

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

1 WAYNE M. HARDING
Email: wharding@dl.com
2 BRIAN K. ERICKSON (*pro hac vice* application filed)
Email: berickson@dl.com
3 DEWEY & LEBOEUF LLP
401 Congress Avenue, Suite 3200
4 Austin, TX 78701
Telephone: (512) 226-0300
5 Facsimile: (512) 226-0333

6 JOHN DOWNING (CA SBN: 252850)
Email: jdowning@dl.com
7 DEWEY & LEBOEUF LLP
1950 University Ave., Suite 500
8 East Palo Alto, CA 94303-2225
Telephone: (650) 845-7000
9 Facsimile: (650) 845-7333

10 Attorneys for Plaintiff
MOTOROLA, INC.

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

14 Motorola, Inc.,) Case No. _____
15)
16 Plaintiff,) **COMPLAINT FOR DECLARATORY**
17 vs.) **JUDGMENT**
18) Date: July 21, 2008
19 Command Audio Corporation,)
Defendant.)

20
21 Plaintiff Motorola, Inc. (“Motorola”) files this Complaint For Declaratory Judgment against
22 Defendant Command Audio Corporation (“Command Audio”) and in support of this action alleges:

23 **NATURE AND BASIS OF THE ACTION**

24 1. This is an action arising under the Federal Declaratory Judgment Act, 28 U.S.C. §§
25 2201, *et seq.* and the United States patent laws, 35 U.S.C. § 1, *et seq.* Motorola requests judicial
26 declarations that it does not infringe any valid and enforceable claim of U.S. Patent Nos.:

- 27 • 5,406,626, entitled “Radio Receiver For Information Dissemination [sic] Using
28 Subcarrier,” (“’626 Patent”);

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

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- 5,524,051, entitled “Method And System For Audio Information Dissemination Using Various Modes Of Transmission,” (“’051 Patent”);
- 5,590,195, entitled “Information Dissemination Using Various Transmission Modes,” (“’195 Patent”);
- 5,751,806, entitled “Audio Information Dissemination Using Various Transmission Modes,” (“’806 Patent”); and
- 6,330,334, entitled “Method And System For Information Dissemination Using Television Signals,” (“’334 Patent”),

attached as Exhibits A-E (collectively, the “Patents In Suit”).

THE PARTIES

2. Plaintiff Motorola is a global manufacturer and supplier of products that allow consumers to record and playback audio and/or video such as personal versatile recorders (“PVRs”) (herein after referred to as “Motorola Products”). Motorola is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 1303 East Algonquin Road, Schaumburg, Illinois 60196.

3. Upon information and belief, Defendant Command Audio is a corporation organized and existing under the laws of California with a principal place of business at 203 Redwood Shores Parkway, Redwood City, California. Upon information and belief, Command Audio’s sole business is acquiring and licensing intellectual property.

4. Upon information and belief, Command Audio in general does not make or sell any device and specifically does not make or sell any device that practices any claim of the Patents In Suit. Upon information and belief, Command Audio’s only source of revenue is licensing intellectual property.

JURISDICTION

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 based on federal question jurisdiction. This Court has personal jurisdiction over Command Audio because it

1 resides in this state and district and because it does business in this state and district, including
2 commencing litigation in this district to enforce various ones of the Patents In Suit.

3 **VENUE**

4 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

5 **INTRADISTRICT ASSIGNMENT**

6 7. Assignment of this action on a district-wide basis is appropriate because this is an
7 Intellectual Property Action.

8 **JUDICIABLE CONTROVERSY**

9 8. On February 1, 2002, Command Audio filed a patent infringement lawsuit in the
10 United States District Court for the Northern District of California against Sony Electronics, Inc.,
11 (“Sony”) Case No. 02-cv-0599 (MJJ) (hereinafter, the “Sony Lawsuit”). The Sony Lawsuit was
12 dismissed with prejudice on or about January 6, 2006. On information and belief, in the Sony
13 Lawsuit, Command Audio asserted that it was the owner by assignment of all rights, title and interest
14 in and to the Patents In Suit and that Sony infringed the Patents In Suit by selling PVRs.

15 9. Command Audio issued a press release dated December 15, 2005 announcing the
16 settlement of the Sony Lawsuit (available on Command Audio’s web site at
17 http://www.commandaudio.com/_release.php?which=7). In that press release, Command Audio
18 stated that “Our patents are critical to the time-shifting functionality and convenience that millions of
19 TV viewers and radio listeners are demanding.” Command Audio also stated that “We expect
20 continued success as we actively protect and license our intellectual property.”

21 10. Command Audio issued a press release dated April 25, 2006 announcing that
22 ReplayTV took a license to the Patents In Suit (available on Command Audio’s web site at
23 http://www.commandaudio.com/_release.php?which=8). In that press release, Command Audio
24 stated that “Our patents are critical to the time-shifting functionality and convenience that millions of
25 TV viewers and radio listeners are demanding. Our license agreement with ReplayTV further
26 reinforces the strength and value of our patents.” Command Audio also reaffirmed that Command
27 Audio would “actively protect and license our intellectual property.”
28

1 11. Command Audio issued a press release dated April 24, 2007 announcing that
2 Scientific-Atlanta had taken a license to the Patents In Suit (available at
3 http://www.commandaudio.com/_release.php?which=10). Command Audio stated in that press
4 release that “Our patents are critical to the time-shifting functionality and convenience that millions
5 of TV viewers are demanding.” Command Audio again reaffirmed in that press release that
6 Command Audio would “actively protect and license our intellectual property.” In that same press
7 release, Command Audio stated that “The Company owns and licenses a portfolio of U.S. and
8 foreign patents covering the transmission, storage, navigation and consumer playback of the audio
9 elements of broadcast media. These capabilities are offered in a variety of consumer and automotive
10 electronic devices and in the services that transmit content to them. Some of the best-known
11 products incorporating Command Audio’s technology are personal video recorders (PVRs, also
12 known as digital video recorders, or DVRs), personal computers with PVR functionality and digital
13 radios with record capability.”

14 12. Command Audio, on its web site at <http://www.commandaudio.com/licenses.php>,
15 states expressly that “We strictly enforce our patents in order to protect their value and the interests
16 of our licensees.”

17 13. On or about November 25, 1997, Command Audio filed U.S. Patent Application No.
18 08/977,846 (the '846 Application) in the United States Patent and Trademark Office (“PTO”).

19 14. During its prosecution of the '846 Application, Command Audio described the
20 relationship between the '846 Application and the Patents In Suit as follows: “Command Audio is
21 the assignee of [the Patents In Suit], all of which have the same inventor (John O. Ryan) and
22 described similar subject matter. (Indeed, [the '195 patent, '806 Patent and '334 Patent] all share the
23 same disclosure as the ['846 Application] because all are continuations-in-part of U.S. Application
24 No. 08/031,763 filed on March 15, 1993.” Command Audio has repeatedly argued during its
25 prosecution of the '846 Application that the rejected claims of the '846 Application are very similar
26 in scope to various issued claims of the Patents In Suit because they are both directed to the so-called
27 “Ryan Architecture”. Command Audio has argued that the so-called “Ryan Architecture” claimed in
28 the Patents In Suit has experienced commercial success and, because the rejected claims in the '846

1 Application allegedly claim the same so-called “Ryan Architecture”, the Examiner should withdraw
2 the obviousness rejections of those claims. Moreover, the claims of the '846 Application are so
3 similar to the claims of the Patents In Suit that, on or about March 15, 1999, Command Audio
4 submitted to the PTO a terminal disclaimer in the '846 Application in light of the '806 Patent and the
5 '626 Patent.

6 15. Since the '846 Application was filed on or about November 25, 1997, the PTO has
7 issued at least ten (10) office actions rejecting all claims of the '846 application, including office
8 actions dated September 14, 1998, May 26, 1999, August 15, 2001, March 1, 2002, October 29,
9 2002, February 6, 2004, September 13, 2005, June 7, 2006, August 10, 2007, and July 8, 2008.

10 16. In the office action dated August 10, 2007, the PTO rejected all of the then-pending
11 claims in the '846 Application on various grounds involving Japanese Patent Application No. JP
12 4310631 (“Yoshio”), U.S. Pat. No. 5,057,932 (“Lang”), PCT Patent Application No. WO 91/03112
13 (“De Bey”), PCT Patent Application No. WO 92/10040 (“Rovira”), and/or “Official Notice”. None
14 of the particular grounds of rejection set forth in the August 10, 2007 office action were considered
15 by the PTO during the examination of any of the Patents In Suit.

16 17. None of Yoshio, Lang or De Bey was submitted to the PTO by Command Audio in
17 the examination of any of the Patents In Suit. None of Yoshio, Lang or De Bey was cited by the
18 PTO in the examination of any of the Patents In Suit. None of Yoshio, Lang or De Bey was
19 considered during the examination of the Patents In Suit.

20 18. Rovira was not submitted to the PTO by Command Audio in the examination of any
21 of the '626 Patent, the '051 Patent, the '195 Patent, or the '806 Patent. Rovira was not cited by the
22 PTO in the examination of any of the '626 Patent, the '051 Patent, the '195 Patent, or the '806 Patent.
23 Rovira was not considered during the examination of any of the '626 Patent, the '051 Patent, the '195
24 Patent, or the '806 Patent.

25 19. On or about February 8, 2008, as part of its prosecution of the '846 Application,
26 Command Audio submitted a declaration by Charles H. Jablonski, one of Command Audio’s
27 technical experts from the Sony Lawsuit involving the Patents In Suit. On behalf of Command
28 Audio, Charles H. Jablonski declared that the so-called “Ryan Architecture” was claimed in both the

1 Patents In Suit and in the '846 Application and that it is “fundamental for enabling these
2 characteristic features and functionality of typical PVRs. . . .”

3 20. Also on or about February 8, 2008 and also as part of its prosecution of the '846
4 Application, Command Audio’s attorneys argued that the so-called “Ryan Architecture” was
5 claimed in both the Patents In Suit and '846 Application, and that the so-called “Ryan Architecture”
6 was “fundamental for enabling characteristic features and functionality of typical personal video
7 recorders”

8 21. Also on or about February 8, 2008 and also as part of its prosecution of the '846
9 Application, Command Audio submitted a declaration by Donald F. Bogue. On information and
10 belief, Donald F. Bogue is the President and Chief Executive Officer of Command Audio. On
11 behalf of Command Audio, Donald F. Bogue submitted claim charts purportedly applying select
12 claims of the Patents In Suit to PVRs.

13 22. In the most recent office action dated July 8, 2008, the PTO issued a final rejection
14 of all pending claims in the '846 Application.

15 23. Command Audio has made an assertion of its rights in the area of PVR technology
16 directly to Motorola, alleging that the making, using, selling, offering for sale and/or importing of
17 Motorola Products infringes the Patents In Suit. On February 26, 2008 Command Audio presented
18 Motorola with a term sheet for a license agreement to the Patents in Suit, which it alleged Motorola
19 needed based on its projections of Motorola’s PVR-enabled set-top boxes. Motorola took, and
20 continues to take the position that it does not need a license to the Patents in Suit, and denies that
21 making, using, selling, offering for sale and/or importing Motorola Products, infringes, directly or
22 indirectly, any valid claim of the Patents In Suit. In addition to its assertion of rights through its
23 proposed license agreement, Command Audio made a direct and clear assertion of rights on March
24 11, 2008. During the communication on March 11, 2008, Motorola indicated that it would not take a
25 license to the Patents In Suit for various reasons, including the fact that substantial questions of
26 validity exist with respect to the Patents In Suit based on, for example, the repeated and long-
27 standing rejections of similar claims in the '846 Application. Command Audio then threatened that
28 it would take steps to move things forward in light of Motorola’s refusal to take a license. This

1 statement to Motorola, taken in the context of licensing negotiations, Command Audio's history of
2 litigation, Command Audio's repeated press statements that it will "strictly enforce" its patents, and
3 Command Audio's statements made during the prosecution of the '846 Application, constitutes a
4 threat of litigation.

5 24. Command Audio has asserted its rights in the area of PVR technology publicly in its
6 press releases, in the prosecution of the '846 Application, and in communications with Motorola.
7 Command Audio has asserted that Motorola must take a license to the Patents in Suit, and has
8 threatened litigation over the Patents in Suit. Motorola takes the position that it does not need a
9 license to the Patents in Suit and that its making, using, selling, offering for sale and/or importing of
10 Motorola Products does not infringe, directly or indirectly, any valid claim of the Patents in Suit.
11 Accordingly, there is a substantial controversy between Motorola and Command Audio having
12 adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory
13 judgment as to the noninfringement, invalidity, unenforceability, and scope of the Patents In Suit.
14 Therefore, Motorola seeks a declaration of non-infringement, invalidity and unenforceability of the
15 Patents In Suit.

16 INEQUITABLE CONDUCT

17 25. On or about March 15, 1993, Macrovision filed U.S. Patent Application No.
18 08/031,763 (the "'763 application"), which eventually issued as the '626 Patent. The '763
19 application was prosecuted by Gerow D. Brill and Norman Klivans, attorneys for Macrovision and
20 then Command Audio. On information and belief, Macrovision spun off Command Audio on or
21 about August 23, 1996, and at some point in time assigned to Command Audio various rights in the
22 Patents In Suit.

23 26. In an office action dated April 14, 1994, the examiner, Bernarr Gregory, rejected all
24 claims of the '763 application under 35 U.S.C. § 112, first paragraph, as failing to adequately teach
25 how to make and to use the invention. Specifically, examiner Gregory found that "The Specification
26 fails to provide adequate disclosure to enable any person skilled in the art to construct a database
27 from a received signal as claimed."
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1 27. On or about May 20, 1994, Brill had an interview with examiner Gregory. According
2 to examiner Gregory's summary of the interview, the rejection under 35 U.S.C. 35 § 112, first
3 paragraph, was not discussed. Upon information and belief, the rejection under 35 U.S.C. § 112,
4 first paragraph, was not discussed.

5 28. After the May 20, 1994 interview, in a response dated June 30, 1994, Brill responded
6 to the 35 U.S.C. § 112, first paragraph rejection on behalf of Command Audio by stating that "The
7 Applicant respectfully traverses the Examiner's rejection. Attached is an Affidavit from Mr.
8 Michael Shields, an individual skilled in the art of electronic engineering and software design and
9 directed to this rejection. Therefore, the Applicant respectfully submits that this rejection should be
10 withdrawn." Brill did not make any other argument or statements in the response in an attempt to
11 overcome the rejection under 35 U.S.C. § 112, first paragraph. Brill did not disclose in the response
12 that Shields had any past, ongoing, or planned future relationship with Command Audio.

13 29. Upon information and belief, the "Affidavit" referred to by Brill in the response dated
14 June 30, 1994 was an affidavit under 37 C.F.R. § 1.132 from Shields dated June 23, 1994 (the "June
15 23rd Shields Affidavit"). In the June 23rd Shields Affidavit, Shields stated that he "designed the
16 prototype of the instant invention including a database based on the teachings of the specification
17 and figure of the instant application."

18 30. In an interview summary dated July 6, 1994, examiner Gregory stated that a
19 telephonic interview was conducted on July 5, 1994 with Brill and that "a slight change is necessary
20 to the Affidavit under 37 CFR 1.132. The rewritten affidavit will be submitted by Applicant in due
21 course."

22 31. On August 23, 1994, Brill submitted an affidavit under 37 C.F.R. § 1.132 from
23 Shields dated July 6, 1994 (the "July 6th Shields Affidavit"). In the July 6th Shields Affidavit,
24 Shields stated that he "built an embodiment of the instant invention as described in the specification
25 including a database based on the teachings of the specification and figure of the instant
26 application."

27 32. Both the June 23rd Shields Affidavit and the July 6th Shields Affidavit disclosed that
28 Shields "received a Bachelor of Science in Electrical Engineering from the Massachusetts Institute

1 of Technology in 1977 and Masters in Business Administration from Santa Clara University in
2 1985.” Both the June 23rd Shields Affidavit and the July 6th Shields Affidavit disclosed that Shields
3 “has been employed as a Electrical Engineer and Software Designer since 1977 for such companies
4 as Ampex Corporation and Sony Corporation.”

5 33. In a communication dated September 20, 1994, the examiner allowed all claims of the
6 '763 application, stating that “This communication is responsive to RESPONSE WITH AFFIDAVIT
7 (26 AUG '94).” The '763 application issued as the '626 Patent on April 11, 1995.

8 34. Upon information and belief, Shields, Brill and Klivans were involved in drafting and
9 submitting one or both of the Shields Affidavits. Command Audio’s submissions of the June 23rd
10 and July 6th Shields Affidavits constitutes inequitable conduct, on four different grounds, each of
11 which is sufficient to justify holding the Patents In Suit unenforceable.

12 35. First, neither the June 23rd Shields Affidavit nor the July 6th Shields Affidavit disclose
13 that Shields was a contractor for Command Audio and that the events referred to in the Affidavits
14 took place during the performance of Shields’ contract and that Shields had a relationship with other
15 persons at Command Audio. In fact, both the June 23rd Shields Affidavit and the July 6th Shields
16 Affidavit are silent as to any past, current, or future planned relationship between Shields and
17 Command Audio. At no time during the prosecution of any of the Patents In Suit did Command
18 Audio ever disclose Shields’ relationship with Command Audio to the PTO. Upon information and
19 belief, Shields, Brill and Klivans were aware that Shields was a contractor with Command Audio,
20 that the events referred to in the Affidavit took place during the performance of Shields’ contract,
21 and failed to disclose those facts with the intent to make Shields appear unbiased. Even though
22 examiner Gregory did not raise a question concerning any such relationship, it was material to
23 examiner Gregory’s evaluation of the credibility and content of the Shields’ affidavits to know of
24 any significant relationship between Shields and Command Audio; failure to disclose that
25 relationship violated Shields’ and Brill’s duty of disclosure. The failure to disclose Shields’
26 relationship with Command Audio, particularly in light of the express disclosure of Shields’ other
27 work experiences and educational background and Brill’s characterization of Shields merely as an
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1 “individual skilled in the art”, constitutes inequitable conduct sufficient to justify holding the Patents
2 In Suit unenforceable.

3 36. Second, Shields’ statements that he “designed the prototype of the instant invention
4 including a database” in the June 23rd Shields Affidavit and “built an embodiment of the instant
5 invention as described in the specification including a database” in the July 6th Shields Affidavit
6 were materially false because, upon information and belief, neither of the devices to which he was
7 referring could “construct a database from a received signal as claimed”, which was the sole basis of
8 the rejection. In fact, neither device even included a tuner. Thus, Shields’ statements were material
9 and false. Upon information and belief, Shields, Bill and Klivans knew that neither of the devices
10 were able to “construct a database from a received signal as claimed” and intentionally submitted the
11 false Shields’ affidavits in order to mislead examiner Gregory into withdrawing the rejection of all
12 claims. Therefore, the submission of those affidavits constitutes inequitable conduct sufficient to
13 justify holding the Patents In Suit unenforceable.

14 37. Third, Shields’ statement in the July 6th Shields Affidavit that he “built” an
15 embodiment of the invention was materially false because, upon information and belief, Shields did
16 not “build” the devices to which he was referring. Upon information and belief, Shields coordinated
17 with a team of other contractors that performed at least the layout and assembly of the two devices,
18 and the software development of one of those devices. Thus, Shields’ statement that he, as a person
19 of ordinary skill, “built” a relevant device was materially false. Brill emphasized this
20 misrepresentation by stating that Shields was an “individual skilled in the art” as opposed to one of a
21 team of contractors. Upon information and belief, Shields and Brill intentionally misrepresented
22 Shields’ actions. The June 23rd Shields Affidavit states that Shields merely “designed” the devices.
23 Upon information and belief, examiner Gregory found that insufficient to withdraw his rejection that
24 the specification must enable one to “construct” the claimed device, so Shields and Brill
25 intentionally misrepresented in the July 6th Shields Affidavit that Shields actually “built” the device
26 in order to mislead examiner Gregory into withdrawing the rejection of all claims. This
27 misrepresentation also served to further conceal the fact that Shields had a relationship with
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1 Command Audio, which may have been revealed if it were disclosed that a team of contractors had
2 “built” the devices.

3 38. Fourth, Shields’ statement that he built a device “based on the teachings of the
4 specification and figure of the instant application” in the June 23rd Shields Affidavit and the July 6th
5 Shields Affidavit constitutes inequitable conduct because, upon information and belief, Shields had
6 never seen nor read the specification of the '763 application at the time the devices were made. He
7 therefore could not have built anything “based on the teachings of the specification.” Rather,
8 Shields’ contributions to the devices were based on various oral and or written communications with
9 John Ryan and others at Command Audio during the performance of his contract. Upon information
10 and belief, Shields, Brill and Klivans knew that Shields had never seen the specification and
11 intentionally submitted these false affidavits in an attempt to mislead examiner Gregory into
12 withdrawing his rejection of all claims. These statements also served to further conceal the fact that
13 Shields was a contractor for Command Audio, which would have been revealed if Shields, Brill or
14 Klivans had disclosed the actual basis of Shields’ work.

15 39. For the reasons given above, the '626 Patent was procured through inequitable
16 conduct, and is unenforceable. Each of the other Patents In Suit is unenforceable because, each
17 shares the same sole inventor and, according to Command Audio, is directed to the same so-called
18 “Ryan Architecture” and includes claim limitations directed to constructing a database from a
19 received signal. Furthermore, the '195, '806 and '334 Patents descend directly from and claim
20 priority to the application that issued as the '626 Patent. Command Audio did not attempt to cure the
21 inequitable conduct of the '626 Patent during the prosecution of any of the other Patents In Suit.
22 Accordingly, the inequitable conduct of the '626 Patent infects and renders unenforceable all of the
23 Patents In Suit.

24 40. Upon information and belief, the Patents In Suit were procured through inequitable
25 conduct because John Ryan, the sole named inventor, failed to disclose to the PTO “Computer Talk
26 Radio on Horizon”, *San Jose Mercury News*, March 4, 1993 (reprinted from a more expansive article
27 published in the March 4, 1993 of the *New York Times*), and “Desktop Talk Show Era Arrives”, *The*
28 *San Francisco Chronicle*, March 4, 1993. These references were material to the examination of each

1 of the Patents In Suit as they disclose methods and devices for the reception, storage, and menu
2 driven playback of audio. Ryan knew of these references prior to the issuance of each of the Patents
3 In Suit and withheld them from the PTO with the intent to deceive the PTO regarding the
4 patentability of the subject matter claimed in the Patents In Suit.

5 41. Upon information and belief, the Patents In Suit were procured through inequitable
6 conduct because Klivans failed to disclose to the PTO Tydeman et al., *Teletext and Videotex in the*
7 *United States: Market Potential, Technology, Public Policy Issues* (1982), the MacRecorder Sound
8 System audio digitizer product, and the MacRecorder User Guide. Tydeman was material to the
9 examination of each of the Patents In Suit as it discloses methods and devices for the reception,
10 storage, and menu driven playback of alphanumeric data and audio, including by voice synthesis.
11 The MacRecorder references were material to the examination of each of the Patents In Suit as they
12 disclose methods and devices for the reception via television signal, storage, and menu driven
13 playback of audio. Klivans knew of these references and their materiality prior to the issuance of
14 each of the Patents In Suit and withheld them from the PTO with the intent to deceive the PTO
15 regarding the patentability of the subject matter claimed in the Patents In Suit.

16 42. For the reasons given above, each of the Patents In Suit is unenforceable.

17 COUNT I

18 Declaration of Non-Infringement of U.S. Patent No. 5,406,626

19 43. Motorola incorporates and re-alleges the averments contained in the foregoing
20 paragraphs of its Complaint, as if set forth in full.

21 44. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
22 between Motorola and Command Audio concerning the noninfringement of the '626 Patent, which
23 requires a declaration of rights by this Court.

24 45. Motorola Products do not infringe any valid claim of the '626 Patent.

25 46. Motorola is entitled to a declaratory judgment that the manufacture, use, offer for
26 sale, sale and/or importation of Motorola Products do not infringe, directly or indirectly, either
27 literally or equivalently, any valid claim of the '626 Patent.

1 47. Motorola is entitled to further relief, including injunctive relief and damages,
2 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

3 **COUNT II**

4 **Declaration of Invalidity of U.S. Patent No. 5,406,626**

5 48. Motorola incorporates and re-alleges the averments contained in the foregoing
6 paragraphs of its Complaint, as if set forth in full.

7 49. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
8 between Motorola and Command Audio concerning the validity of the claims of the '626 Patent.

9 50. The claims of the '626 Patent are invalid for failure to meet the requirements of
10 patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112.

11 51. Motorola is entitled to a declaratory judgment that the claims of the '626 Patent are
12 invalid.

13 52. Motorola is entitled to further relief, including injunctive relief and damages,
14 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

15 **COUNT III**

16 **Declaration of Non-Infringement of U.S. Patent No. 5,524,051**

17 53. Motorola incorporates and re-alleges the averments contained in the foregoing
18 paragraphs of its Complaint, as if set forth in full.

19 54. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
20 between Motorola and Command Audio concerning the noninfringement of the '051 Patent, which
21 requires a declaration of rights by this Court.

22 55. Motorola Products do not infringe any valid claim of the '051 Patent.

23 56. Motorola is entitled to a declaratory judgment that the manufacture, use, offer for
24 sale, sale and/or importation of Motorola Products do not infringe, directly or indirectly, either
25 literally or equivalently, any valid claim of the '051 Patent.

26 57. Motorola is entitled to further relief, including injunctive relief and damages,
27 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

1 COUNT IV

2 Declaration of Invalidity of U.S. Patent No. 5,524,051

3 58. Motorola incorporates and re-alleges the averments contained in the foregoing
4 paragraphs of its Complaint, as if set forth in full.

5 59. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
6 between Motorola and Command Audio concerning the validity of the claims of the '051 Patent.

7 60. The claims of the '051 Patent are invalid for failure to meet the requirements of
8 patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112.

9 61. Motorola is entitled to a declaratory judgment that the claims of the '051 Patent are
10 invalid.

11 62. Motorola is entitled to further relief, including injunctive relief and damages,
12 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

13 COUNT V

14 Declaration of Non-Infringement of U.S. Patent No. 5,590,195

15 63. Motorola incorporates and re-alleges the averments contained in the foregoing
16 paragraphs of its Complaint, as if set forth in full.

17 64. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
18 between Motorola and Command Audio concerning the noninfringement of the '195 Patent, which
19 requires a declaration of rights by this Court.

20 65. Motorola Products do not infringe any valid claim of the '195 Patent.

21 66. Motorola is entitled to a declaratory judgment that the manufacture, use, offer for
22 sale, sale and/or importation of Motorola Products do not infringe, directly or indirectly, either
23 literally or equivalently, any valid claim of the '195 Patent.

24 67. Motorola is entitled to further relief, including injunctive relief and damages,
25 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

1 COUNT VI

2 Declaration of Invalidity of U.S. Patent No. 5,590,195

3 68. Motorola incorporates and re-alleges the averments contained in the foregoing
4 paragraphs of its Complaint, as if set forth in full.

5 69. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
6 between Motorola and Command Audio concerning the validity of the claims of the '195 Patent.

7 70. The claims of the '195 Patent are invalid for failure to meet the requirements of
8 patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112.

9 71. Motorola is entitled to a declaratory judgment that the claims of the '195 Patent are
10 invalid.

11 72. Motorola is entitled to further relief, including injunctive relief and damages,
12 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

13 COUNT VII

14 Declaration of Non-Infringement of U.S. Patent No. 5,751,806

15 73. Motorola incorporates and re-alleges the averments contained in the foregoing
16 paragraphs of its Complaint, as if set forth in full.

17 74. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
18 between Motorola and Command Audio concerning the noninfringement of the '806 Patent, which
19 requires a declaration of rights by this Court.

20 75. Motorola Products do not infringe any valid claim of the '806 Patent.

21 76. Motorola is entitled to a declaratory judgment that the manufacture, use, offer for
22 sale, sale and/or importation of Motorola Products do not infringe, directly or indirectly, either
23 literally or equivalently, any valid claim of the '806 Patent.

24 77. Motorola is entitled to further relief, including injunctive relief and damages,
25 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

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COUNT VIII

Declaration of Invalidity of U.S. Patent No. 5,751,806

78. Motorola incorporates and re-alleges the averments contained in the foregoing paragraphs of its Complaint, as if set forth in full.

79. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between Motorola and Command Audio concerning the validity of the claims of the '806 Patent.

80. The claims of the '806 Patent are invalid for failure to meet the requirements of patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112.

81. Motorola is entitled to a declaratory judgment that the claims of the '806 Patent are invalid.

82. Motorola is entitled to further relief, including injunctive relief and damages, pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

COUNT IX

Declaration of Non-Infringement of U.S. Patent No. 6,330,334

83. Motorola incorporates and re-alleges the averments contained in the foregoing paragraphs of its Complaint, as if set forth in full.

84. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between Motorola and Command Audio concerning the noninfringement of the '334 Patent, which requires a declaration of rights by this Court.

85. Motorola Products do not infringe any valid claim of the '334 Patent.

86. Motorola is entitled to a declaratory judgment that the manufacture, use, offer for sale, sale and/or importation of Motorola Products do not infringe, directly or indirectly, either literally or equivalently, any valid claim of the '334 Patent.

87. Motorola is entitled to further relief, including injunctive relief and damages, pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

1 COUNT X

2 Declaration of Invalidity of U.S. Patent No. 6,330,334

3 88. Motorola incorporates and re-alleges the averments contained in the foregoing
4 paragraphs of its Complaint, as if set forth in full.

5 89. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
6 between Motorola and Command Audio concerning the validity of the claims of the '334 Patent.

7 90. The claims of the '334 Patent are invalid for failure to meet the requirements of
8 patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112.

9 91. Motorola is entitled to a declaratory judgment that the claims of the '334 Patent are
10 invalid.

11 92. Motorola is entitled to further relief, including injunctive relief and damages,
12 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

13 COUNT XI

14 Declaration of Unenforceability of The Patents In Suit

15 93. Motorola incorporates and re-alleges the averments contained in the foregoing
16 paragraphs of its Complaint, as if set forth in full.

17 94. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202,
18 between Motorola and Command Audio concerning the unenforceability of the claims of the Patents
19 In Suit.

20 95. The Patents In Suit are unenforceable because Command Audio and/or Command
21 Audio's representatives, employees or predecessors engaged in inequitable conduct during the
22 prosecution of the Patents In Suit.

23 96. Motorola is entitled to a declaratory judgment that the Patents In Suit are
24 unenforceable.

25 97. Motorola is entitled to further relief, including injunctive relief and damages,
26 pursuant to 28 U.S.C. § 2202, as the Court may deem just and proper.

PRAYER FOR RELIEF

WHEREFORE, Motorola asks this Court to enter judgment in its favor against Defendants and grant the following relief:

A. Declaring that no valid claim of U.S. Patent No. 5,406,626 has been infringed, directly or indirectly, literally or equivalently, by the making, using, selling, offering to sell, and/or importing of Motorola Products;

B. Declaring that the claims of U.S. Patent No. 5,406,626 are invalid;

C. Declaring that the claims of U.S. Patent No. 5,406,626 are unenforceable;

D. Declaring that no valid claim of U.S. Patent No. 5,524,051 has been infringed, directly or indirectly, literally or equivalently, by the making, using, selling, offering to sell, and/or importing of Motorola Products;

E. Declaring that the claims of U.S. Patent No. 5,524,051 are invalid;

F. Declaring that the claims of U.S. Patent No. 5,524,051 are unenforceable;

G. Declaring that no valid claim of U.S. Patent No. 5,590,195 has been infringed, directly or indirectly, literally or equivalently, by the making, using, selling, offering to sell, and/or importing of Motorola Products;

H. Declaring that the claims of U.S. Patent No. 5,590,195 are invalid;

I. Declaring that the claims of U.S. Patent No. 5,590,195 are unenforceable;

J. Declaring that no valid claim of U.S. Patent No. 5,751,806 has been infringed, directly or indirectly, literally or equivalently, by the making, using, selling, offering to sell, and/or importing of Motorola Products;

K. Declaring that the claims of U.S. Patent No. 5,751,806 are invalid;

L. Declaring that the claims of U.S. Patent No. 5,751,806 are unenforceable;

M. Declaring that no valid claim of U.S. Patent No. 6,330,334 has been infringed, directly or indirectly, literally or equivalently, by the making, using, selling, offering to sell, and/or importing of Motorola Products;

N. Declaring that the claims of U.S. Patent No. 6,330,334 are invalid;

O. Declaring that the claims of U.S. Patent No. 6,330,334 are unenforceable;

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225

1 P. Declaring this case exceptional and awarding Motorola its attorneys' fees and
2 costs incurred in this action, pursuant to 35 U.S.C. § 285; and

3 Q. Granting Motorola such other, further, and different relief as the Court may
4 deem just and proper.

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6 Dated: July 21, 2008

DEWEY & LEBOEUF LLP

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8 By: _____

Wayne M. Harding
Texas SBN: 08978500
wharding@dl.com
Brian Erickson (*pro hac vice* application filed)
Texas SBN: 24012594
berickson@dl.com
401 Congress Avenue, Suite 3200
Austin, TX 78701
Telephone: (512) 226-0300
Facsimile: (512) 226-0333

John Downing
California SBN: 252850
Email: jdowning@dl.com
DEWEY & LEBOEUF LLP
1950 University Ave. Suite 500
East Palo Alto, CA 94303-2225
Telephone: (650) 845-7000
Facsimile: (650) 845-7333

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18 Attorneys for Plaintiff
MOTOROLA, INC.

DEWEY & LeBOEUF LLP
1950 University Avenue, Suite 500
East Palo Alto, CA 94303-2225