's products and services would never have been put into service.
7 Defendant's acts complained of herein caused those claimed-invention embodiments
8 as a whole to perform, and Defendant's procurement of monetary and commercial
9 benefit from it.
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13 24. Support for the allegations of infringement may be found in the preliminary
14 exemplary table attached as Exhibit H. These allegations of infringement are
15 preliminary and are therefore subject to change.
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17 25. Defendant has caused Plaintiff damage by direct infringement of the claims of
18 the '442 patent.
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20 **VII. CONDITIONS PRECEDENT**
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22 26. Plaintiff has never sold a product. Upon information and belief,
23 Plaintiff's predecessors-in-interest have never sold a product. Plaintiff is a non-
24 practicing entity, with no products to mark. Plaintiff has pled all statutory
25 requirements to obtain pre-suit damages. Further, all conditions precedent to recovery
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1 are met. Under the rule of reason analysis, Plaintiff has taken reasonable steps to
2 ensure marking by any licensee producing a patented article.
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4 27. Plaintiff and its predecessors-in-interest have entered into settlement
5 licenses with several defendant entities, but none of the settlement licenses were to
6 produce a patented article, for or under the Plaintiff's patents. Duties of confidentiality
7 prevent disclosure of settlement licenses and their terms in this pleading but discovery
8 will show that Plaintiff and its predecessors-in-interest have substantially complied
9 with Section 287(a). Furthermore, each of the defendant entities in the settlement
10 licenses did not agree that they were infringing any of Plaintiff's patents, including
11 the Patents-in-Suit, and thus were not entering into the settlement license to produce
12 a patented article for Plaintiff or under its patents. Further, to the extent necessary,
13 Plaintiff has limited its claims of infringement to method claims and thereby remove
14 any requirement for marking.
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19 28. To the extent Defendant identifies an alleged unmarked product
20 produced for Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in
21 discovery to either show that the alleged unmarked product does not practice the
22 Patents-in-suit and that Plaintiff has substantially complied with the marking statute.
23 Defendant has failed to identify any alleged patented article for which Section 287(a)
24 would apply. Further, Defendant has failed to allege any defendant entity produces a
25 patented article.
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1 29. The policy of § 287 serves three related purposes: (1) helping to avoid
2 innocent infringement; (2) encouraging patentees to give public notice that the article
3 is patented; and (3) aiding the public to identify whether an article is patented.
4 These policy considerations are advanced when parties are allowed to freely settle
5 cases without admitting infringement and thus not require marking. All settlement
6 licenses were to end litigation and thus the policies of §287 are not violated. Such a
7 result is further warranted by 35 U.S.C. §286 which allows for the recovery of
8 damages for six years prior to the filing of the complaint.
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12 30. For each previous settlement license, Plaintiff understood that (1) the
13 settlement license was the end of litigation between the defendant entity and Plaintiff
14 and was not a license where the defendant entity was looking to sell a product under
15 any of Plaintiff's patents; (2) the settlement license was entered into to terminate
16 litigation and prevent future litigation between Plaintiff and defendant entity for
17 patent infringement; (3) defendant entity did not believe it produced any product that
18 could be considered a patentable article under 35 U.S.C. §287; and, (4) Plaintiff
19 believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for
20 each prior settlement license.
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24 31. Each settlement license that was entered into between the defendant
25 entity and Plaintiff was negotiated in the face of continued litigation and while
26 Plaintiff believes there was infringement, no defendant entity agreed that it was
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1 infringing. Thus, each prior settlement license reflected a desire to end litigation and
2 as such the policies of §287 are not violated.
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4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief as follows:

- 6 a. enter judgment that Defendant has infringed the claims of the Patents-in-Suit;
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8 b. award Plaintiff damages in an amount sufficient to compensate it for
9 Defendant's infringement of the Patent-in-Suit in an amount no less than a
10 reasonable royalty or lost profits, together with pre-judgment and post-
11 judgment interest and costs under 35 U.S.C. § 284;
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13 c. award Plaintiff an accounting for acts of infringement not presented at trial and
14 an award by the Court of additional damage for any such acts of infringement;
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16 d. declare this case to be "exceptional" under 35 U.S.C. § 285 and award Plaintiff
17 its attorneys' fees, expenses, and costs incurred in this action;
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19 e. declare Defendant's infringement to be willful and treble the damages,
20 including attorneys' fees, expenses, and costs incurred in this action and an
21 increase in the damage award pursuant to 35 U.S.C. § 284; and,
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23 f. award Plaintiff such other and further relief as this Court deems just and proper.
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1 Dated: September 9, 2024

Respectfully submitted,

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DEMAND FOR JURY TRIAL

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

Dated: September 9, 2024

Respectfully submitted,

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