

1 John L. Cooper (State Bar No. 050324)  
Jeffrey M. Fisher (State Bar No. 155284)  
2 Andrew Leibnitz (State Bar No. 184723)  
FARELLA BRAUN & MARTEL LLP  
3 Russ Building, 30th Floor  
235 Montgomery Street  
4 San Francisco, CA 94104  
Telephone: (415) 954-4400  
5 Facsimile: (415) 954-4480

6 Attorneys for Plaintiffs  
DOLBY LABORATORIES, INC., and DOLBY  
7 LABORATORIES LICENSING CORPORATION

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

11 DOLBY LABORATORIES, INC., and  
DOLBY LABORATORIES LICENSING  
12 CORPORATION,

13 Plaintiffs,

14 vs.

15 LUCENT TECHNOLOGIES, INC., and  
LUCENT TECHNOLOGIES GUARDIAN I  
16 LLC,

17 Defendants.

18 LUCENT TECHNOLOGIES INC., and  
19 LUCENT TECHNOLOGIES GUARDIAN I  
LLC,

20 Counterclaim Plaintiffs,

21 vs.

22 DOLBY LABORATORIES, INC., and  
23 DOLBY LABORATORIES LICENSING  
CORPORATION,

24 Counterclaim Defendants.

Case No. C 01-20709 JF (RS)

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY JUDGMENT OF  
PATENT NONINFRINGEMENT AND  
INVALIDITY**

**DEMAND FOR JURY TRIAL**

26 Plaintiffs, Dolby Laboratories, Inc. (“Dolby Labs”) and Dolby Laboratories Licensing  
27 Corporation (“Dolby Licensing”) (collectively referred to herein as “Dolby”), allege as follows:  
28



1 alleges that Lucent does substantial business in, and has general and systematic contacts with, this  
2 judicial district.

3 **JURISDICTION AND VENUE**

4 8. The claims alleged below are brought under the Patent Laws of the United States,  
5 35 U.S.C. section 1 et seq., and the Declaratory Judgment Act, 28 U.S.C. sections 2201(a) and  
6 2202. This Court has subject matter jurisdiction over the Patent Law claims under 28 U.S.C.  
7 section 1338(a), 1331 and 2201(a).

8 9. Venue is proper in this judicial district pursuant to 28 U.S.C. sections 1391(b) and  
9 (c), where a substantial part of the actions, statements, and threats giving rise to the claims took  
10 place.

11 **GENERAL ALLEGATIONS**

12 10. U.S. Letters Patent No. 5,627,938 (the “‘938 Patent”) entitled “Rate Loop  
13 Processor For Perceptual Encoder/Decoder” was filed on September 22, 1994 and issued on  
14 May 6, 1997. The inventor named on the ‘938 Patent is James D. Johnston. This Patent  
15 generally involves a process and means for encoding and decoding audio signals.

16 11. U.S. Letters Patent No. 5,341,457 (the “‘457 Patent”) entitled “Perceptual Coding  
17 of Audio Signals” was filed on August 20, 1993 and issued on August 23, 1994. The inventors  
18 named on the ‘457 Patent are Joseph L. Hall, II and James D. Johnston. This patent, too,  
19 generally involves a process and means for encoding and decoding audio signals.

20 12. Dolby is informed and believes, and based thereon alleges, that Lucent is the  
21 assignee and owner of the ‘938 Patent and the ‘457 Patent.

22 13. Dolby Labs owns several patents relating to technology known as Dolby AC-3  
23 (“AC-3”), an audio data rate reduction technology based on human perceptual and psychoacoustic  
24 masking principles. In essence, AC-3 restricts the digital encoding and decoding of audio data to  
25 those sounds which can be perceived by the human ear and are not otherwise masked by other  
26 audio signals. Dolby Licensing licenses AC-3 within the United States, including within this  
27 district, and throughout the world to computer manufacturers (“licensees”) for use in the  
28 manufacture and sale of computers with AC-3 compatible DVD readers, which licensees market

1 and sell to purchasers (“sub-licensees”) within the United States, including within this district,  
2 and abroad.

3 14. As set forth below, Lucent’s representatives have asserted to Dolby, its licensees  
4 and/or its sub-licensees in California, including within this district, and elsewhere, that the  
5 manufacture, sale and/or use of computers with AC-3 compatible DVD readers allegedly  
6 infringes the ‘938 Patent and/or the ‘457 Patent. Lucent has also indicated that it will not hesitate  
7 to protect its rights in the ‘938 Patent and/or the ‘457 Patent, including by filing suit against  
8 Dolby, its licensees, and/or its sub-licensees. Indeed, Lucent has directly or indirectly threatened  
9 Dolby, its licensees, and/or its sub-licensees, including within this district, and elsewhere, that  
10 Lucent will bring a patent infringement action against Dolby, its licensees, and/or its sub-  
11 licensees based on the manufacture, sale, and/or use of computers with AC-3 compatible DVD  
12 readers.

13 15. Dolby is informed and believes, and on that basis alleges that Lucent has  
14 threatened infringement and/or suit against over a dozen of Dolby’s licensees and/or its  
15 sublicensees from 1998 to the present, including Pace Micro Technology PLC (“Pace”), Liquid  
16 Audio, Inc. (“Liquid Audio”), Creative Technology, Ltd. (“Creative Technology”), Gateway, Inc.  
17 (“Gateway”), Boston Acoustics, Inc. (“Boston Acoustics”), Ravisent Technologies Inc.  
18 (“Ravisent”), Dell Computer Corporation (“Dell”), Compaq Computer Corporation (“Compaq”),  
19 InterVideo, Inc. (“InterVideo”), CyberLink Corporation (“CyberLink”), ASUSTeK (“ASUS”),  
20 General Instruments (“GI”), RioPort, Inc. (“RioPort”), Sigma Designs, Inc. (“Sigma Designs”),  
21 Hughes Network Systems (“Hughes”), Apple Computer, Inc. (“Apple”), and Broadcom  
22 Corporation (“Broadcom”).

23 16. Dolby is informed and believes, and on that basis alleges that these threats go  
24 beyond mere reference to possible patent infringement during routine license negotiations. As  
25 detailed below:

- 26 • Lucent has leveled express and/or implied threats of litigation (by, *inter alia*,  
27 admitting that its claims qualify as “allegations of potential liability,” demanding “past  
28

1 damages,” and stating to at least one Dolby customer that it would let a jury decide the  
2 infringement issue); and

- 3 • Lucent has employed coercive and/or improper “scare-the-customer-and-run”  
4 negotiation strategies, including misrepresenting facts (*e.g.*, stating recently to one  
5 Dolby customer that the present litigation “is no more”), refusing requests to provide  
6 written information to support its accusations, and refusing to meet with Dolby.  
7 Instead, Lucent has engaged in a consistent pattern of threatening Dolby’s customers –  
8 many of whom are small businesses who have been forced to spend substantial sums  
9 to defend against Lucent’s baseless claims, and none of whom desire to get involved  
10 in patent infringement litigation with a corporation of Lucent’s size and resources.

### 11 Lucent’s Threats Against Pace

12 17. On February 5, 2002, a representative of Pace informed Dolby that, in seeking to  
13 enforce the ‘938 and ‘457 Patents against Pace, Lucent had misrepresented the facts regarding the  
14 instant litigation. In particular, Pace stated that, “at a recent meeting [between] Pace [and  
15 Lucent] . . . Lucent said that Dolby’s claim for a declaration that it was not infringing any valid  
16 Lucent patents was ‘no more.’”

17 18. Lucent has long sought to enforce the ‘938 and ‘457 Patents against Pace through  
18 aggressive tactics. By letter dated December 13, 2000, Jane Connor, counsel for Pace, informed  
19 Dolby that Lucent had charged Pace with patent infringement. Ms. Connor enclosed a copy of a  
20 letter received from Lucent on August 4, 2000 which repeatedly and directly accused Pace of  
21 patent infringement:

22 After having reviewed product offerings and recent press  
23 statements regarding contract awards, we expect that Pace Micro  
24 Technology is in need of rights to Lucent’s patents related to the  
25 MPEG-2 and Dolby AC-3 standards. The following table lists  
26 patents we consider essential to the indicated standards.

27 <b>MPEG-2</b>	28 <b>AC-3</b>
U.S. Patent No. 5,227,878	U.S. Patent No. 5,627,938
U.S. Patent No. 4,958,226	U.S. Patent No. 5,341,457

U.S. Patent No. 4,383,272	
---------------------------	--

The DMR5000-1 MMDS Set-top Box offered by Pace Micro Technology infringes all of the patents mentioned above. . . . Further, all other products that implement Dolby AC-3 infringe the patents listed in the second column of the table.

A copy of this letter is attached hereto as Exhibit A.

19. On March 6, 2001, only weeks after Dolby voluntarily dismissed without prejudice its initial complaint in this controversy while Dolby and Lucent tried to resolve their disputes, Dolby received a fax marked “URGENT” from Ms. Connor. Ms. Connor stated that Pace had retained external counsel to deal with Lucent’s accusations, and she requested Dolby’s immediate assistance:

Pace is seeking to resist Lucent’s claims for royalties on various grounds, including noninfringement, invalidity and irrelevance. However, at a recent meeting between Lucent and Pace, Lucent appeared very bullish of a successful outcome for Lucent in your action against them, and are increasing the pressure on Pace by claiming that success will enhance the value of their AC-3 patents. In order to strengthen our [defenses] . . . we clearly need some assistance in respect of the AC-3 patents.

20. Dolby is informed and believes and on that basis alleges that, to this date, Lucent’s threats of infringement litigation remain.

#### **Lucent’s Threats Against Liquid Audio**

21. Dolby is informed and believes and on that basis alleges that, in January 2000, Liquid Audio received a letter from Lucent stating that “all instances of Liquid Audio’s commercialization of AC-3 . . . infringe not only the ‘457 [P]atent, but also [the ‘938 Patent].” (A copy of the letter is attached hereto as Exhibit B.) With “significant concern,” Liquid Audio forwarded the message to outside counsel and provided the company’s attorneys with a copy of the letter.

22. Dolby is informed and believes and on that basis alleges that, soon after receiving the January letter from Lucent, Liquid Audio received another letter dated February 29, 2000 in which Lucent again accused Liquid Audio of “infringement of Lucent Technologies patents in . . . products that incorporate . . . AC-3.” (A copy of this letter is attached hereto as Exhibit C.)

1 Again, Liquid Audio provided a copy of the letter to its outside counsel. In addition, Liquid  
2 Audio soon thereafter contacted Dolby to seek assistance in defending Liquid Audio against  
3 Lucent's claims.

4 23. Dolby is informed and believes and on that basis alleges that, after receiving  
5 Lucent's letters, Liquid Audio took the threat of litigation so seriously that it warned investors of  
6 the letters in its Form 10-K filed with the SEC on March 3, 2000. Further, although Liquid Audio  
7 already used the legal services of one outside law firm, Liquid Audio engaged an additional law  
8 firm to provide specialized patent counseling.

9 24. Dolby is informed and believes and on that basis alleges that, seeking to forestall  
10 litigation, Liquid Audio agreed to meet with representatives of Lucent on or about April 26, 2000.  
11 From the presence of Lucent's attorneys at that meeting, and from the continued assertion by  
12 Lucent that Liquid Audio infringed Lucent's patents, Liquid Audio continued to take the threat of  
13 litigation seriously. Liquid Audio subsequently communicated its concerns to Dolby.

14 25. Dolby is informed and believes and on that basis alleges that, after the April  
15 meeting, Liquid Audio organized a "strenuous and sustained" effort to convince Lucent not to  
16 sue. Liquid Audio sought and received legal advice from both of its outside law firms. The  
17 company also hired an outside engineer to assist Liquid Audio and its attorneys in analyzing  
18 Lucent's infringement claims. In addition, Liquid Audio enlisted Dolby's expertise with AC-3 in  
19 preparing a presentation for Lucent regarding Liquid Audio's noninfringement of Lucent's  
20 patents. After nearly five months of work and many tens of thousands of dollars in expenditures,  
21 Liquid Audio presented its arguments to Lucent's representatives on or about September 21, 2000  
22 regarding why Lucent should not sue Liquid Audio.

23 26. Dolby is informed and believes and on that basis alleges that, notwithstanding  
24 extensive efforts by Liquid Audio to avoid litigation, on June 25, 2001 Lucent sent yet another  
25 letter to Liquid Audio's attorneys in furtherance of Lucent's claims. As of this date, Lucent has  
26 done nothing to retract or lessen its threats of infringement litigation.

27  
28

**Lucent's Threats Against Creative Technology**

1  
2 27. Dolby is informed and believes, and on that basis alleges that on or about October  
3 27, 1998, Creative Technology received a letter from Lucent's Director of its Intellectual Property  
4 Business, Thomas C. Dodd. (A copy of the letter is attached hereto as Exhibit D.) In a chart  
5 entitled "Product/Patent Mapping," Lucent claimed that its '938 Patent covered Creative  
6 Technology's products which used AC-3. The last two paragraphs of Lucent's letter stated:  
7 "Lucent is willing to negotiate a license for the above patent use. [However,] Lucent is not  
8 willing to negotiate for four years on this agreement. We believe that an agreement could be  
9 reached within six months."

10 28. After Creative Technology communicated its concerns to Dolby, Dolby's outside  
11 patent counsel, David N. Lathrop of Gallagher & Lathrop, contacted outside patent counsel for  
12 Creative Technology, Truong T. Dinh. Mr. Dinh communicated Creative Technology's serious  
13 concern regarding allegations by Lucent that Creative Technology practiced Lucent's patents by  
14 using AC-3.

15 29. Mr. Dinh also communicated to Mr. Lathrop that, in meetings on January 6, 1999  
16 and March 1, 1999, Lucent and Creative Technology exchanged detailed arguments as to the  
17 relationship between AC-3 and claim 4 of the '938 Patent. Counsel for Creative Technology  
18 briefed Mr. Lathrop on these meetings on March 17, 1999, at which time he requested further  
19 information from Dolby or its patent counsel that could assist in defending Creative Technology  
20 against Lucent's claims.

21 30. Dolby is informed and believes, and on that basis alleges that this conduct on the  
22 part of Lucent created a clear and present threat of litigation by Lucent. To date, Lucent has  
23 provided no statement or indication that it has retracted or lessened its allegations against  
24 Creative Technology.

**Lucent's Threats Against Gateway & Boston Acoustics**

25  
26 31. Dolby is informed and believes, and on that basis alleges that on March 24, 1999,  
27 outside patent counsel for Gateway, Richard P. Gilly, contacted Gateway's supplier of speaker  
28 systems, Boston Acoustics. Mr. Gilly stated that Lucent had accused Gateway of violating



1 Lucent's rights under the '938 Patent by virtue of Gateway's use of AC-3. Gateway's counsel  
2 specifically identified Lucent's accusation as an "infringement claim" under Gateway's  
3 indemnification agreement with Boston Acoustics. Mr. Gilly requested that Boston Acoustics  
4 "defend" Gateway in a meeting between Lucent and Gateway scheduled for April 21, 1999.

5 32. Boston Acoustics' CEO, Andrew Kotsatos, contacted Dolby on approximately  
6 April 12, 1999 to seek assistance, passing along Gateway's March 24<sup>th</sup> letter. Recognizing the  
7 potential for patent litigation to ensue, Dolby referred the matter to its outside patent counsel,  
8 Mr. Lathrop, on April 14, 1999.

9 33. Dolby is informed and believes, and on that basis alleges that on July 9, 1999,  
10 Mr. Gilly notified Boston Acoustics' lawyers that Lucent "continue[d] to assert" the '938 Patent  
11 against Gateway. On behalf of Gateway, Mr. Gilly demanded indemnification from Boston  
12 Acoustics. Indicative of Lucent's intent to vex Dolby's licensees and sub-licensees without  
13 providing documentary evidence of its threats, Mr. Gilly further stated that Lucent refused to  
14 provide written information regarding its claims, and instead relied solely on "oral discussions."  
15 Nevertheless, Mr. Gilly provided in his letter a detailed chart showing how Lucent compared  
16 features of claim 4 of the '938 Patent with sections of a published standard of AC-3. Mr. Lathrop  
17 received Gateway's written concerns regarding its potential "liability" on or about July 22, 1999.

18 34. On July 23, 1999, Mr. Kotsatos of Boston Acoustics reiterated to Dolby the  
19 accusations that Lucent had asserted against Gateway. Boston Acoustics also requested that  
20 Dolby provide legal assistance in defending Gateway. Dolby informed Mr. Lathrop of  
21 Mr. Kotsatos' statements on July 26, 1999.

22 35. Working with Mr. Gilly, Mr. Lathrop attempted to meet with representatives of  
23 Lucent to discuss their allegations of infringement of the '938 Patent. Mr. Gilly scheduled a  
24 meeting for October 21, 1999 in which Mr. Lathrop could meet with representatives of Gateway  
25 and Lucent to discuss the '938 Patent.

26 36. On October 18, 1999, three days before the scheduled meeting, Mr. Gilly informed  
27 Mr. Lathrop that Lucent had cancelled the meeting – apparently in an attempt to avoid  
28 confronting a knowledgeable representative from Dolby regarding Lucent's claims of

1 infringement. Mr. Gilly asked Dolby for assistance in drafting an “appropriately worded written  
2 position of noninfringement/invalidity to send to Lucent.”

3 37. On April 5, 2000, Mr. Gilly advised Boston Acoustics’ attorneys and Mr. Lathrop  
4 that Lucent had broadened its accusations asserting the ‘457 Patent against Gateway in addition to  
5 the ‘938 Patent. Gateway requested that Boston Acoustics and Dolby “defend” Gateway. Over  
6 the next two months, Mr. Lathrop worked closely with Mr. Gilly to prepare responses to Lucent’s  
7 accusations.

8 38. When Gateway and Lucent scheduled a meeting in May 2000, Lucent refused to  
9 allow Mr. Lathrop to attend the meeting – again avoiding confrontation with a Dolby  
10 representative who could refute Lucent’s infringement accusations. Dolby is informed and  
11 believes, and on that basis alleges that Gateway eventually met with Lucent on May 24, 2000,  
12 when Lucent made a technical presentation arguing that Gateway’s computers using AC-3  
13 “infringed” Lucent’s patents. Gateway presented to Lucent its basis for believing that Gateway  
14 did not infringe the ‘457 and ‘938 Patents. Mr. Gilly indicated that, despite Gateway’s arguments  
15 to the contrary, Lucent continued to insist all products that incorporate AC-3 infringe both the  
16 ‘457 and ‘938 Patents.

17 39. On May 22, 2001 – only days before Dolby originally filed this action – Mr. Gilly  
18 informed Mr. Lathrop about a meeting held between Gateway and Lucent the previous week. On  
19 information and belief, Gateway informed Lucent during this meeting that neither Gateway nor  
20 Dolby believed a license was required under either the ‘457 Patent or the ‘938 Patent. Lucent  
21 responded that licenses were required from Lucent to practice AC-3. Mr. Gilly told Mr. Lathrop  
22 that, during his meeting with Lucent, he had expressed his opinion that Gateway/Dolby and  
23 Lucent seemed to be moving apart, and had reiterated Gateway’s concern about the threat of  
24 litigation. Dolby is informed and believes, and on that basis alleges that to this date, Lucent  
25 continues to assert Gateway’s use of AC-3 infringes the ‘457 and ‘938 Patents. Lucent has  
26 provided no indication of retraction of its threats as of this date.

27  
28



1           46.     The following day, on Friday, August 27, 1999, Mr. Wang wrote again, noting  
2 ASUS' predicament in more urgent tones:

3                   ASUSTeK is a public company and they can't ship [products  
4                   accused of] patent infringement, especially [by a] big company like  
5                   Lucent. They are holding their shipment because of this royalty  
6                   issue. Please let us know [what Dolby can do to help] as soon as  
7                   possible.

8     Dolby immediately brought Mr. Wang's e-mails to Mr. Lathrop's attention.

9           47.     Dolby is informed and believes, and on that basis alleges that on December 13,  
10 1999, ASUS notified InterVideo by e-mail that Lucent required a meeting in January 2000 "to  
11 discuss the patent issue." Mr. Wang forwarded the message to Dolby and Mr. Lathrop, stating, "I  
12 really hope Dolby can resolve the Lucent patent infringement issue ASAP."

13           48.     On January 12, 2000, responding to Dolby's request for documents regarding  
14 Lucent's threats, Mr. Wang informed Dolby by e-mail that "ASUS doesn't [have] document[s]  
15 from Lucent [regarding] AC-3 infringement" – a fact consistent with Lucent's apparent efforts to  
16 extort royalties from Dolby's customers while skirting documentation of its threats. Mr. Wang  
17 complained that "the written documents between Lucent and ASUS is quite limited [since]  
18 Lucent hasn't left too much to them!" In addition, Mr. Wang specifically noted that "Lucent has  
19 refused to offer any claim chart . . . claim[ing] they are under no obligation to provide that."  
20 Nevertheless, Mr. Wang passed along the following straightforward quote from Lucent's meeting  
21 with ASUS: namely the assertion by Lucent that "use of AC-3 infringes Lucent's patent."

22           49.     In the same e-mail of January 12, 2000, Mr. Wang relayed ASUS' notes from its  
23 meeting with Lucent relating to AC-3:

24                   Lucent claims Lucent is the patent owner and according to the U.S.  
25                   patent law, they have the right to claim to anyone they believe  
26                   infringement is happening. Lucent stated: If ASUS buy[s] and  
27                   sell[s] the infringed product, then ASUS is engag[ing] in  
28                   contributory infringement or induce[ment] to use the infringed  
29                   products. Then they have the right to protect their patent!

30     Mr. Wang further complained that Lucent was victimizing ASUS, a Taiwanese company,  
31 because: (1) it was more lucrative than fighting with the knowledgeable Dolby; and, (2) ASUS

1 operated “far away in Asia,” where public companies cannot carry out any potentially illegal  
2 activities.

3 50. Documenting Lucent’s concerted effort to evade examination by Dolby of  
4 Lucent’s claims, ASUS wrote to InterVideo on Friday, January 14, 2000 as follows:

5 I don’t think Lucent will give any written document stat[ing that]  
6 “Dolby AC-3 infringes . . . Lucent’s patent[s] . . . “ They are the  
7 expert, they know very well they might get into trouble with Dolby.  
8 [A]ll they want is to get something from ASUS, which is  
9 defenseless in this field.

10 They even refuse to give us the claim chart!

11 Forwarding ASUS’ message the following Monday, January 17, 2000, Mr. Wang further  
12 informed Dolby that “Lucent [was] trying to block [ASUS’] shipment[s] . . . [absent payment of]  
13 royalt[ies].”

14 51. Dolby is informed and believes, and on that basis alleges that Lucent then refused  
15 to allow Dolby to participate in a January 27, 2000 telephone meeting between Lucent and ASUS  
16 regarding Lucent’s patent claims regarding AC-3. In March 2000, evidencing how seriously it  
17 took Lucent’s threats, InterVideo engaged outside patent counsel. Subsequently, Intervideo’s  
18 counsel has been in close communication with Dolby regarding Lucent’s threats against his  
19 client.

20 52. CyberLink first notified Dolby of AC-3’s alleged infringement of Lucent’s ‘457  
21 Patent on May 31, 2000, when CyberLink reported a customer complaint about the issue.  
22 CyberLink identified the customer as ASUS on June 26, 2000, when CyberLink demanded  
23 Dolby’s support regarding Lucent’s “patent claim” against ASUS. “Please help,” wrote  
24 CyberLink.

25 53. Subsequently, on July 5, 2000, CyberLink informed Dolby by e-mail that Lucent  
26 had “harassed ASUS several times this week” and stated that “ASUS definitely need[s] a good  
27 defen[se]” regarding the ‘938 Patent. In that message, CyberLink “urgently” demanded Dolby’s  
28 support regarding Lucent’s “patent claim.”



1           59.     Subsequently, on February 27, 2001, Mr. Tran reported that Lucent had renewed  
2 its claim that “anyone licensing [the] Dolby implementation will automatically infringe on their  
3 patent.” In response to Dolby’s request for documentation regarding Lucent’s claim, Mr. Tran  
4 supplied Dolby with a copy of the ‘938 Patent on April 6, 2001, and again requested Dolby’s  
5 assistance in defending Sigma Designs.

6           60.     Dolby is informed and believes and on that basis alleges that to this day, Lucent  
7 has done nothing to lessen or retract its threat of infringement litigation.

#### 8                           **Lucent’s Threats Against Hughes Network Systems**

9           61.     On June 7, 2000, Adrian Yap of Hughes contacted Dolby. He reported that  
10 Hughes had received information stating that there would be possible patent infringement of  
11 Lucent’s patents if Hughes used Dolby Digital technology. Dolby immediately informed  
12 Mr. Lathrop of the communication with Hughes.

#### 13                           **Lucent’s Threats Against Apple**

14           62.     Dolby is informed and believes and on that basis alleges that on April 14, 2000,  
15 Lucent sent the ‘457 and ‘938 Patents to Apple. In an accompanying chart entitled  
16 “Product/Patent Mapping,” Lucent indicated that the two patents covered Apple’s uses of DVD  
17 and “all other products implementing AC-3 audio coding.” Lucent sent two additional letters  
18 over the remainder of 2000. In April 2001, Lucent began contacting Apple essentially monthly  
19 thereafter. Apple thereafter contacted Dolby and quite anxiously requested Dolby’s assistance.  
20 Dolby is informed and believes and on that basis alleges that these threats have not been lessened  
21 or retracted by Lucent.

#### 22                           **Lucent’s Threats Against Broadcom**

23           63.     By letter dated February 2, 2000, Lucent advised Broadcom that “all of  
24 Broadcom’s products implementing the AC-3 specification infringe the 5,627,938 and 5,341,457  
25 patents.” (A copy of this letter is attached hereto as Exhibit E.) Dolby is informed and believes  
26 and on that basis alleges that, viewing Lucent’s accusation of infringement in the February 2000  
27 letter as a “forerunner to patent litigation,” Broadcom’s in-house counsel immediately contacted  
28

1 outside counsel after learning of the letter. Broadcom then provided the company's attorneys  
2 with a copy of the letter.

3 64. Dolby is informed and believes and on that basis alleges that, in trying to avoid  
4 litigation, Broadcom met with representatives of Lucent on approximately four or five occasions  
5 after February 2000. In those meetings, Lucent continued to assert that Broadcom's use of AC-3  
6 infringed Lucent's patents. Lucent also demanded payment by Broadcom of an unspecified  
7 amount for "past damages."

8 65. Dolby is informed and believes and on that basis alleges that over the course of the  
9 aforementioned meetings with Lucent, Broadcom repeatedly suggested to Lucent that Lucent  
10 speak with Dolby about Lucent's claims of infringement. Lucent did not to do so. Since  
11 Broadcom received Lucent's February 2000 letter, Broadcom has a reasonable and well-founded  
12 fear of being sued for patent infringement by Lucent.

13 66. To date, Lucent has done nothing to lessen or retract its claims of infringement  
14 against Dolby, its licensees, and its sub-licensees as set forth above. None of Dolby's customers  
15 has ever communicated to Dolby that their apprehension of litigation has subsided. On  
16 information and belief, Dolby alleges that its customers have present and well-founded  
17 apprehension of imminent litigation by Lucent claiming patent infringement.

18 67. Dolby is informed and believes and on that basis alleges that, while avoiding  
19 documentation of its threats and refusing to meet with Dolby, Lucent has attempted to coerce  
20 Dolby's customers into paying Lucent royalties by express and implied threats of litigation.  
21 Often targeting distant and/or small companies, some of whom are unfamiliar with American law  
22 and hesitant to risk suit against a company with Lucent's size and resources, Lucent has imposed  
23 on Dolby's customers costly business disruptions (such as shipments held by Dolby's customers  
24 pending resolution of Lucent's allegations). Dolby is informed and believes and on that basis  
25 alleges that Lucent's negotiating strategies involving threats of infringement are an attempt to  
26 enforce its '938 and '457 Patents through scare-the-customer-and-run tactics.

27 68. Because of Lucent's numerous and repeated threats against Dolby, its licensees,  
28 and/or its sub-licensees, as of the date this action was filed and continuing thereafter, Dolby



1 remains certain that litigation with Lucent was imminent. The volume and consistency of  
2 Lucent's accusations regarding AC-3's purported infringement of the '938 and '457 Patents  
3 convinced Dolby that litigation with Lucent could not be avoided. Lucent's size, patent  
4 enforcement resources, and doggedness in pursuing Dolby's customers further convinced Dolby  
5 that litigation was inevitable. Nothing that has occurred since these threats were leveled has  
6 allayed those fears. In fact, Lucent has refused to retract its infringement allegations in this  
7 litigation. Dolby has continued to have this reasonable apprehension of suit at all times since.

8 69. Dolby is informed and believes and on that basis alleges that Lucent has never  
9 withdrawn its threats of infringement or its threats of litigation. Indeed, Lucent's counsel  
10 advised Dolby's counsel prior to the January 5, 2001 hearing on Lucent's motion to dismiss that it  
11 would file a counterclaim for infringement if this Court denied its motion to dismiss.

12 70. Dolby is informed and believes and on that basis alleges that, as a result of  
13 Lucent's threats to Dolby, its licensees, and/or its sub-licensees, Dolby has lost and will continue  
14 to lose business opportunities.

15 **FIRST CLAIM FOR RELIEF**  
16 **[Declaratory Judgment Of Noninfringement Of '938 Patent]**

17 71. Dolby repeats and realleges, as though fully set forth, the allegations contained in  
18 paragraphs 1 through 70 above.

19 72. Dolby has licensed, and continues to license its patented AC-3 technology for use  
20 in the manufacture and sale of computers with AC-3 compatible DVD readers.

21 73. Lucent has indicated to Dolby, its licensees and/or its sub-licensees that the  
22 manufacture, sale, and/or use of computers with AC-3 compatible DVD readers infringes the '938  
23 Patent, including by contacting licensees and sub-licensees and attempting to force them to take a  
24 license under the '938 Patent for their continued manufacture, sale, and/or use of computers with  
25 AC-3 compatible DVD readers.

26 74. Lucent has accused Dolby, its licensees, and/or its sub-licensees of patent  
27 infringement and threatened to file suit against Dolby, its licensees, and/or its sub-licensees.  
28

1 75. Dolby has a reasonable apprehension that Lucent will file a patent infringement  
2 action against Dolby, its licensees, and/or its sub-licensees, if Dolby continues to license its  
3 patented AC-3 technology for use in the manufacture and sale of computers with AC-3  
4 compatible DVD readers and/or licensees continue to manufacture and/or sell, and/or sub-  
5 licensees continue to use, computers with AC-3 compatible DVD readers.

6 76. Dolby currently licenses and sub-licenses its patented AC-3 technology for use in  
7 the manufacture and sale of computers with AC-3 compatible DVD readers, which Lucent claims  
8 infringes the '938 Patent. Therefore, a valid and justifiable controversy has arisen and exists  
9 between Dolby and Lucent within the meaning of 28 U.S.C. section 2201.

10 77. Dolby has not infringed and is not now infringing the '938 Patent, and requests a  
11 declaration from the Court so finding.

12 **SECOND CLAIM FOR RELIEF**  
13 **[Declaratory Judgment Of Invalidity Re '938 Patent]**

14 78. Dolby repeats and realleges, as though fully set forth, the allegations contained in  
15 paragraphs 1 through 77 above.

16 79. Although Dolby's investigation of the '938 Patent's validity is ongoing, on  
17 information and belief, Dolby alleges that certain, if not all, of the claims of the '938 Patent are  
18 invalid for failure to satisfy the conditions and requirements for patentability as set forth in Title  
19 35, United States Code sections 101, 102, 103, 112, and 120, and Dolby requests a declaration of  
20 the Court so finding.

21 80. On information and belief, the differences between the subject matter purportedly  
22 covered by the '938 Patent and the prior art on encoding and decoding audio data and related  
23 technology are such that the subject matter of the '938 Patent as a whole would have been  
24 obvious within the meaning of 35 U.S.C. section 103(a). The '938 Patent therefore is invalid.

25 **THIRD CLAIM FOR RELIEF**  
26 **[Declaratory Judgment Of Noninfringement Of '457 Patent]**

27 81. Dolby repeats and realleges, as though fully set forth, the allegations contained in  
28 paragraphs 1 through 80 above.

1 82. Dolby has licensed, and continues to license its patented AC-3 technology for use  
2 in the manufacture and sale of computers with AC-3 compatible DVD readers.

3 83. Lucent has indicated to Dolby, its licensees and/or its sub-licensees that the  
4 manufacture, sale, and/or use of computers with AC-3 compatible DVD readers infringes the '457  
5 Patent, including by contacting licensees and sub-licensees and attempting to force them to take a  
6 license under the '457 Patent for their continued manufacture, sale, and/or use of computers with  
7 AC-3 compatible DVD readers.

8 84. Lucent has accused Dolby, its licensees, and/or its sub-licensees of patent  
9 infringement and threatened to file suit against Dolby, its licensees, and/or its sub-licensees.

10 85. Dolby has a reasonable apprehension that Lucent will file a patent infringement  
11 action against Dolby, its licensees, and/or its sub-licensees, if Dolby continues to license its  
12 patented AC-3 technology for use in the manufacture and sale of computers with AC-3  
13 compatible DVD readers and/or licensees continue to manufacture and/or sell, and/or sub-  
14 licensees continue to use, computers with AC-3 compatible DVD readers.

15 86. Dolby currently licenses and sub-licenses its patented AC-3 technology for use in  
16 the manufacture and sale of computers with AC-3 compatible DVD readers, which defendants  
17 claim infringes the '457 Patent. Therefore, a valid and justifiable controversy has arisen and  
18 exists between plaintiffs and defendants within the meaning of 28 U.S.C. section 2201.

19 87. Dolby has not infringed and is not now infringing the '457 Patent, and requests a  
20 declaration from the Court so finding.

21 **FOURTH CLAIM FOR RELIEF**  
22 **[Declaratory Judgment Of Invalidity Re '457 Patent]**

23 88. Dolby repeats and realleges, as though fully set forth, the allegations contained in  
24 paragraphs 1 through 87 above.

25 89. Although Dolby's investigation of the '457 Patent's validity is ongoing, on  
26 information and belief, Dolby alleges that certain, if not all, of the claims of the '457 Patent are  
27 invalid for failure to satisfy the conditions and requirements for patentability as set forth in Title  
28

1 35, United States Code sections 101, 102, 103, 112, and 120, and Dolby requests a declaration of  
2 the Court so finding.

3 90. On information and belief, the differences between the subject matter purportedly  
4 covered by the '457 Patent and the prior art on encoding and decoding audio data and related  
5 technology are such that the subject matter of the '457 Patent as a whole would have been  
6 obvious within the meaning of 35 U.S.C. section 103(a). The '457 Patent therefore is invalid.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Dolby prays for judgment as follows:

9 1. For a judicial determination and declaration that U.S. Letters Patent No. 5,627,938  
10 is invalid, in whole or in part;

11 2. For a judicial determination and declaration that U.S. Letters Patent No. 5,341,457  
12 is invalid, in whole or in part;

13 3. For a declaration that Dolby has not infringed, induced others to infringe or  
14 contributed to infringement of any of the claims of the U.S. Letters Patent No. 5,627,938;

15 4. For a declaration that Dolby has not infringed, induced others to infringe or  
16 contributed to infringement of any of the claims of the U.S. Letters Patent No. 5,341,457;

17 5. For an injunction prohibiting defendants Lucent, its officers, agents, servants,  
18 employees, and other representatives, and all persons in active concert or participation with any  
19 of them, from charging infringement of, or instituting any action for alleged infringement of U.S.  
20 Letters Patent No. 5,627,938 against Dolby, its licensees and/or its sub-licensees;

21 6. For an injunction prohibiting defendants Lucent, its officers, agents, servants,  
22 employees, and other representatives, and all persons in active concert or participation with any  
23 of them, from charging infringement of, or instituting any action for alleged infringement of U.S.  
24 Letters Patent No. 5,341,457 against Dolby, its licensees and/or its sub-licensees;

25 7. For reasonable attorneys' fees and costs of suit; and

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8. For such other and further relief as the Court deems just and equitable.

DATED: December 30, 2002

FARELLA BRAUN & MARTEL LLP

By: /s/ John L. Cooper  
John L. Cooper  
Attorneys for Plaintiffs  
DOLBY LABORATORIES, INC., and DOLBY  
LABORATORIES LICENSING CORPORATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 3-6, Plaintiffs Dolby Laboratories, Inc. and Dolby Laboratories Licensing Corporation hereby demand a trial of this dispute by jury.

DATED: December 30, 2002

FARELLA BRAUN & MARTEL LLP

By: /s/ John L. Cooper  
John L. Cooper  
Attorneys for Plaintiffs  
DOLBY LABORATORIES, INC., and DOLBY  
LABORATORIES LICENSING CORPORATION