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8 Attorney for Plaintiff
9 INCASE DESIGNS, INC.

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 INCASE DESIGNS, INC.

13 Plaintiff,

14 v.

15 INCIPIO TECHNOLOGIES, INC,

16 Defendant.

Case No.: 3:13-CV-00609

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

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18 Plaintiff Incase Designs, Inc. (“Plaintiff” or “Incase”) complains as follows:

19 **NATURE OF ACTION**

20 1. This action arises under the Patent Laws of the United States, 35 U.S.C. §§100, *et*
21 *seq.*

22 **JURISDICTION AND VENUE**

23 2. The Court has subject matter jurisdiction of this action under 28 U.S.C. §1331 and
24 §1338(a) in that it arises under the United States Patent Laws.

25 3. Defendant Incipio Technologies Inc. (“Defendant”) is subject to this Court’s
26 specific and general personal jurisdiction because Defendant conducts extensive business in this
27 Judicial District, has committed the acts complained of in this Judicial District, and has caused
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1 injury to Plaintiff within this Judicial District by virtue of the acts of patent infringement that are
2 described herein.

3 4. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§1391(b), (c) and
4 1400(b). Defendant is transacting, doing and/or soliciting business and committing acts of patent
5 infringement in this Judicial District and elsewhere in the United States.

6 **THE PARTIES**

7 5. Incase is a global leader in the design, development, manufacture, and sale of
8 carrying cases, bags, and covers for consumer electronics.

9 6. Upon information and belief, Defendant is a California corporation with its
10 principal place of business at 6001 Oak Canyon, Irvine, California 92618. Defendant has been
11 selling and offering to sell infringing tablet covers within the United States, and within this
12 District, all without consent from Plaintiff. Defendant's infringing products include, but are not
13 necessarily limited to, its Flagship Folio, Slim Kickstand, and Premium Kickstand.

14 **FIRST CLAIM FOR RELIEF**

15 **(Infringement of the '991 Patent)**

16 7. Plaintiff incorporates by reference and realleges each of the allegations set forth
17 above.

18 8. On November 20, 2012, U.S. Patent No. 8,312,991 B2 (the '991Patent), entitled
19 Case for Electronic Tablet, was issued for the invention of a novel case for consumer electronics
20 and the methods for the manufacture of same. Plaintiff has owned this patent throughout the
21 period of Defendant's infringing acts and still owns this patent.

22 9. On February 14, 2013, Plaintiff provided Defendant with actual notice of the '991
23 Patent and its infringement of same. Defendant is aware of the '991 Patent, yet it knowingly and
24 actively induces consumers to use its infringing Flagship Folio, Slim Kickstand, and Premium
25 Kickstand covers within the United States. Thus, Defendant actively induces infringement of the
26 '991 Patent in violation of 35 U.S.C. § 271(b).

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1 10. Since February 14, 2013, if not earlier, Defendant’s patent infringement has been
2 committed willfully with full knowledge of the ‘991 Patent.

3 11. Defendant has infringed and is still infringing the ‘991 Patent by making, selling,
4 and using tablet covers that embody the patented invention, and Defendant will continue to do so
5 unless enjoined by this court.

6 **SECOND CLAIM FOR RELIEF**

7 **(Infringement of the ‘008 Patent)**

8 12. Plaintiff incorporates by reference and realleges each of the allegations set forth in
9 paragraphs 1-6 above.

10 13. On December 11, 2012, U.S. Patent No. 8,328,008 (the ‘008 Patent), entitled Case
11 for Electronic Tablet, was issued for the invention of a novel case for consumer electronics and the
12 methods for the manufacture of same. Plaintiff has owned this patent throughout the period of
13 Defendant’s infringing acts and still owns this patent.

14 14. On February 14, 2013, Plaintiff provided Defendant with actual notice of the ‘008
15 Patent and its infringement of same. Defendant is aware of the ‘008 Patent, yet it knowingly and
16 actively induces consumers to use its infringing Flagship Folio, Slim Kickstand, and Premium
17 Kickstand covers within the United States. Thus, Defendant actively induces infringement of the
18 ‘008 Patent in violation of 35 U.S.C. § 271(b).

19 15. Since February 14, 2013, if not earlier, Defendant’s patent infringement has been
20 committed willfully with full knowledge of the ‘008 Patent.

21 16. Defendant has infringed and is still infringing the ‘008 Patent by making, selling,
22 and using tablet covers that embody the patented invention, and Defendant will continue to do so
23 unless enjoined by this court.

24 **PRAYER FOR RELIEF**

25 Therefore, Plaintiff prays for judgment:

- 26 1. That Defendant has infringed the ‘991 Patent and the ‘008 Patent;
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1 2. That Plaintiff be awarded damages from patent infringement according to proof and
2 ordering that such damages be multiplied up to treble their amount;

3 3. Preliminarily and permanently enjoining Defendant and all others acting in concert
4 with Defendant from making, using, selling, or offering to sell the infringing tablet covers or any
5 other product that infringes the '991 Patent or the '008 Patent without permission or license from
6 Plaintiff;

7 4. That Defendant be ordered to deliver up to Plaintiff all products infringing the '991
8 Patent or the '008 Patent within its ownership, possession, or control for destruction by Plaintiff
9 or, in the alternative, that the Court award a compulsory royalty for the current and future sale of
10 such goods;

11 5. That the Court declare this to be an exceptional case pursuant to 35 U.S.C. §285,
12 and award reasonable attorney's fees;

13 6. That the Court increase damages up to three times the amount found or assessed by
14 the Court in Plaintiff's favor and against Defendant for its willful and deliberate infringement of
15 the '991 and '008 Patents.

16 7. That Plaintiff be awarded its costs of suit, and pre- and post-judgment interest on
17 any money judgment;

18 8. For such other relief as the Court deems proper.

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20 Dated: February 25, 2013

Respectfully submitted,

21 /s/ Brian E. Mitchell

22 Brian E. Mitchell

23 MITCHELL + COMPANY

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JURY DEMAND

Plaintiff demands a jury trial on all claims as to which it has a right to a jury.

Dated: February 25, 2013

Respectfully submitted,

/s/ Brian E. Mitchell
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