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7 Attorneys for Plaintiff GOOGLE INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 GOOGLE INC.,

12 Plaintiff,

13 v.

14 ROCKSTAR CONSORTIUM US LP and
MOBILESTAR TECHNOLOGIES LLC,

15 Defendants.
16

CASE NO. 3:13-cv-5933

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NOS. 5,838,551;
6,037,937; 6,128,298; 6,333,973; 6,463,131;
6,765,591; AND 6,937,572**

DEMAND FOR JURY TRIAL

17
18 Plaintiff Google Inc. (“Google”) seeks a declaration that Google does not directly or
19 indirectly infringe United States Patent Nos. 5,838,551, 6,037,937, 6,128,298, 6,333,973,
20 6,463,131, 6,765,591, and 6,937,572, as follows:
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1 **NATURE OF THE ACTION**

2 1. This is an action for a declaratory judgment of non-infringement arising under the
3 patent laws of the United States, Title 35 of the United States Code. Google requests this relief
4 because Defendants Rockstar Consortium US LP and MobileStar Technologies LLC (collectively,
5 “Rockstar”) have filed seven lawsuits claiming that Google’s customers infringe some or all of
6 United States Patent Nos. 5,838,551, 6,037,937, 6,128,298, 6,333,973, 6,463,131, 6,765,591, and
7 6,937,572 (the “patents in suit”) by making, using, selling, offering for sale, importing, exporting,
8 supplying, or distributing “certain mobile communication devices having a version (or an adaption
9 thereof) of [the] Android operating system” developed by Google. Rockstar’s litigation campaign
10 has placed a cloud on Google’s Android platform; threatened Google’s business and relationships
11 with its customers and partners, as well as its sales of Nexus-branded Android devices; and created
12 a justiciable controversy between Google and Rockstar.

13 **THE PARTIES**

14 2. Plaintiff Google Inc. (“Google”) is a corporation organized and existing under the
15 laws of the state of Delaware, with its principal place of business at 1600 Amphitheatre Parkway,
16 Mountain View, California, 94043. Google’s mission is to organize the world’s information and
17 make it universally accessible and useful. As part of that mission, Google produces Android, an
18 open-source mobile platform that has been adopted by original equipment manufacturers
19 (“OEMs”) worldwide.

20 3. Defendant Rockstar Consortium US LP (“Rockstar Consortium”) is a limited
21 partnership organized and existing under the laws of the state of Delaware. Rockstar Consortium
22 claims that its principal place of business is at Legacy Town Center 1, 7160 North Dallas
23 Parkway, Suite No. 250, Plano, Texas, 75024, but the substantial majority of its employees,
24 including senior management, are based in Ontario, Canada. Rockstar Consortium is admittedly a
25 “patent licensing business” that produces no products, and instead exists solely to assert its
26 patents. (<http://www.ip-rockstar.com/about>.)

27 4. Defendant MobileStar Technologies LLC (“MobileStar”) is a limited liability
28 corporation organized and existing under the laws of the state of Delaware, and also claims that its

1 principal place of business is at Legacy Town Center 1, 7160 North Dallas Parkway,
2 Suite No. 250, Plano, Texas, 75024. MobileStar claims to be a subsidiary of Rockstar.
3 MobileStar was formed for litigation one day before Rockstar filed its lawsuits against Google's
4 customers.

5 **JURISDICTIONAL STATEMENT**

6 5. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201, and
7 under the patent laws of the United States, 35 U.S.C. §§ 1-390.

8 6. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331,
9 1338(a), and 2201(a).

10 7. This Court has personal jurisdiction over Rockstar. Among other things, Rockstar
11 has continuous and systematic business contacts with California. As Rockstar executives have
12 explained to the media, once Rockstar identifies commercially successful products, it approaches
13 the companies behind those products in person and through other means to seek licenses to
14 Rockstar's patents. Rockstar conducts this business extensively throughout California, including
15 through personnel located in the San Francisco Bay Area. Rockstar's CEO has publicly stated that
16 Facebook (based in Menlo Park) and LinkedIn (based in Mountain View) infringe Rockstar's
17 patents. (<http://www.wired.com/wiredenterprise/2013/11/veschi/>.) In fact, Rockstar's CEO has
18 stated that it would be difficult to imagine that any tech companies—legions of which call
19 California home—do not infringe Rockstar's patents. On information and belief, Rockstar's
20 licensing and enforcement efforts in California have generated substantial revenues.

21 8. On information and belief, Rockstar's shareholders direct and participate in
22 Rockstar's licensing and enforcement efforts against companies in California. For example, Apple
23 Inc. ("Apple") is a large shareholder in closely-held Rockstar, and maintains a seat on Rockstar's
24 board of directors. Rockstar's CEO has publicly stated that Rockstar maintains regular contact
25 with its shareholders. Apple's headquarters are in Cupertino, California.

26 9. In addition, this Court has personal jurisdiction over Rockstar for another reason:
27 Rockstar has purposefully directed into California its enforcement activities regarding the patents
28 in suit. As part of this enforcement campaign, Rockstar contacted and met with a series of

1 California-based companies, accusing their devices that use Google’s Android platform. On
2 information and belief, Rockstar contacted and met with these California-based companies in
3 order to discourage them from continuing to use Google’s Android platform in their devices, and
4 to interfere with Google’s business relationships.

5 10. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), because a
6 substantial part of the events giving rise to Google’s claim occurred in this district, and because
7 Rockstar Consortium and MobileStar are subject to personal jurisdiction here.

8 11. An immediate, real, and justiciable controversy exists between Google and
9 Rockstar as to whether Google is infringing or has infringed United States Patent Nos. 5,838,551
10 (the “551 patent”), 6,037,937 (the “937 patent”), 6,128,298 (the “298 patent”), 6,333,973 (the
11 “973 patent”), 6,463,131 (the “131 patent”), 6,765,591 (the “591 patent”), and 6,937,572 (the
12 “572 patent”).

13 **INTRADISTRICT ASSIGNMENT**

14 12. For purposes of intradistrict assignment under Civil Local Rules 3-2(c) and 3-5(b),
15 this Intellectual Property Action will be assigned on a district-wide basis.

16 **ROCKSTAR’S HISTORY AND BUSINESS**

17 13. In June 2011, five of the world’s largest technology companies—including Google
18 competitors Apple, Research In Motion, and Microsoft—joined forces to obtain a portfolio of
19 patents auctioned during the bankruptcy of Nortel Networks. Bankrolled by these companies, a
20 manufactured entity called “Rockstar Bidco” placed the winning bid of \$4.5 billion. According to
21 Apple’s June 2011 Form 10-Q filed with the Securities and Exchange Commission, Apple
22 contributed “approximately \$2.6 billion” of that sum.

23 14. Following its acquisition of Nortel’s portfolio, Rockstar Bidco transferred
24 ownership of thousands of patents to its owners, whom it calls the “founding licensees.” Rockstar
25 Bidco transferred ownership of over 1,000 patents to Apple alone. On information and belief,
26 Rockstar Bidco was then reorganized into Rockstar Consortium.

27 15. Rockstar produces no products and practices no patents. Instead, Rockstar employs
28 a staff of engineers in Ontario, Canada, who examine other companies’ successful products to find

1 anything that Rockstar might use to demand and extract licenses to its patents under threat of
2 litigation.

3 16. Public reports confirm that in the first two months following its purchase of
4 Nortel's portfolio, Rockstar sought licenses from as many as 100 companies. On information and
5 belief, Rockstar has since sought licenses from many additional companies.

6 **ROCKSTAR'S CAMPAIGN AGAINST ANDROID**

7 17. Among the myriad companies ensnared in Rockstar's patent dragnet are customers
8 and partners of Google who use the Android platform in their devices, including ASUS, HTC,
9 Huawei, LG, Pantech, Samsung, and ZTE.

10 18. On October 31, 2013, Rockstar brought patent infringement actions against ASUS,
11 HTC, Huawei, LG, Pantech, Samsung, and ZTE in the Marshall Division of the United States
12 District Court for the Eastern District of Texas. *Rockstar Consortium US LP v. ASUSTek*
13 *Computer, Inc.*, No. 2:13-cv-894; *Rockstar Consortium US LP v. HTC Corp.*, No. 2:13-cv-895;
14 *Rockstar Consortium US LP v. Huawei Investment & Holding Co.*, No. 2:13-cv-896; *Rockstar*
15 *Consortium US LP v. LG Electronics Inc.*, No. 2:13-cv-898; *Rockstar Consortium US LP v.*
16 *Pantech Co.*, No. 2:13-cv-899; *Rockstar Consortium US LP v. Samsung Electronics Co.*,
17 No. 2:13-cv-900; and *Rockstar Consortium US LP v. ZTE Corp.*, No. 2:13-cv-901 (collectively,
18 the "Android OEM Actions" against the "Android OEM Defendants").

19 19. In the Android OEM Actions, Rockstar alleges that each Android OEM Defendant
20 infringes some or all of the '551, '937, '298, '973, '131, '591, and '572 patents by making, using,
21 selling, offering for sale, importing, exporting, supplying, or distributing "certain mobile
22 communication devices having a version (or an adaption thereof) of [the] Android operating
23 system" developed by Google.

24 20. In the Android OEM Actions, Rockstar accuses Android features including
25 "Mobile Hotspot functionality" which is "designed to route data packets between wireless devices
26 tethered to the Mobile Hotspot to nodes on a public network such as the Internet," allegedly
27 infringing the '298 patent; "VPN management functionality," allegedly infringing the '591 patent;
28 "Messaging and Notification functionality," allegedly infringing the '131 patent; a "navigable

1 graphical user interface (‘navigable GUI’) that permits a user to manipulate and control the
2 contents of the display to maximize the use of display real estate,” allegedly infringing the ’937
3 patent; “integrated notification message center,” allegedly infringing the ’973 patent; and
4 “Location Services functionality,” allegedly infringing the ’572 patent.

5 21. Rockstar further accuses devices incorporating Android of infringing the ’551
6 patent by “includ[ing] at least one electronic package comprising a component that is located
7 between an EMI shield and a ground member for performing shielding operations” where “[t]he
8 EMI shield is incorporated into the electronic package, which is then mounted to a circuit board”
9 in the accused devices.

10 22. As Rockstar’s complaints admit, in the Android OEM Actions Rockstar has
11 asserted its patents only against “certain mobile communication devices having a version (or an
12 adaption thereof) of [the] Android operating system” developed by Google—although each of the
13 Android OEM Defendants also makes other products that do not use Google’s Android platform.
14 Rockstar has further asserted patent infringement by the Nexus 7, a device offered for sale by
15 Google and built by ASUS, one of the Android OEM Defendants.

16 23. On information and belief, Rockstar intends the Android OEM Actions to harm
17 Google’s Android platform and disrupt Google’s relationships with the Android OEM Defendants.
18 This is an open secret: industry media immediately observed that in filing the Android OEM
19 Actions, Rockstar “launch[ed] an all-out patent attack on Google and Android.”
20 ([http://arstechnica.com/tech-policy/2013/10/patent-war-goes-nuclear-microsoft-apple-owned-](http://arstechnica.com/tech-policy/2013/10/patent-war-goes-nuclear-microsoft-apple-owned-rockstar-sues-google/)
21 [rockstar-sues-google/.](http://arstechnica.com/tech-policy/2013/10/patent-war-goes-nuclear-microsoft-apple-owned-rockstar-sues-google/))

22 24. For all these reasons, an actual controversy exists between Google and Rockstar
23 regarding the alleged infringement of any claim of the ’551, ’937, ’298, ’973, ’131, ’591, and
24 ’572 patents.

25 **GOOGLE DOES NOT INFRINGE THE PATENTS IN SUIT**

26 25. Neither any version of Google’s Android platform nor any of the Nexus 5,
27 Nexus 7, or Nexus 10 devices sold by Google directly or indirectly infringe any claim of the ’551,
28 ’937, ’298, ’973, ’131, ’591, and ’572 patents.

1 **THIRD COUNT**

2 **(Declaration of Non-Infringement of the '298 Patent)**

3 38. Google restates and incorporates by reference the allegations in paragraphs 1
4 through 37 of this Complaint as if fully set forth herein.

5 39. Rockstar Consortium claims to own all rights, title, and interest in United States
6 Patent No. 6,128,298 (the "'298 patent"). MobileStar claims to be the exclusive licensee of '298
7 patent. A true and correct copy of the '298 patent is attached hereto as Exhibit C.

8 40. In the Android OEM Actions, Rockstar accuses Android OEM Defendants ASUS,
9 HTC, Huawei, LG, Pantech, Samsung, and ZTE of infringing the '298 patent in that each "makes,
10 uses, sells, offers for sale, imports, exports, supplies and/or distributes within the United States"
11 devices incorporating a version of Google's Android platform that supports "Mobile Hotspot
12 functionality [which] is designed to route data packets between wireless devices tethered to the
13 Mobile Hotspot to nodes on a public network such as the Internet." In its complaint against
14 ASUS, which manufactures the Nexus 7, Rockstar specifically accuses the Nexus 7, a device
15 offered for sale by Google.

16 41. The Nexus 5, Nexus 7, and Nexus 10 devices use Google's Android platform.

17 42. A substantial, immediate, and real controversy therefore exists between Google and
18 Rockstar regarding whether the Android platform or any of these Nexus devices infringe or have
19 infringed the '298 patent. A judicial declaration is necessary to determine the parties' respective
20 rights regarding the '298 patent.

21 43. Google seeks a judgment declaring that Google's Android platform and the
22 Nexus 5, Nexus 7, and Nexus 10 devices do not directly or indirectly infringe any claim of the
23 '298 patent.

24 **FOURTH COUNT**

25 **(Declaration of Non-Infringement of the '973 Patent)**

26 44. Google restates and incorporates by reference the allegations in paragraphs 1
27 through 43 of this Complaint as if fully set forth herein.

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1 uses, sells, offers for sale, imports, exports, supplies and/or distributes within the United States”
2 devices incorporating a version of Google’s Android platform that supports “Messaging and
3 Notification functionality.” In its complaint against ASUS, which manufactures the Nexus 7,
4 Rockstar specifically accuses the Nexus 7, a device offered for sale by Google.

5 53. The Nexus 5, Nexus 7, and Nexus 10 devices use Google’s Android platform.

6 54. A substantial, immediate, and real controversy therefore exists between Google and
7 Rockstar regarding whether the Android platform or any of these Nexus devices infringe or have
8 infringed the ’131 patent. A judicial declaration is necessary to determine the parties’ respective
9 rights regarding the ’131 patent.

10 55. Google seeks a judgment declaring that Google’s Android platform and the
11 Nexus 5, Nexus 7, and Nexus 10 devices do not directly or indirectly infringe any claim of the
12 ’131 patent.

13 **SIXTH COUNT**

14 **(Declaration of Non-Infringement of the ’591 Patent)**

15 56. Google restates and incorporates by reference the allegations in paragraphs 1
16 through 55 of this Complaint as if fully set forth herein.

17 57. MobileStar claims to own all rights, title, and interest in United States Patent
18 No. 6,765,591 (the “’591 patent”). Rockstar Consortium claims no interest in the ’591 patent, yet
19 seeks a judgment of infringement against the Android OEM Defendants in the Android OEM
20 Actions. A true and correct copy of the ’591 patent is attached hereto as Exhibit F.

21 58. In the Android OEM Actions, Rockstar accuses Android OEM Defendants ASUS,
22 HTC, Huawei, LG, Pantech, Samsung, and ZTE of infringing the ’591 patent in that each “makes,
23 uses, sells, offers for sale, imports, exports, supplies and/or distributes within the United States”
24 devices incorporating a version of Google’s Android platform that supports “VPN management
25 functionality.” In its complaint against ASUS, which manufactures the Nexus 7, Rockstar
26 specifically accuses the Nexus 7, a device offered for sale by Google.

27 59. The Nexus 5, Nexus 7, and Nexus 10 devices use Google’s Android platform.

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