

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 9:13-cv-80567-MIDDLEBROOKS/Brannon
(consolidated for pretrial)**

ZENITH ELECTRONICS LLC, PANASONIC CORPORATION, U.S. PHILIPS CORPORATION, and THE TRUSTEES OF THE COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Plaintiffs/Counterclaim Defendants,

v.

CRAIG ELECTRONICS INC.,

Defendant/ Counterclaim Plaintiff.

Case No. 9:13-cv-80567-DMM (Lead)

JURY TRIAL DEMANDED

ZENITH ELECTRONICS LLC, PANASONIC CORPORATION, U.S. PHILIPS CORPORATION, and THE TRUSTEES OF THE COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Plaintiffs,

v.

CURTIS INTERNATIONAL LTD.,

Defendant.

Case No. 9:13-cv-80568-DMM

JURY TRIAL DEMANDED

ZENITH ELECTRONICS LLC, PANASONIC CORPORATION, U.S. PHILIPS CORPORATION, and THE TRUSTEES OF THE COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Plaintiffs,

v.

VIEWSONIC CORPORATION (alternatively named VIEWSONIC DISPLAY CO.),

Defendant.

Case No. 9:13-cv-80570-DMM

JURY TRIAL DEMANDED

(Continued next page)

VIEWSONIC CORPORATION,

*Counter-Claimant and
Third Party Claimant,*

v.

ZENITH ELECTRONICS LLC, PANASONIC
CORPORATION, U.S. PHILIPS CORPORATION,
THE TRUSTEES OF THE COLUMBIA
UNIVERSITY IN THE CITY OF NEW YORK,

Counter-Defendants,

and

MPEG LA, LLC

Third Party Defendant.

Case No. 9:13-cv-80570-DMM

JURY TRIAL DEMANDED

**DEFENDANT VIEWSONIC CORPORATION'S ANSWER,
AFFIRMATIVE DEFENSES, COUNTERCLAIMS
AND THIRD-PARTY CLAIM**

(Case No. 9:13-cv-80570-DMM Only)

Defendant VIEWSONIC CORPORATION (hereinafter “ViewSonic”), by and through undersigned counsel, hereby answers the Complaint (“Complaint”) filed by Plaintiffs ZENITH ELECTRONICS LLC, PANASONIC CORPORATION, U.S. PHILIPS CORPORATION, and THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK (hereinafter collectively “Plaintiffs”), as follows:

ANSWER TO THE COMPLAINT

PARTIES

1. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and therefore denies them.

2. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and therefore denies them.

3. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and therefore denies them.

4. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint and therefore denies them.

5. With respect to paragraph 5 of the complaint, ViewSonic admits that it is a Delaware corporation, has an office in Plantation, Florida, and has done business in Florida. ViewSonic denies the remaining allegations in paragraph 5.

JURISDICTION AND VENUE

6. Paragraph 6 of the Complaint states legal conclusions to which no response is required.

7. Paragraph 7 of the Complaint states legal conclusions to which no response is required.

8. Paragraph 8 of the Complaint states legal conclusions to which no response is

required. ViewSonic denies that venue is proper in this District.

9. Paragraph 9 of the Complaint states legal conclusions to which no response is required. ViewSonic admits that it has conducted business in Florida, and denies all other allegations in paragraph 9.

PATENTS-IN-SUIT

10. ViewSonic admits that United States Patent No. 5,802,107 (“the ‘107 patent”) as attached to the Complaint as Exhibit 1 is titled “Symbol Rotator” and indicates on its face that it was issued on September 1, 1998. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 of the Complaint, and therefore denies them.

11. ViewSonic admits that United States Patent No. 5,629,958 (“the ‘958 patent”) as attached to the Complaint as Exhibit 2 is titled “Data Frame Structure and Synchronization System for Digital Television Signal” and indicates on its face that it was issued on May 13, 1997. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11 of the Complaint, and therefore denies them.

12. ViewSonic admits that United States Patent No. Reissue 42,643 (“the ‘643 patent”) as attached to the Complaint as Exhibit 3 is titled “Communication System” and indicates on its face that it was issued on August 23, 2011. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12 of the Complaint, and therefore denies them.

13. ViewSonic admits that United States Patent No. 5,684,541 (“the ‘541 patent”) as attached to the Complaint as Exhibit 4 is titled “Transmitter Station for Transmitting a Plurality of Television Programs, and Receiver for Receiving the Programs” and indicates on its face that

it was issued on November 4, 1997. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 13 of the Complaint, and therefore denies them.

14. ViewSonic admits that United States Patent No. 8,115,873 (“the ‘873 patent”) as attached to the Complaint as Exhibit 5 is titled “Object-Based Audio-Visual Terminal and Bitstream Structure” and indicates on its face that it was issued on February 14, 2012. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 of the Complaint, and, and therefore denies them.

THE ATSC STANDARD

15. ViewSonic admits that the Advanced Television Systems Committee, Inc. (“ATSC”) developed standards for the transmission and reception of digital television. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and therefore denies them.

16. ViewSonic admits that the Federal Communications Commission (“FCC”) has adopted ATSC standards in the United States requiring DTV receivers to be equipped with DTV tuners in compliance with ATSC standards. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and therefore denies them.

VIEWSONIC’S PURPORTED INFRINGEMENT

17. Paragraph 17 of the Complaint states legal conclusions to which no response is required. ViewSonic denies that it has committed any acts of patent infringement. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 17 of the Complaint and, on that basis, denies each of them.

18. ViewSonic admits that it offers to sell, sells and imports some products that comply with ATSC standards. ViewSonic denies the remaining allegations in Paragraph 18 of the Complaint.

19. ViewSonic admits that it advertises that some of its products comply with FCC regulations. ViewSonic denies the remaining allegations in Paragraph 19 of the Complaint.

20. ViewSonic admits that it has sold television sets with the following model numbers VT1601LED, VT1901LED, VT2215LED, VT2755LED, VT3255LED, VT4236LED, VT2430, VT2405LED and VT4210LED. ViewSonic denies the remaining allegations in Paragraph 20 of the Complaint.

21. ViewSonic denies the allegations contained in paragraph 21 of the Complaint.

22. ViewSonic admits that it has sold and sells some products to third parties that are compliant with ATSC standards. ViewSonic denies the remaining allegations in Paragraph 22 of the Complaint.

23. ViewSonic denies the allegations contained in paragraph 23 of the Complaint.

24. ViewSonic denies that it received any notice of infringement from Plaintiffs at any time prior to the date ViewSonic was served with the Complaint. To the extent paragraph 24 of the Complaint contains any further allegations, ViewSonic denies them.

25. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and therefore denies them.

26. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and therefore denies them.

27. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint and therefore denies them.

28. ViewSonic is without knowledge or information sufficient to form a belief as to

the truth of the allegations in paragraph 28 of the Complaint and therefore denies them.

29. ViewSonic admits that it received correspondence from MPEG LA purporting to offer a license to certain patents. ViewSonic denies the remaining allegations in Paragraph 29 of the Complaint.

30. ViewSonic admits that it has not entered into a license for the '107, '958, '643, '541, or '873 patents with any of the Plaintiffs. To the extent paragraph 30 of the Complaint contains any further allegations, ViewSonic denies same.

31. ViewSonic denies the allegations contained in paragraph 31 of the Complaint.

32. ViewSonic denies the allegations contained in paragraph 32 of the Complaint.

33. ViewSonic denies the allegations contained in paragraph 33 of the Complaint.

34. ViewSonic denies the allegations contained in paragraph 34 of the Complaint.

35. ViewSonic denies the allegations contained in paragraph 35 of the Complaint.

36. ViewSonic denies the allegations contained in paragraph 36 of the Complaint.

COUNT I: PURPORTED INFRINGEMENT OF U.S. PATENT NO. 5,802,107

37. ViewSonic incorporates by reference its answers to the averments of paragraphs 1 through 36 as if fully set forth herein.

38. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Complaint and therefore denies them.

39. ViewSonic denies the allegations contained in paragraph 39 of the Complaint.

40. ViewSonic denies the allegations contained in paragraph 40 of the Complaint.

41. ViewSonic denies the allegations contained in paragraph 41 of the Complaint.

42. ViewSonic denies the allegations contained in paragraph 42 of the Complaint.

COUNT II: PURPORTED INFRINGEMENT OF U.S. PATENT NO. 5,629,958

43. ViewSonic incorporates by reference its answers to the averments of paragraphs 1

through 36 as if fully set forth herein.

44. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint and therefore denies them.

45. ViewSonic denies the allegations contained in paragraph 45 of the Complaint.

46. ViewSonic denies the allegations contained in paragraph 46 of the Complaint.

47. ViewSonic denies the allegations contained in paragraph 47 of the Complaint.

48. ViewSonic denies the allegations contained in paragraph 48 of the Complaint.

COUNT III: PURPORTED INFRINGEMENT OF U.S. PATENT NO. REISSUE 42,643

49. ViewSonic incorporates by reference its answers to the averments of paragraphs 1 through 36 as if fully set forth herein.

50. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint and therefore denies them.

51. ViewSonic denies the allegations contained in paragraph 51 of the Complaint.

52. ViewSonic denies the allegations contained in paragraph 52 of the Complaint.

53. ViewSonic denies the allegations contained in paragraph 53 of the Complaint.

54. ViewSonic denies the allegations contained in paragraph 54 of the Complaint.

COUNT IV: PURPORTED INFRINGEMENT OF U.S. PATENT NO. 5,684,541

55. ViewSonic incorporates by reference its answers to the averments of paragraphs 1 through 36 as if fully set forth herein.

56. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaint and therefore denies them.

57. ViewSonic denies the allegations contained in paragraph 57 of the Complaint.

58. ViewSonic denies the allegations contained in paragraph 58 of the Complaint.

59. ViewSonic denies the allegations contained in paragraph 59 of the Complaint.

60. ViewSonic denies the allegations contained in paragraph 60 of the Complaint.

COUNT V: PURPORTED INFRINGEMENT OF U.S. PATENT NO. 8,115,873

61. ViewSonic incorporates by reference its answers to the averments of paragraphs 1 through 36 as if fully set forth herein.

62. ViewSonic is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 of the Complaint and therefore denies them.

63. ViewSonic denies the allegations contained in paragraph 63 of the Complaint.

64. ViewSonic denies the allegations contained in paragraph 64 of the Complaint.

65. ViewSonic denies the allegations contained in paragraph 65 of the Complaint.

66. ViewSonic denies the allegations contained in paragraph 66 of the Complaint.

EXCEPTIONAL CASE

67. ViewSonic incorporates by reference its answers to the averments of paragraphs 1 through 66 as if fully set forth herein.

68. ViewSonic denies the allegations contained in paragraph 68 of the Complaint.

PLAINTIFFS' REQUEST FOR RELIEF

ViewSonic states that Plaintiffs prayer for relief does not require a response.

ViewSonic denies that Plaintiffs are entitled to any relief whatsoever as prayed or otherwise.

ViewSonic denies each and every allegation of the Complaint not already admitted or denied and further denies that Plaintiffs are entitled to any relief whatsoever from ViewSonic on the basis of any of the purported claims for relief contained in the Complaint.

AFFIRMATIVE DEFENSES

For further answer by way of affirmative defenses, each of which pertains to each claim of infringement in the Complaint, ViewSonic respectfully states as follows:

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

Plaintiffs' Complaint failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE
(Non-Infringement)**

ViewSonic has not infringed and does not infringe, either literally or under the doctrine of equivalents, nor contributed to infringement by others, nor actively induced others to infringe, any purportedly valid claim of the '107, '958, '643, '541, and '873 Patents (the "Asserted Patents").

**THIRD AFFIRMATIVE DEFENSE
(Invalidity)**

The Asserted Patents, and each and every claim thereof, are invalid for failure to comply with one or more requirements of Title 35, United States Code, including without limitation the provisions of 35 U.S.C. §§ 101, 102, 103, 112, and 132, and the rules, regulations, and laws pertaining thereto.

**FOURTH AFFIRMATIVE DEFENSE
(No Injunctive Relief)**

Plaintiffs are not entitled to injunctive relief because ViewSonic has not infringed and is not infringing any valid and enforceable claim of the Asserted Patents and because any purported injury to Plaintiffs is not immediate or irreparable. To the extent Plaintiffs prove that they would be entitled to any relief, they would have an adequate remedy at law. Moreover, the public interest and balance of hardships weigh against an injunction under the circumstances of this case.

**FIFTH AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)**

Upon information and belief, by reason of prior art and the proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications that led to the issuance of the Asserted Patents, including, without limitation, amendments, representations, concessions, and admissions made by or on behalf of the applicant, Plaintiffs are estopped from asserting that at least some of the claims of the Asserted Patents cover and include any ViewSonic products alleged to infringe the Asserted Patents under the doctrine of equivalents.

**SIXTH AFFIRMATIVE DEFENSE
(Waiver, Laches and Estoppel)**

Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of waiver, laches, estoppel, and/or other equitable doctrines.

**SEVENTH AFFIRMATIVE DEFENSE
(Limitation on Damages)**

Plaintiffs' claims for recovery are barred, in whole or in part, by 35 U.S.C. § 287.

**EIGHTH AFFIRMATIVE DEFENSE
(Limitation on Damages)**

Under the provisions of 35 U.S.C. § 286, Plaintiffs are precluded from seeking recovery for any of ViewSonic's allegedly infringing acts occurring more than six years before the filing of the Complaint.

**NINTH AFFIRMATIVE DEFENSE
(Action Including An Invalid Claim)**

Plaintiff's prayer for costs is barred, in whole or in part, by Plaintiffs failure to disclaim any invalid claims under 35 U.S.C. § 288.

**TENTH AFFIRMATIVE DEFENSE
(License and/or Exhaustion)**

Plaintiff's claims are precluded in whole in part to the extent any allegedly infringing products are licensed either expressly or impliedly and/or under the doctrine of patent exhaustion or first sale.

**ELEVENTH AFFIRMATIVE DEFENSE
(Reissue Patents)**

Plaintiffs' recovery is barred, in whole or in part, with respect to any reissued patents asserted against ViewSonic, by 35 U.S.C. § 252

**TWELFTH AFFIRMATIVE DEFENSE
(Implied License)**

On information and belief, Plaintiffs' claims for recovery are barred, in whole or in part, by the doctrine of express license and/or implied license for reasons including, without limitation, that Plaintiffs are barred from asserting claims of infringement of one or more of the Asserted Patents against ViewSonic under the MPEG LA ATSC Patent Portfolio License and the MPEG LA Agreement Among Licensors.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Absence of Damages)**

Plaintiffs have not suffered and will not suffer any injury or damages by way to the acts and conduct alleged in its Complaint.

**FOURTEENTH AFFIRMATIVE DEFENSE
(Unavailability of Equitable Remedies)**

Plaintiffs are not entitled to equitable relief because they have an adequate remedy at law.

**FIFTEENTH AFFIRMATIVE DEFENSE
(Causation)**

On information and belief, Plaintiffs, or an agent of the Plaintiffs, acts or omissions caused any alleged infringement by ViewSonic.

**SIXTEENTH AFFIRMATIVE DEFENSE
(Violenti Non Fit Injuria)**

On information and belief, Plaintiffs are not entitled to recovery based on *violenti non fit injuria*, or that "he who suffers damage through his own fault has no right to complain of it."

**SEVENTEENTH AFFIRMATIVE DEFENSE
(Non Essential Patents)**

On information and belief, one or more of the Asserted Patents is not essential to the ATSC standard.

**EIGHTEENTH AFFIRMATIVE DEFENSE
(Violation of FRAND)**

Plaintiffs do not offer licenses to the Asserted Patents on fair, reasonable and nondiscriminatory terms and therefore the Plaintiffs are not entitled to any recovery.

**NINETEENTH AFFIRMATIVE DEFENSE
(Claim Construction)**

ViewSonic does not infringe any claim of the Patents-in-Suit and Plaintiffs are estopped from asserting any infringement thereof by virtue of the fact that during the respective proceedings relating to the issuance of the Patents-in-Suit or their respective predecessors in the U.S. Patent Office, the admissions, representations and amendments made by the alleged patentee(s) and/or their attorneys prevent a construction of the claims of the Patents-in-Suit broad enough to encompass any product allegedly made, used, sold, offered for sale, or imported by ViewSonic.

**TWENTIETH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

Plaintiffs have failed to mitigate any injury or damages they may have suffered.

**TWENTY FIRST AFFIRMATIVE DEFENSE
(Standing)**

One or more of the Plaintiffs lack standing to assert or enforce the Patents-in-Suit.

**TWENTY SECOND AFFIRMATIVE DEFENSE
(Essential Parties)**

Plaintiffs have failed to join one or more required parties to the action.

**TWENTY THIRD AFFIRMATIVE DEFENSE
(Venue)**

ViewSonic asserts that venue is not proper in the instant forum, or, venue is more appropriate in a judicial district other than this judicial district.

**TWENTY FOURTH AFFIRMATIVE DEFENSE
(Personal Jurisdiction)**

Plaintiffs and this Court lack *in personam* jurisdiction over ViewSonic pursuant to 28 USC § 1391 and the long-arm jurisdiction of the State of Florida.

OTHER AFFIRMATIVE DEFENSES

ViewSonic's investigation of the claims and its defenses is continuing. In addition to the affirmative defenses set forth herein, ViewSonic expressly reserves the right to allege and assert any additional affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure.

COUNTERCLAIMS AND THIRD-PARTY CLAIM

ViewSonic Corporation (“ViewSonic”) hereby submits its Counterclaims against Plaintiffs Zenith Electronics LLC (“Zenith”), Panasonic Corporation (“Panasonic”), U.S. Philips Corporation (“Philips”), and The Trustees of Columbia University in the City of New York (“Columbia”) (Zenith, Panasonic, Philips and Columbia are referred to collectively as “Plaintiffs”), and Third Party Claim against MPEG LA, LLC (“MPEG LA”) (Plaintiffs and MPEG LA are together referred to as “Counter-Defendants”), and upon information and belief as to the actions of all persons or entities other than ViewSonic, alleges as follows:

1. By this Counterclaim and Third Party Claim, ViewSonic seeks to end unlawful and anticompetitive practices acquired through the manipulation of the standard setting process for the ATSC technology standard. Plaintiffs -- most of whom are horizontal competitors of ViewSonic in the market for digital televisions sold in the United States -- own patents in the “pool” of “standard essential” patents which they claim comprise the ATSC technology standard for conversion of digital television signals (“the ATSC Standard”), which the Federal Communications Commission (“FCC”) adopted in December, 1996.

2. Several of the Plaintiffs knew or should have known that some of their patents would read on the ATSC Standard that was ultimately adopted. In fact, several of the patents on which they have brought suit were pending at the time of the standard setting meetings, and issued after the ATSC Standard was formally adopted.

3. By promising that they would license their patents that read on the ATSC Standard upon terms that are fair, reasonable and non-discriminatory, Counter-Defendants Zenith and Philips induced the standard setting bodies and the FCC into granting them a monopoly on the standard essential technology. Counter-defendants have also artificially inflated prices on

their “pool” license to excessive levels, and in so doing have inflated competitor costs, reduced output, and restrained competition, including ViewSonic.

THE PARTIES

4. ViewSonic is a corporation organized under the laws of Delaware with its principal place of business located in Walnut, California.

5. Upon information and belief, Third Party Defendant MPEG LA is a Delaware Limited Liability company, having its principal place of business in Denver, Colorado.

6. Upon information and belief based solely on the allegations in paragraph 1 of the Complaint, Zenith is a Delaware limited liability company, having its principal place of business in Lincolnshire, Illinois. ViewSonic is informed and believes, and on that basis alleges that Zenith is currently a wholly owned subsidiary of LG Electronics Inc. ("LG "). ViewSonic is further informed and believes, and on that basis alleges that LG currently sells televisions under the LG rather than the Zenith brand in the relevant market, as described below. For purposes of this Counterclaim and Third Party Claim, the term Zenith shall refer to the conduct of its parent, LG, with respect to allegations concerning sales of products in the relevant market.

7. Upon information and belief based solely on the allegations in paragraph 2 of the Complaint, Panasonic is a Japanese corporation, having its principal place of business in Osaka, Japan. ViewSonic is further informed and believes, and on that basis alleges, that Panasonic was previously known as Matsushita Electric Corporation of America and/or Matsushita Electric Industrial Co., Ltd. (together, "Matsushita"). All references to Panasonic herein shall include Matsushita to the extent it participated in the activities described below.

8. Upon information and belief based solely on the allegations in paragraph 3 of the Complaint, Philips is a Delaware corporation, having its principal place of business in Briarcliff Manor, New York.

9. Upon information and belief based solely on the allegations in paragraph 4 of the Complaint, Columbia is a New York corporation, having its principal place of business in New York, New York.

10. ViewSonic is informed and believes, and on that basis alleges, that at all times relevant hereto, MPEG LA was, and is, the Licensing Administrator acting on behalf of each of the other Counter-Defendants, and all of the things alleged to have been done by MPEG LA were done in the capacity, scope and course thereof.

JURISDICTION AND VENUE

11. This Court has exclusive original jurisdiction over the subject matter of this action under 28 U.S.C. § 1331. This action arises under the Patent Act of 1952, 35 U.S.C. §§ 1, et seq., as amended, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and the Sherman Act, 15 U.S.C. §1 *et seq.* Exclusive jurisdiction for any action arising under any Act of Congress relating to patents is conferred on U.S. district courts pursuant to 28 U.S.C. § 1338(a), and under the Sherman Act pursuant to 28 U.S.C. § 1337.

12. In addition, this Court has supplemental jurisdiction over the breach of contract and promissory estoppel claims pursuant to 28 U.S.C. § 1367 because these claims are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

13. This Court has personal jurisdiction over Zenith because, on information and belief, Zenith conducts business in and maintains substantial contacts with the State of Florida. Further, Zenith has purposefully availed itself of commercial activities in this forum and this Counterclaim and Third Party Claim arises out of those activities.

14. This Court has personal jurisdiction over Panasonic because, on information and belief, Panasonic conducts business in and maintains substantial contacts with the State of

Florida. Further, Panasonic has purposefully availed itself of commercial activities in this forum and this Counterclaim and Third Party Claim arises out of those activities.

15. This Court has personal jurisdiction over Philips because, on information and belief, Philips conducts business in and maintains substantial contacts with the State of Florida. Further, Philips has purposefully availed itself of commercial activities in this forum and this Counterclaim and Third Party Claim arises out of those activities.

16. This Court has personal jurisdiction over Columbia because, on information and belief, Columbia conducts business in and maintains substantial contacts with the State of Florida. Further, Columbia has purposefully availed itself of commercial activities in this forum and this Counterclaim and Third Party Claim arises out of those activities.

17. This Court has personal jurisdiction over MPEG LA because, on information and belief, it conducts business in and maintains substantial contacts with the State of Florida, and because it has sought to license the ATSC patent pool to parties in this jurisdiction.

18. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), and (d) and § 1400(b) because a substantial part of the events giving rise to the Counterclaim and Third Party Claim alleged herein occurred in this District and, on information and belief, Zenith, Panasonic, Philips, and Columbia conduct business in this District. ViewSonic has filed a motion to transfer this action to the Central District California, which is now pending before this Court; this Counterclaim and Third Party Claim is filed without prejudice to that motion.

GENERAL ALLEGATIONS

Patents In Suit

19. Upon information and belief based solely on paragraph 10 of the Complaint, on or about September 1, 1998 United States Patent No. 5,802,107, entitled “Symbol Rotator,” was issued (hereinafter “the ‘107 patent”).

20. Upon information and belief based solely on paragraph 38 of the Complaint, Zenith purports to be the owner by assignment of the '107 Patent.

21. Upon information and belief based solely on paragraph 11 of the Complaint, on or about May 13, 1997 United States Patent No. 5,629,958, entitled "Data Frame Structure and Synchronization System for Digital Television Signal," was issued (hereinafter "the '958 patent").

22. Upon information and belief based solely on paragraph 44 of the Complaint, Zenith purports to be the owner by assignment of the '958 Patent.

23. Upon information and belief based solely on paragraph 12 of the Complaint, on or about August 23, 2011 United States Patent No. Reissue 42,643, entitled "Communication System," was reissued (hereinafter "the '643 patent").

24. Upon information and belief based solely on paragraph 50 of the Complaint, Panasonic purports to be the owner by assignment of the '643 Patent.

25. Upon information and belief based solely on paragraph 13 of the Complaint, on or about November 4, 1997 United States Patent No. 5,648,541, entitled "Transmitter Station for Transmitting a Plurality of Television Programs, and Receiver for Receiving the Programs," was issued (hereinafter "the '541 patent").

26. Upon information and belief based solely on paragraph 56 of the Complaint, Philips purports to be the owner by assignment of the '541 Patent.

27. Upon information and belief based solely on paragraph 14 of the Complaint, on or about February 14, 2012 United States Patent No. 8,115,873, entitled "Object-Based Audio-Visual Terminal and Bitstream Structure," was issued (hereinafter "the '873 patent").

28. Upon information and belief based solely on paragraph 62 of the Complaint, Columbia purports to be the owner by assignment of the '873 Patent.

29. On June 4, 2013, Plaintiffs filed the Complaint in this action alleging infringement of the '107, '958, '643, '541 and '873 Patents by ViewSonic. (Together, the '107, '958, '643, '541 and '873 patents are referred to as "the Patents In Suit").

Background of ATSC Standard-Determining Organization

30. The development of uniform technical standards can often play an important role in the development of new technology. While standards development can benefit certain technologies by encouraging innovation as technical specifications for the standards become widely accepted, the standards also can have disadvantages. For instance, technical standardization creates a "lock-in" effect and the risk of "patent hold-up." When there are no standards, the royalty a patentee can earn from a patent license for its technology is constrained by the availability of alternative technologies; however, once a standard requires a manufacturer to employ patented technology, other technologies are no longer available substitutes and no longer constrain a patentee's ability to demand royalties far in excess of what is warranted by the intrinsic value of the technology.

31. Once a standard is set manufacturers continue to develop new products that also comply with the technical standard. Since the costs and disruption associated with using a different technology is often prohibitively expensive, the manufacturer that implements, or is required to implement, a standard therefore becomes "locked-in." Owners of patents that cover aspects of the standard are in a position to take advantage of lock-in and demand exorbitant royalties from manufacturers, knowing that it would be less costly for the manufacturers to pay the excessive royalty rather than incur the cost of implementing other technologies, or the cost of litigation including the risk of an injunction.

32. For these reasons, timely disclosure of essential intellectual property rights is critical to ensuring that those participating in standards development can evaluate various

proposals for the standard with knowledge of the associated licensing costs for each proposed technology.

33. To prevent patent hold-up, participants to the standard setting process who may own essential patents must generally commit to license those rights on fair, reasonable and nondiscriminatory (“FRAND”) terms to any manufacturer who uses the standard. Participants in standards development rely on these contractual undertakings to ensure that the widespread adoption of the standard will not be held hostage by owners of standard essential patents who may seek to extract unreasonable royalties from those implementing the standard.

34. The ATSC Standard involved in this litigation concerns digital television transmission. Two fundamentally different methods exist for transmitting television images: analog and digital. Since approximately 1940, all television transmissions in this State and throughout the United States used analog transmission incorporating the FCC-approved NTSC Analog Television Standard as amended. At all relevant times up until the mid-to-late 2000s, television sets and VCRs in the United States including in this State primarily used NTSC Analog Television Standard technology.

35. The International Telecommunications Union (“ITU”), is a professional association and leading developer of technical standards. ITU members include engineers, scientists, and allied professionals whose technical interests relate to electrical and computer sciences, engineering, and related disciplines. The Advanced Television Systems Committee (“ATSC”) is an international standard-setting body composed of representatives from various entities involved in the creation and maintenance of standards related to digital television. The ITU and ATSC and their members participated in the selection and adoption of the ATSC Standard.

36. ViewSonic is informed and believes, and on that basis alleges, that in 1987, the FCC established the Advisory Committee on Advanced Television Service (the “Advisory Committee”) to assist the FCC in gathering and processing necessary information on advanced television technologies.

37. ViewSonic is informed and believes, and on that basis alleges, that in 1993, at the behest of the FCC, an alliance was formed of various industrial companies to develop standards for digital television, which was known as “the Grand Alliance.” ViewSonic is further informed and believes, and on that basis alleges, that Zenith and Philips (through a predecessor or other affiliate) were members of the Grand Alliance.

38. ViewSonic is informed and believes, and on that basis alleges, that on December 24, 1996, the FCC adopted the major elements of the ATSC Standard, mandating its use for digital television broadcasts in the United States. FCC rules require broadcasters to broadcast digital television signals in compliance with the ATSC Standard, and require digital television receivers to be equipped with digital television tuners for receiving, decoding, and presenting such digital television signals in compliance with the ATSC Standard.

39. ViewSonic is informed and believes, and on that basis alleges, that in 1996, the United States Congress required that all full power television stations in the United States, including those transmitting in and into this State, must transmit digital signals as of February 17, 2009, which was later extended to June 12, 2009. This switch to digital signal transmission required consumers in this State and throughout the country either to replace their analog televisions with expensive digital televisions or instead buy a digital-to-analog converter box so that digital signals after June 13, 2009 could still be viewed on the consumers' analog televisions and VCRs.

FRAND Licensing Is Required for the ATSC Standard

40. To protect against unscrupulous conduct by any member who seeks to benefit unfairly from, or to manipulate to its advantage, the ITU's and ATSC's standard-setting process, and to enable the ITU and ATSC and its members to develop standards free from potentially blocking patents, ViewSonic is informed and believes, and on that basis alleges, that the ITU and ATSC instituted policies and rules regarding the disclosure and licensing of patents.

41. ViewSonic is informed and believes, and on that basis alleges, that the ITU's and ATSC's rules and policies require fairness and candor with respect to intellectual property. For example, these organizations require members to disclose known patents and negotiate on FRAND terms.

42. ViewSonic is informed and believes, and on that basis alleges, that Zenith and Philips made promises and commitments to the ITU and/or the ATSC to license their standard essential patents on FRAND terms, upon which the ITU and/or ATSC relied in setting the ATSC Standard. When the FCC adopted portions of the ATSC standard it prepared a "Fourth Report and Order," in which it acknowledged that the proponents of the ATSC Standard -- including, on information and belief, Zenith and Philips -- agreed to make any relevant patents they owned available either free of charge or on a reasonable, nondiscriminatory basis; the FCC then expressly stated that its adoption of the ATSC standard was premised directly upon those assurances:

54. In earlier phases of this proceeding we indicated that, in order for DTV [digital television] to be successfully implemented, the patents on the technology would have to be licensed to other manufacturing companies *on reasonable and nondiscriminatory terms*. We noted that the system proponents that participated in the Advisory Committee's competitive testing process were required to submit a statement that they would comply with the ANSI patent policies. *The proponents agreed to make any relevant patents that they owned available either free of charge or on a reasonable, nondiscriminatory basis and we stated*

that we intended to condition selection of a DTV system on such commitments. .

. . . .

55. It appears that licensing of the patents for DTV technology will not be an impediment to the development and deployment of DTV products for broadcasters and consumers. *We reiterate that adoption of this standard is premised on reasonable and nondiscriminatory licensing of relevant patents,* but believe that greater regulatory involvement is not necessary at this time. We remain committed to this principle and if a future problem is brought to our attention, we will consider it and take appropriate action.

Federal Communications Commission “*Fourth Report and Order*” In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268 (December 24, 1996) (citations omitted) (emphasis added).

Plaintiffs’ Patents and FRAND Obligations

43. ViewSonic is informed and believes, and on that basis alleges, that at the time of the standard setting process, Plaintiffs Zenith, Panasonic and Philips (“the Manufacturing Plaintiffs”) had patents and/or patent applications pending with claims that they would later assert read on the ATSC Standard, based upon the following:

a. ViewSonic is informed and believes, and on that basis alleges, that the ‘541 Patent owned by Philips has a priority date of May 12, 1994 and an issue date of November 4, 1997.

b. ViewSonic is informed and believes, and on that basis alleges, that the ‘643 Patent owned by Panasonic has a priority date of either May 10, 1994 or March 25, 1992, and was reissued on August 23, 2011.

c. ViewSonic is informed and believes, and on that basis alleges, that the ‘958 Patent owned by Zenith has a priority date of July 8, 1994 and was issued on May 13, 1997.

d. ViewSonic is informed and believes, and on that basis alleges, that the '107 Patent owned by Zenith has a priority date of September 13, 1996 and was issued on September 1, 1998.

44. ViewSonic is informed and believes, and on that basis alleges, that the '541,'643, '958, and '107 patents all were pending at the time of the December, 1996 adoption of the ATSC Standard, and all issued thereafter.

45. ViewSonic is informed and believes, and on that basis alleges, that Zenith, Philips and others made promises and commitments to the ATSC and the ITU and their members and affiliates in connection with the ATSC Standard setting process, that each of their essential patents would be available for licensing on FRAND terms.

46. ViewSonic is further informed and believes, and on that basis alleges, that had Zenith, Philips and others failed to provide FRAND assurances, their patents would not have been incorporated into the ATSC Standard and/or the FCC would not have adopted the ATSC Standard. Such assurances are for the protection of third-parties, like ViewSonic, who rely on such FRAND commitments to ensure that the royalties later sought conform to the promises initially made, and do not result in patent hold up.

47. ViewSonic is informed and believes, and on that basis alleges, that in providing FRAND assurances, Zenith, Philips and others entered into an actual or implied contract for the benefit of any entity that implemented the ATSC standard, and are now irrevocably bound by their commitments to offer licenses on FRAND terms until the ATSC Standard is withdrawn.

48. In addition, ViewSonic is informed and believes, and on that basis alleges, that Panasonic and others have agreed to license their ATSC Standard essential patents on FRAND terms.

49. In addition to committing to license their patents on FRAND terms, Plaintiffs also agreed that they would license any of the patents they claimed to be essential to the standard on an individual basis, upon demand, and not only as part of a patent pool or package. Plaintiffs have acknowledged this commitment in Paragraph 27 of their Complaint.

The ATSC Patent Pool

50. MPEG LA holds itself out as the world's leading packager of patent pools for standards in consumer electronics. The "patent pool" of ATSC Standard patents ("the ATSC Pool") consists of an arrangement between MPEG LA, as "Licensing Administrator," and patent owners, including but not limited to Plaintiffs, whereby patent owners pool their patents and MPEG LA administers licenses of those patents to others who require access to the patents in order to sell devices that meet the ATSC Standard.

51. Plaintiffs allege that each of the Patents in Suit is essential to the ATSC Standard.

52. ViewSonic is informed and believes, and on that basis alleges, that each of the Plaintiffs has contributed one or more patents allegedly essential to the ATSC Standard to the ATSC Pool. The ATSC Pool includes the Patents in Suit, as well as approximately 100 other U.S. patents, and many foreign patents. Plaintiffs Zenith and Panasonic each own numerous patents that they contributed to the ATSC Patent Pool, the majority of which are not at issue in the present suit. In addition to Plaintiffs, several other patent owners are licensors to the ATSC Patent Pool.

53. ViewSonic is informed and believes, and on that basis alleges, that since the formation of the ATSC Pool significant changes have occurred in the market for ATSC-compliant products. Most notably, the price of ATSC-compliant products has dropped dramatically. Nonetheless, on information and belief, the rate for a license to the ATSC Pool has not dropped by similar amounts; in fact, ViewSonic is informed and believes, and on that basis

alleges that it has not fluctuated since the Pool was formed, and has remained constant at \$5.00 per unit sold. This excessive rate is particularly problematic for low price-tier television sellers, like ViewSonic, because these companies must keep costs low in order to compete.

54. Furthermore, since the inception of the ATSC Pool, many patents that have been alleged to be essential to the pool have expired. On information and belief, the rates for a license to the ATSC Pool have not been adjusted and/or reduced in accordance with patent expiration.

55. ViewSonic is informed and believes, and on that basis alleges, that Plaintiffs have authorized MPEG LA to negotiate licenses covering the Patents in Suit on their behalf. Based on interactions between ViewSonic and MPEG LA, ViewSonic reasonably believed that MPEG LA had and has authority to act as Licensing Administrator on behalf of Plaintiffs.

Plaintiffs and MPEG LA Fail to Abide by Their FRAND Obligations

56. From at least 2007, the Manufacturing Plaintiffs have competed with Defendants in distributing digital televisions throughout the United States, including in this State.

57. MPEG LA has demanded that ViewSonic enter into a license agreement for the ATSC Pool, which MPEG LA has claimed consists of patents that are all essential to the ATSC Standard, and which MPEG LA claims are embodied in products sold by ViewSonic.

58. ViewSonic has attempted to negotiate license agreements with MPEG LA on FRAND terms. During the negotiations, ViewSonic informed MPEG LA that the royalty sought by MPEG LA was unfair and unreasonable, given ViewSonic' size, market position, and practice of competing on lower prices.

59. Despite their commitments to the ITU and/or ATSC standard setting organizations, the FCC, and the public, ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs have each breached their FRAND assurances and obligations by refusing to extend ViewSonic a license consistent with their promises to

individually license the Patents in Suit on FRAND terms. Instead, they have either: (a) failed to license their Patents in Suit separate and apart from their entire portfolio of pooled patents; and/or (b) offered to license their Patents in Suit for an excessively high rate. In addition, the royalty rates offered by the Manufacturing Plaintiffs fail to satisfy their FRAND obligation and commitment, as evidenced in part by the fact that some of the rates offered are excessively high relative to the MPEG LA rate for all the patents in the entire ATSC Pool.

60. As the royalty rates separately offered by each of the Manufacturing Plaintiffs were not FRAND royalty rates and, in some cases, the Manufacturing Plaintiffs failed to license the Patents in Suit separate and apart from other patents they own in the ATSC Pool and/ or offered them only at excessive rates, ViewSonic was unable to license the Patents in Suit on an individual basis.

61. MPEG LA and Plaintiffs also demanded back royalties from ViewSonic for products previously sold by ViewSonic that allegedly utilized the ATSC Standard. ViewSonic informed MPEG LA that it was not entitled to back royalties due to the passage of time and stated that the payment of unreasonable back royalties was not legal.

62. MPEG LA repeatedly declined ViewSonic's offers of compromise.

63. Manufacturing Plaintiffs are responsible not only for their own breaches of their FRAND assurances, but for the actions of MPEG LA, which has failed to extend ViewSonic a license for the ATSC patent pool on FRAND terms.

64. MPEG LA and the Manufacturing Plaintiffs have demanded royalty rates that exceed the rate that such patents should reasonably command given the following, each of which is stated on information and belief:

a. The impending expiration of the Patents in Suit and/or the patents in the ATSC Pool;

b. The questionable essentiality of the Patents in Suit and/or the patents in the ATSC Pool;

c. The value of the patents relative to the price of the products at issue;

d. The declining market price for products alleged to be using the patents.

65. In addition, ViewSonic is informed and believes, and on that basis alleges, that MPEG LA and/or Plaintiffs have demanded that ViewSonic pay royalties on products for which Plaintiffs either have already received a royalty, or are already entitled to receive a royalty, in violation of the doctrine of patent exhaustion, and have demanded royalties for a period of time that exceeds that which is allowed under U.S. patent law.

66. Moreover, ViewSonic is informed and believes, and on that basis alleges, that MPEG LA and the Manufacturing Plaintiffs failed to take into consideration any of the following factors when issuing their royalty demands:

a. The availability and royalty rates for similar patents and/or patent pools, including the MPEG2 patent pool also administered by MPEG LA, and others;

b. The profitability of the patented invention, including the duration and term of the license, alternatives that could have been written into the standard, and the customary selling price of the products.

67. ViewSonic is informed and believes, and on that basis alleges, that by their conduct, the Manufacturing Plaintiffs and MPEG LA are attempting not only to receive a windfall in profits, but to artificially inflate the price of digital televisions sold in the U.S. to supra-competitive levels to restrain or eliminate competition for low price-tier televisions. In so doing, the Manufacturing Plaintiffs and MPEG LA are engaging in anti-competitive conduct by attempting to eliminate competition in the U.S. market for digital televisions by increasing the

costs of ViewSonic and certain other horizontal competitors in order to reduce output and restrain or eliminate competition.

Relevant Market

68. The relevant market includes all television sets which utilize the ATSC Standard that were sold in the United States between the December, 1996 adoption of the ATSC Standard and the December, 2016 expiration of the MPEG LA ATSC Patent Pool Portfolio License, or any extension thereof.

Maintenance and Exercise of Market Power

69. There has been no determination that practicing the ATSC Standard infringes the Patents in Suit or any other patents in the ATSC Pool. However, the Plaintiffs' assertions that the Patents in Suit are essential to the ATSC Standard, combined with the FCC's order mandating the ATSC Standard as the sole commercial standard for digital television transmission, confer upon the Plaintiffs a monopoly in the technology for the standard itself, as each Plaintiff, acting alone, has the power to hold up use of the standard and, thus, sales of products that implement it.

70. Plaintiffs' monopoly in the ATSC Standard technology was constrained by their FRAND commitment, which, once repudiated by the Manufacturing Plaintiffs, crossed from permissible monopoly to illegal monopolization.

71. In addition, ViewSonic is informed and believes, and on that basis alleges, that Manufacturing Plaintiffs and the other manufacturing members of the ATSC Pool have market power in the relevant market, as together they account for a large percentage of the televisions sold in the United States.

72. ViewSonic and the Manufacturing Plaintiffs are horizontal competitors. As ViewSonic competes intensely on price, ViewSonic is informed and believes, and on that basis

alleges, that the Manufacturing Plaintiffs have incentive to lessen the intensity of ViewSonic's price competition and/or drive low price-tier television sellers such as ViewSonic from the market by increasing their costs by imposing an unreasonably high royalty.

73. ViewSonic is informed and believes, and on that basis alleges that MPEG LA, acting as Licensing Administrator for the ATSC Pool, and the Manufacturing Plaintiffs – all of whom are horizontal competitors of ViewSonic – have intentionally set their royalty rates at prices that are not only well above FRAND levels, but intentionally so chosen to restrain or eliminate competition from ViewSonic and others who sell their products at lower prices than those charged for comparable products sold by the Manufacturing Plaintiffs.

74. The Manufacturing Plaintiffs and MPEG LA, as Licensing Administrator for the ATSC Pool, have set royalty rates that in turn raise costs, and thus prices on products for which the royalties are paid. ViewSonic is informed and believes, and on that basis alleges, that this in turn restricts output and reduces or eliminates competition in the relevant market

75. Alternatively, the Manufacturing Plaintiffs' assertions that anyone complying with the ATSC standard infringes the Patents in Suit, coupled with their refusal to license them on FRAND terms, as well as MPEG LA's conduct as Licensing Administrator for the ATSC Pool in refusing to license the ATSC Pool on FRAND terms, create a dangerous probability that the Manufacturing Plaintiffs will achieve monopoly power, as all potential licensees are compelled by the FCC to use the ATSC Standard.

Barriers to Entry

76. ViewSonic is informed and believes, and on that basis alleges, that significant entry barriers protect the relevant market. Regulatory requirements, including FCC mandated licensing of essential standards such as the ATSC Standard, the MPEG2 standard, and others, high capital costs associated with the design and manufacture of television sets, high shipping

and packaging costs associated with transporting television sets manufactured abroad to the U.S., and others, enable MPEG LA and the Manufacturing Plaintiffs to set and maintain excessive prices for the ATSC Pool, which prices are passed through to consumers in the form of higher prices.

Concerted Activity in Restraint of Trade

77. ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs and MPEG LA, as Licensing Administrator for the ATSC Pool, have conspired in restraint of trade to affect, raise, fix, maintain, and stabilize prices for television sets sold in the U.S. by demanding an excessive, non-FRAND royalty rate for the ATSC Standard. Such conduct, includes, without limitation, the following, each of which is stated on information and belief:

a. MPEG LA, acting in concert with the Manufacturing Plaintiffs and others, has demanded an excessively high royalty which is intended to restrain or eliminate competition from ViewSonic and others in the relevant market; and

b. the Manufacturing Plaintiffs, acting in concert with each other and MPEG LA, have each demanded an artificially high royalty which is intended to restrain or eliminate competition from ViewSonic and others in the relevant market;

78. ViewSonic is informed and believes, and on that basis alleges, that the effect of this unlawful conduct will be restrain or eliminate competition and reduce output.

Antitrust Injury

79. ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs' conduct threatens harm to competition and harm to consumers of television sets in the U.S. The Manufacturing Plaintiffs' conduct threatens to increase the price

and reduce the output of televisions that implement the ATSC standard, thus raising prices and reducing output of televisions available to consumers in the U.S.

80. ViewSonic is informed and believes, and on that basis alleges, that the effect of the non-FRAND royalties charged by MPEG LA and the Manufacturing Plaintiffs will lead to increased costs to all television manufacturers, which in turn will be passed through to consumers.

81. ViewSonic is informed and believes, and on that basis alleges, that the non-FRAND royalties demanded by MPEG LA and the Manufacturing Plaintiffs has resulted in a reduction of competition, as it has decreased incentives to produce products that implement the ATSC Standard at low prices.

82. The Manufacturing Plaintiffs' conduct is subjecting ViewSonic and other television manufacturers to the threat of having to pay royalties that are overvalued.

FIRST CLAIM FOR RELIEF

VIOLATION OF SHERMAN ACT §2 BY UNLAWFUL MAINTENANCE,

EXTENSION, AND/OR ABUSE OF MONOPOLY POWER

(Against Zenith and Philips)

83. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 82 above, as though set forth in full.

84. ViewSonic is informed and believes, and on that basis alleges, that Plaintiffs Zenith and Philips falsely represented to the ITU, ATSC, and/or FCC, either expressly, impliedly or by omission, that if elements of their patented technology were included in the ATSC Standard, then they would license any such patents to all applicants on FRAND terms.

85. ViewSonic is informed and believes, and on that basis alleges, that the ITU, ATSC, and FCC relied on the promises of Zenith and Philips to license the Patents in Suit on

FRAND terms, as they would not have agreed to adopt a U.S. standard that would have given them “blocking patents.”

86. Plaintiffs Zenith and Philips have failed, in good faith, to offer license on FRAND terms, and on information and belief, never intended to do so.

87. ViewSonic is informed and believes, and on that basis alleges, that Plaintiffs Zenith and Philips, have intentionally attempted to obtain, and have obtained monopoly power and the ability to control prices in the relevant market. Specifically, having succeeded in using false promises, misrepresentations and/or omissions to get their technology incorporated into the ATSC Standard, they now seek to utilize the patents allegedly covering the technology to raise prices and exclude competition in the relevant market.

88. Unless this Court declares that the conduct of Zenith and Philips has violated the antitrust laws, there exists a dangerous probability that they will succeed in monopolizing the relevant market.

89. ViewSonic is informed and believes, and on that basis alleges, that the actions of Zenith and Philips have had or will have the following effects: competition in the relevant market will be impaired and restrained, and they will have illegally obtained the power to control prices and/or restrain and exclude competition in the market for the sale of products using the technology standards incorporated in the ATSC Standard, thereby affecting interstate commerce.

90. ViewSonic is informed and believes, and on that basis alleges, that unless the attempts of Zenith, and Philips to obtain an unfair, unreasonable, and discriminatory royalty are declared to be unlawful, and in view of their allegations that all of ViewSonic’s ATSC products are subject to their patents, ViewSonic is and will continue to be injured in its business and property and will suffer substantial and irreparable harm.

SECOND CLAIM FOR RELIEF

VIOLATION OF SHERMAN ACT §1 BY CONCERTED ACTION

UNREASONABLY RESTRAINING TRADE

(Against Zenith, Panasonic, Philips and MPEG LA)

91. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 82 above, as though set forth in full.

92. ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs are engaged in interstate commerce in the United States, and these activities involve products in the flow of interstate commerce and will substantially impact interstate commerce.

93. Television products complying with the ATSC Standard are sold throughout the United States, and thus the relevant geographic market is the United States.

94. Manufacturing Plaintiffs are horizontal competitors of ViewSonic that, upon information and belief, have conspired and agreed with MPEG LA to reduce or eliminate competition from low price-tier television sellers such as ViewSonic by entering into the following agreements in restraint of trade: (a) an agreement not to compete on pricing for the royalty rate for the ATSC patent pool; and (b) an agreement to set a non-FRAND royalty rate for the pooled patents.

95. ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs have used the cover of the ATSC Patent Pool to engage in additional concerted action in unreasonable restraint of trade, including without limitation: failing to offer licenses for their patents on FRAND terms; engaging in patent hold up; demanding royalty rates that are excessive in light of the fact that some patents in the ATSC Pool have or will soon expire; demanding a royalty rate for products sold outside the statutory period of limitations for

infringement claims; demanding duplicative royalties for the same products on which royalties have already been paid or are already due from third parties in violation of the patent exhaustion doctrine; acting to restrain and eliminate trade as to low price-tier television sellers such as ViewSonic by charging excessive rates calculated to inflate costs and eliminate lower price-tier competition; failing to offer individual licenses only for the Patents in Suit and/or demanding excessive royalties for individual patents; and by demanding to license the ATSC Pool and/or each individual Plaintiffs' ATSC patent portfolio, including non-U.S. patents, despite failing to demonstrate essentiality of all patents and despite having inadequate safeguards to ensure that the pool is limited to patents actually essential to the ATSC Standard (together, "the Anticompetitive Conduct").

96. ViewSonic is informed and believes, and on that basis alleges, that the agreement to engage in the Anticompetitive Conduct between and among the Manufacturing Plaintiffs, and/or between and among the Manufacturing Plaintiffs and MPEG LA, constitutes a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

97. By engaging in the Anticompetitive Conduct, including but not limited to their practice of refusing licensing on FRAND terms and/or failing to license individual patents, the Manufacturing Plaintiffs and/or the Manufacturing Plaintiffs and MPEG LA, are, upon information and belief, attempting to unreasonably restrain and suppress price competition in the digital television market.

98. ViewSonic is informed and believes, and on that basis alleges, that the actions of the Manufacturing Plaintiffs and/or the Manufacturing Plaintiffs and MPEG LA have had or will have the following effects: competition in the relevant market has been and will continue to be unreasonably impaired and restrained, thereby affecting interstate commerce.

99. ViewSonic is informed and believes, and on that basis alleges, that unless the attempts of the Manufacturing Plaintiffs and/or the Manufacturing Plaintiffs and MPEG LA to obtain an unfair, unreasonable, and discriminatory royalty, and other Anticompetitive Conduct are declared to be unlawful, and in view of the Manufacturing Plaintiffs' and MPEG LA's assertions that all of ViewSonic's ATSC Products are infringing all of the Manufacturing Plaintiffs' patents in the ATSC Pool, ViewSonic is and will continue to be injured in its business and property and will suffer substantial and irreparable harm.

THIRD CLAIM FOR RELIEF

BREACH OF CONTRACT

(Against Zenith, Panasonic and Philips)

100. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 82 above, as though set forth in full.

101. ViewSonic is informed and believes, and on that basis alleges, that in express or implied statements to the FCC, ATSC, and/or ITU, and/or via their agreements with MPEG LA, the Manufacturing Plaintiffs agreed to license any essential patents for the ATSC Standard on FRAND terms.

102. ViewSonic is informed and believes, and on that basis alleges, that for consideration, including membership and participation in the FCC, ATSC, ITU, and/or the ATSC Pool, the Manufacturing Plaintiffs entered into an express and/or implied contract with FCC, ATSC, ITU, MPEG LA, and/or their members, to which others, including ViewSonic, are third party beneficiaries.

103. ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs, individually and through their MPEG LA, breached their contractual obligations by failing to license their allegedly essential patents on FRAND terms. The

Manufacturing Plaintiffs' demands for unreasonable royalties and/or failure to license their allegedly essential patents on FRAND terms was based on their failure to consider the following: patents in the ATSC Pool have or will soon expire, and the royalty rates should decrease as patents in the pool expire; royalties had already been paid or were already due to be paid by third parties on products, and should not be demanded a second time in violation of the patent exhaustion doctrine; and some of the Manufacturing Plaintiffs failed to offer individual licenses for only the Patents in Suit, instead demanding royalty fees for the entire ATSC Pool and/or each individual Plaintiffs' ATSC patent portfolio, including non-U.S. patents, despite the fact that all of the patents are not essential and despite having inadequate safeguards to ensure that the pool was limited to patents actually essential to the ATSC standard.

104. ViewSonic is informed and believes, and on that basis alleges, that it has incurred damages and irreparable harm and will be further damaged in the future due to the Manufacturing Plaintiffs' breach of their contractual obligations.

FOURTH CLAIM FOR RELIEF

PROMISSORY ESTOPPEL

(Against Zenith, Panasonic and Philips)

105. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 82 and 101 through 104 above, as though set forth in full.

106. ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs made representations and engaged in other conduct, including representations and/or omissions to the FCC, ATSC, and/or ITU, and/or in agreements with MPEG LA that obligated them to license any patents they may own that they allege are required to operate in accordance with the accused ATSC Standard on FRAND terms.

107. ViewSonic is informed and believes, and on that basis alleges, that the Manufacturing Plaintiffs' conduct constituted promises to the FCC, ATSC, MPEG LA, their members, and/or third parties that make, use, sell, offer to sell, or import into the United States products compliant with the ATSC standard. ViewSonic is further informed and believes, and on that basis alleges, that the intended purpose of the Manufacturing Plaintiffs' promises was to induce reliance thereon; by making such promises, the Manufacturing Plaintiffs knew or reasonably should have known they would be relied upon.

108. ViewSonic is informed and believes, and on that basis alleges, that the FCC, ATSC, ITU, MPEG LA, their members, and/or third parties, including ViewSonic, reasonably relied upon Plaintiffs' promises, and invested substantial resources developing, marketing, and selling products that are alleged to utilize the ATSC Standard, with the expectation that the Manufacturing Plaintiffs would comply with their promises and offer licenses to any essential patents on FRAND terms.

109. Plaintiffs are estopped from defaulting on these promises under the doctrine of promissory estoppel.

110. ViewSonic is informed and believes, and on that basis alleges, that it has been damaged as a result of its reasonable reliance as set forth herein, and is threatened by the imminent loss of profits, customers, potential customers, goodwill, and product image such that injustice can only be avoided by enforcement of the Manufacturing Plaintiffs' promises.

111. ViewSonic is informed and believes, and on that basis alleges, that it will suffer irreparable injury by reason of the acts and conduct of the Manufacturing Plaintiffs alleged above until and unless the court enjoins such acts practices and conduct.

FIFTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF '107 PATENT

112. ViewSonic realleges and incorporate by reference paragraphs 1 through 29 of this Counterclaim and Third Party Claim as if fully set forth herein.

113. This is an action for a declaratory judgment of non-infringement by ViewSonic of the '107 Patent pursuant to 28 U.S.C. §§ 2201 and 2202.

114. Plaintiffs have alleged that ViewSonic directly infringes, indirectly infringes by inducement, literally and/or under the doctrine of equivalents, the '107 Patent.

115. The filing of this action by Plaintiffs, and ViewSonic's First Affirmative Defense, create an actual and justiciable controversy concerning the non-infringement of the '107 Patent.

116. ViewSonic seeks a declaration under 28 U.S.C. §§ 2201, et seq. that it does not infringe any claim of the '107 Patent.

SIXTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF '958 PATENT

117. ViewSonic realleges and incorporate by reference paragraphs 1 through 29 of this Counterclaim and Third Party Claim as if fully set forth herein.

118. This is an action for a declaratory judgment of non-infringement by ViewSonic of the '958 Patent pursuant to 28 U.S.C. §§ 2201 and 2202.

119. Plaintiffs have alleged that ViewSonic directly infringes, indirectly infringes by inducement, literally and/or under the doctrine of equivalents, the '958 Patent.

120. The filing of this action by Plaintiffs, and ViewSonic's First Affirmative Defense, create an actual and justiciable controversy concerning the non-infringement of the '958 Patent.

121. ViewSonic seeks a declaration under 28 U.S.C. §§ 2201, et seq. that it does not infringe any claim of the '958 Patent.

SEVENTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF '643 PATENT

122. ViewSonic realleges and incorporate by reference paragraphs 1 through 29 of this Counterclaim and Third Party Claim as if fully set forth herein.

123. This is an action for a declaratory judgment of non-infringement by ViewSonic of the '643 Patent pursuant to 28 U.S.C. §§ 2201 and 2202.

124. Plaintiffs have alleged that ViewSonic directly infringes, indirectly infringes by inducement, literally and/or under the doctrine of equivalents, the '643 Patent.

125. The filing of this action by Plaintiffs, and ViewSonic's First Affirmative Defense, create an actual and justiciable controversy concerning the non-infringement of the '643 Patent.

126. ViewSonic seeks a declaration under 28 U.S.C. §§ 2201, et seq. that it does not infringe any claim of the '643 Patent.

EIGHTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF '541 PATENT

127. ViewSonic realleges and incorporate by reference paragraphs 1 through 29 of this Counterclaim and Third Party Claim as if fully set forth herein.

128. This is an action for a declaratory judgment of non-infringement by ViewSonic of the '541 Patent pursuant to 28 U.S.C. §§ 2201 and 2202.

129. Plaintiffs have alleged that ViewSonic directly infringes, indirectly infringes by inducement, literally and/or under the doctrine of equivalents, the '541 Patent.

130. The filing of this action by Plaintiffs, and ViewSonic's First Affirmative Defense, create an actual and justiciable controversy concerning the non-infringement of the '541 Patent.

131. ViewSonic seeks a declaration under 28 U.S.C. §§ 2201, et seq. that it does not infringe any claim of the '541 Patent.

NINTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF '873 PATENT

132. ViewSonic realleges and incorporate by reference paragraphs 1 through 29 of this Counterclaim and Third Party Claim as if fully set forth herein.

133. This is an action for a declaratory judgment of non-infringement by ViewSonic of the '873 Patent pursuant to 28 U.S.C. §§ 2201 and 2202.

134. Plaintiffs have alleged that ViewSonic directly infringes, indirectly infringes by inducement, literally and/or under the doctrine of equivalents, the '873 Patent.

135. The filing of this action by Plaintiffs, and ViewSonic's First Affirmative Defense, create an actual and justiciable controversy concerning the non-infringement of the '873 Patent.

136. ViewSonic seeks a declaration under 28 U.S.C. §§ 2201, et seq. that it does not infringe any claim of the '873 Patent.

TENTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF INVALIDITY OF '107 PATENT

137. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 29 above, as though set forth in full.

138. Zenith purports to be the assignee and owner of the entire right, title and interest in the '107 patent.

139. Zenith has sued ViewSonic in the present action, alleging infringement of the '107 patent. Thus, an immediate, real, and justiciable controversy exists between Zenith and ViewSonic with respect to the alleged infringement, validity, and enforceability of the '107 patent.

140. The claims of the '107 patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§101, 102, 103, and/or 112.

141. ViewSonic seeks a judgment declaring that the asserted claims of the '107 patent are invalid.

ELEVENTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF INVALIDITY OF '958 PATENT

(Against Zenith)

142. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 29 above, as though set forth in full.

143. Zenith purports to be the assignee and owner of the entire right, title and interest in the '958 patent.

144. Zenith has sued ViewSonic in the present action, alleging infringement of the '958 patent. Thus, an immediate, real, and justiciable controversy exists between Zenith and ViewSonic with respect to the alleged infringement, validity, and enforceability of the '958 patent.

145. The claims of the '958 patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§101, 102, 103, and/or 112.

146. ViewSonic seeks a judgment declaring that the asserted claims of the '958 patent are invalid.

TWELFTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF INVALIDITY OF '643 PATENT

(Against Panasonic)

147. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 29 above, as though set forth in full.

148. Panasonic purports to be the assignee and owner of the entire right, title and interest in the '643 reissue patent.

149. Panasonic has sued ViewSonic in the present action, alleging infringement of the '643 reissue patent. Thus, an immediate, real, and justiciable controversy exists between

Panasonic and ViewSonic with respect to the alleged infringement, validity, and enforceability of the '643 reissue patent.

150. The claims of the '643 reissue patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§101, 102, 103, and/or 112.

151. ViewSonic seeks a judgment declaring that the asserted claims of the '643 reissue patent are invalid.

THIRTEENTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF INVALIDITY OF '541 PATENT

(Against Philips)

152. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 29 above, as though set forth in full.

153. Philips purports to be the assignee and owner of the entire right, title and interest in the '541 patent.

154. Philips has sued ViewSonic in the present action, alleging infringement of the '541 patent. Thus, an immediate, real, and justiciable controversy exists between Philips and ViewSonic with respect to the alleged infringement, validity, and enforceability of the '541 patent.

155. The claims of the '541 patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§101, 102, 103, and/or 112.

156. ViewSonic seeks a judgment declaring that the asserted claims of the '541 patent are invalid.

FOURTEENTH CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF INVALIDITY OF '873 PATENT

(Against Columbia University)

157. ViewSonic incorporates by reference the allegations contained in paragraphs 1 through 29 above, as though set forth in full.

158. Columbia University purports to be the assignee and owner of the entire right, title and interest in the '873 patent.

159. Columbia University has sued ViewSonic in the present action, alleging infringement of the '873 patent. Thus, an immediate, real, and justiciable controversy exists between Zenith and ViewSonic with respect to the alleged infringement, validity, and enforceability of the '873 patent.

160. The claims of the '873 patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§101, 102, 103, and/or 112.

161. ViewSonic seeks a judgment declaring that the asserted claims of the '873 patent are invalid.

PRAYER FOR RELIEF

WHEREFORE, ViewSonic denies that Plaintiffs are entitled to any relief, including the relief requested in its Prayer for Relief. ViewSonic respectfully requests that this Court enter a judgment against Plaintiffs and in favor of ViewSonic:

- A. Finding that ViewSonic Corporation has not infringed the '107 Patent;
- B. Finding that ViewSonic Corporation has not infringed the '958 Patent;
- C. Finding that ViewSonic Corporation has not infringed the '643 Patent;
- D. Finding that ViewSonic Corporation has not infringed the '541 Patent;
- E. Finding that ViewSonic Corporation has not infringed the '873 Patent;

- F. Finding that the '107, '958, '643, '541, and '873 patents are invalid.
- G. Declaring that the '107, '958, '643, '541, and '873 patents are unenforceable.
- H. Awarding to ViewSonic damages in an amount to be proven at trial on account of the Manufacturing Plaintiffs' breach of contract;
- I. Compelling Plaintiffs to offer licenses to the Patents in Suit on FRAND terms;
- J. Awarding to ViewSonic damages, as well as treble damages, in an amount to be proven at trial on account of acts of the Manufacturing Plaintiffs and MPEG LA in violation of Section 1 of the Sherman Act (15 U.S.C. §1);
- K. Awarding to ViewSonic damages, as well as treble damages, in an amount to be proven at trial on account of the acts of Zenith and Philips in violation of Section 2 of the Sherman Act (15 U.S.C. §2);
- L. Awarding to ViewSonic attorney's fees and costs pursuant to 15 U.S.C. §15;
- M. Enter a judgment declaring that ViewSonic is the prevailing party and that this is an exceptional case pursuant to 35 U.S.C. §285 and awarding ViewSonic its reasonable costs and expenses of litigation, including attorneys' and experts' fees;
- N. Dismissing Plaintiffs' Complaint with prejudice;
- O. Denying any damages or injunctive relief to Plaintiffs; and
- P. Awarding to ViewSonic such other and further relief as the Court may deem just and proper.

JURY DEMAND

ViewSonic demands a trial by jury as to all claims, counterclaims, third-party claims and issues properly triable thereby..

Date: November 22, 2013

Respectfully submitted,

LOTT & FISCHER, PL

s/Ury Fischer

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*Attorneys for Defendant, Counter-Claimant and Third
Party Claimant ViewSonic Corporation*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 22, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Ury Fischer

Ury Fischer

SERVICE LIST

Zenith Electronics LLC, et al. v. Craig Electronics Inc., et al.
United States District Court, Southern District of Florida

Case No. 9:13-cv-80567-MIDDLEBROOKS/Brannon
(consolidated for pretrial)

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Attorneys for Plaintiffs and Counter-Defendants

Zenith Electronics LLC, Panasonic Corporation, U.S. Philips Corporation, and The Trustees of the Columbia University in the City of New York

AO 441 (Rev. 07/10) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ZENITH ELECTRONICS LLC, et al.

Plaintiff

v.

VIEWSONIC CORPORATION

Defendant, Third-party plaintiff

v.

MPEG LA, L.L.C

Third-party defendant

Civil Action No. 9:13-cv-80567-DMM (Lead)
9:13-cv-80570

SUMMONS ON A THIRD-PARTY COMPLAINT

To: (Third-party defendant's name and address) MPEG LA, L.L.C
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

A lawsuit has been filed against defendant ViewSonic Corporation, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff Zenith Electronics LLC, et al.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:
Ury Fischer, Esq., Lott & Fischer, PL, 355 Alhambra Circle, Suite 1100, Coral Gables, FL 33134

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:
Justin J. Daniels, Esq., PROSKAUER ROSE LLP, One International Place, Boston, MA 02110

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

AO 441 (Rev. 07/10) Summons on Third-Party Complaint (Page 2)

Civil Action No. 9:13-cv-80567-DMM (Lead)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____
_____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: