

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

<b>CORE WIRELESS LICENSING</b>	)	
<b>S.A.R.L.</b>	)	
	)	<b>CIVIL ACTION NO. 6:12-CV-100</b>
<b>Plaintiff,</b>	)	
	)	<b>JURY TRIAL DEMANDED</b>
<b>v.</b>	)	
	)	
<b>APPLE INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**CORE WIRELESS LICENSING S.A.R.L.'S ANSWER AND COUNTERCLAIMS**  
**TO APPLE INC.'S FIRST AMENDED COUNTERCLAIMS**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff-Counterdefendant, Core Wireless Licensing S.a.r.l. (“Core Wireless”) answers the First Amended Counterclaims of Defendant-Counterclaimant Apple Inc.’s (“Apple”), as follows:

**NATURE OF ACTION**

1. Core Wireless admits that Apple’s First Amended Counterclaims One through Twenty Eight arise from Core Wireless’ allegation of infringement of the asserted patents, but otherwise denies the remainder of the allegations of Paragraph 1 of the Counterclaims.

2. Admitted.

3. Core Wireless admits that it indirectly acquired the asserted patents from Nokia Corporation. Core Wireless admits that Nokia is a member of the European Telecommunications Standards Institute (“ETSI”), a standard-setting organization that promulgates cellular telecommunications standards. Core Wireless admits that Nokia declared the asserted patents as essential to UMTS and/or GSM through declarations submitted to ETSI. Core Wireless admits that it acquired its rights in the asserted patents subject to a commitment to respect certain Nokia commitments to ETSI. Core Wireless admits that it is willing to license the Core Wireless’ Standard Essential Patents, including the asserted patents, to Apple and ETSI members on FRAND terms. Core Wireless denies the remaining allegations of this paragraph.

4. Core Wireless admits that it first approached Apple to discuss a license to the asserted patents on February 29, 2012, the same day that it filed this infringement action against Apple. Core Wireless denies that it has refused to provide FRAND terms to Apple for the asserted patents. Core Wireless denies the remaining allegations of this paragraph.

5. Admitted.

## **PARTIES**

6. Admitted.

7. Admitted.

## **JURISDICTION AND VENUE**

8. Core Wireless admits that the Court has jurisdiction over Counterclaims One through Twenty Eight. Core denies that the Court has jurisdiction over Counterclaim Twenty Nine pursuant to the Federal Patent Act, 28 U.S.C. §§ 1338(a), 2201, 2202, 1331, or 1337.

9. Admitted.

10. Core Wireless admits that Apple brought counterclaims in this action. Core Wireless lacks knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph, and on that basis denies them.

## **FACTS**

### ***The FRAND Commitments of the Core Wireless Asserted Patents***

11. Core Wireless admits that ETSI has, on several occasions, promulgated Intellectual Property Right (“IPR”) Policies, and that these policies are generally set forth in Annex 6 of the various Rules of Procedure promulgated by ETSI. Core Wireless admits that the ETSI IPR policies contemplate certain behavior on the part of ETSI and its members (including Apple) regarding the declaration of essential patents and the licensing of those patents, as set out in the policies that have been promulgated. Core Wireless further admits that the quotation in this paragraph is an accurate quotation from Clause 6.1 of the November 3, 2011 ETSI IPR Policy. Core Wireless denies the remaining allegations of this paragraph.

12. Core Wireless admits that Clause 12 of the ETSI Intellectual Property Rights Policy of November 30, 2012, states, in part, that “The POLICY shall be governed by the laws of

France,” where the term POLICY is defined elsewhere in the document. Core Wireless denies the remaining allegations of this paragraph.

13. Core Wireless admits the first and third sentences of this paragraph. Core Wireless admits that, in appropriate circumstances, and pursuant to various intellectual property rights policies, members of ETSI may declare certain of their patents as “essential” to the UMTS standard. Core Wireless denies the remaining allegations of this paragraph.

14. Core Wireless admits that Nokia is an ETSI member and declared the asserted patents as essential to UMTS and/or GSM through declarations submitted to ETSI. Core Wireless admits that Nokia made certain related commitments to ETSI, and further admits that Core Wireless acquired its rights in the asserted patents subject to a commitment to respect certain Nokia commitments to ETSI. Core Wireless denies the remaining allegations of this paragraph.

15. Core Wireless admits that, on October 6, 2008, Nokia submitted an IPR information statement and licensing declaration to ETSI. Core Wireless admits that such statement includes the following language: “The SIGNATORY and/or its AFFILIATES hereby declare that they are prepared to grant irrevocable licenses under the IPRs on terms and conditions which are in accordance with Clause 6.1 of the ETSI IPR Policy, in respect of the STANDARD, to the extent that the IPRs remain ESSENTIAL. . . . The construction, validity and performance of this DECLARATION shall be governed by the laws of France.” Core Wireless further admits that this statement includes a U.S. patent application that would later issue as the ’045 patent, one of the asserted patents. Core Wireless admits that Nokia declared the other asserted patents as essential to UMTS and/or GSM through declarations submitted to ETSI. Core Wireless admits that it acquired its rights in the asserted patents subject to a commitment to

respect certain Nokia commitments to ETSI. Core Wireless admits that it is willing to license Core Wireless' Standard Essential Patents, including the '045 patent and the other asserted patents, to Apple and ETSI members on FRAND terms. Core Wireless denies the remaining allegations of this paragraph.

***Core Wireless's Acquisition of the Core Wireless Asserted Patents***

16. Admitted.

17. Core Wireless admits that it acquired its rights in the asserted patents subject to a commitment to respect certain Nokia commitments to ETSI. Core Wireless admits that it is willing to license the asserted patents on FRAND terms. Core Wireless denies the remaining allegations of this paragraph.

***Core Wireless's Assertion of the Core Wireless Asserted Patents Against Apple***

18. Core Wireless admits that it filed this action against Apple on February 29, 2012, and that it is currently asserting fourteen patents against Apple in this action. Core Wireless denies the remaining allegations of this paragraph.

19. Core Wireless admits that it did not make a license offer to Apple before filing the present lawsuit on February 29, 2012. Core Wireless further admits that Apple sent a letter to Core Wireless on October 30, 2012. The letter includes the following language:

“Please provide the following information:

1. Core Wireless's FRAND royalty rate for each patent that Core Wireless has asserted against Apple, with each patent's rate separately listed;
2. The methodology by which Core Wireless derived each rate;
3. Confirmation that these rates would be applied to the proper base, namely, the cost of the baseband processor chips (supplied to Apple by Qualcomm and

Intel) that appear to be the subject of Core Wireless's infringement allegations;

4. Confirmation that Core Wireless (or its predecessor-in-interest, Nokia) offered these same rates to other companies, or, if not the same, a specific description of the rates offered to other companies; and
5. Confirmation that other companies paid these same rates, or, if not the same, a specific description of the rates paid by other companies—and list of all companies that have licensed these patents.”<sup>1</sup>

Core Wireless denies the remainder of the allegations of Paragraph 19.

20. Core Wireless admits that Apple sent a letter to Core Wireless on January 30, 2013. The letter includes the following language: “we respectfully request a written response outlining Core Wireless's positions on the issues addressed in my earlier letter, by February 14, 2013.”<sup>2</sup> Core Wireless denies the remainder of the allegations of Paragraph 20.

21. Core Wireless admits that neither its written FRAND offer nor its repeated offers to negotiate FRAND terms included separate terms specific to each of the fourteen asserted patents. Otherwise, Core Wireless denies the remainder of the allegations in Paragraph 21.

22. Denied.

***Harm to Apple***

23. Denied.

24. Denied.

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<sup>1</sup> A true and accurate copy of Apple's October 30, 2012 letter is attached hereto as Exhibit 1.

**CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '277 Patent)**

25. Core Wireless incorporates by reference its responses to Paragraphs 1-24 of this Answer to Apple's Counterclaims as if fully set forth herein.

26. Denied.

27. Denied.

**SECOND CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '277 Patent)**

28. Core Wireless incorporates by reference its responses to Paragraphs 1-27 of this Answer to Apple's Counterclaims as if fully set forth herein.

29. Denied.

30. Denied.

**THIRD CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '347 Patent)**

31. Core Wireless incorporates by reference its responses to Paragraphs 1-30 of this Answer to Apple's Counterclaims as if fully set forth herein.

32. Denied.

33. Denied.

**FOURTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '347 Patent)**

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(...Continued)

<sup>2</sup> A true and accurate copy of Apple's January 30, 2013 letter is attached hereto as Exhibit 2.

34. Core Wireless incorporates by reference its responses to Paragraphs 1-33 of this Answer to Apple's Counterclaims as if fully set forth herein.

35. Denied.

36. Denied.

#### **FIFTH CAUSE OF ACTION**

##### **(Declaratory Judgment of Non-Infringement of the '181 Patent)**

37. Core Wireless incorporates by reference its responses to Paragraphs 1-36 of this Answer to Apple's Counterclaims as if fully set forth herein.

38. Denied.

39. Denied.

#### **SIXTH CAUSE OF ACTION**

##### **(Declaratory Judgment of Invalidity of the '181 Patent)**

40. Core Wireless incorporates by reference its responses to Paragraphs 1-39 of this Answer to Apple's Counterclaims as if fully set forth herein.

41. Denied.

42. Denied.

#### **SEVENTH CAUSE OF ACTION**

##### **(Declaratory Judgment of Non-Infringement of the '959 Patent)**

43. Core Wireless incorporates by reference its responses to Paragraphs 1-42 of this Answer to Apple's Counterclaims as if fully set forth herein.

44. Denied.

45. Denied.

**EIGHTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '959 Patent)**

46. Core Wireless incorporates by reference its responses to Paragraphs 1-45 of this Answer to Apple's Counterclaims as if fully set forth herein.

47. Denied.

48. Denied.

**NINTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '271 Patent)**

49. Core Wireless incorporates by reference its responses to Paragraphs 1-48 of this Answer to Apple's Counterclaims as if fully set forth herein.

50. Denied.

51. Denied.

**TENTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '271 Patent)**

52. Core Wireless incorporates by reference its responses to Paragraphs 1-51 of this Answer to Apple's Counterclaims as if fully set forth herein.

53. Denied.

54. Denied.

**ELEVENTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '321 Patent)**

55. Core Wireless incorporates by reference its responses to Paragraphs 1-54 of this Answer to Apple's Counterclaims as if fully set forth herein.

56. Denied.

57. Denied.

**TWELFTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '321 Patent)**

58. Core Wireless incorporates by reference its responses to Paragraphs 1-57 of this Answer to Apple's Counterclaims as if fully set forth herein.

59. Denied.

60. Denied.

**THIRTEENTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '143 Patent)**

61. Core Wireless incorporates by reference its responses to Paragraphs 1-60 of this Answer to Apple's Counterclaims as if fully set forth herein.

62. Denied.

63. Denied.

**FOURTEENTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '143 Patent)**

64. Core Wireless incorporates by reference its responses to Paragraphs 1-63 of this Answer to Apple's Counterclaims as if fully set forth herein.

65. Denied.

66. Denied.

**FIFTEENTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '850 Patent)**

67. Core Wireless incorporates by reference its responses to Paragraphs 1-66 of this Answer to Apple's Counterclaims as if fully set forth herein.

68. Denied.

69. Denied.

**SIXTEENTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '850 Patent)**

70. Core Wireless incorporates by reference its responses to Paragraphs 1-69 of this Answer to Apple's Counterclaims as if fully set forth herein.

71. Denied.

72. Denied.

**SEVENTEENTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '679 Patent)**

73. Core Wireless incorporates by reference its responses to Paragraphs 1-72 of this Answer to Apple's Counterclaims as if fully set forth herein.

74. Denied.

75. Denied.

**EIGHTEENTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '679 Patent)**

76. Core Wireless incorporates by reference its responses to Paragraphs 1-75 of this Answer to Apple's Counterclaims as if fully set forth herein.

77. Denied.

78. Denied.

**NINETEENTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '045 Patent)**

79. Core Wireless incorporates by reference its responses to Paragraphs 1-78 of this Answer to Apple's Counterclaims as if fully set forth herein.

80. Denied.

81. Denied.

#### **TWENTIETH CAUSE OF ACTION**

##### **(Declaratory Judgment of Invalidity of the '045 Patent)**

82. Core Wireless incorporates by reference its responses to Paragraphs 1-81 of this Answer to Apple's Counterclaims as if fully set forth herein.

83. Denied.

84. Denied.

#### **TWENTY FIRST CAUSE OF ACTION**

##### **(Declaratory Judgment of Non-Infringement of the '860 Patent)**

85. Core Wireless incorporates by reference its responses to Paragraphs 1-84 of this Answer to Apple's Counterclaims as if fully set forth herein.

86. Denied.

87. Denied.

#### **TWENTY SECOND CAUSE OF ACTION**

##### **(Declaratory Judgment of Invalidity of the '860 Patent)**

88. Core Wireless incorporates by reference its responses to Paragraphs 1-87 of this Answer to Apple's Counterclaims as if fully set forth herein.

89. Denied.

90. Denied.

#### **TWENTY THIRD CAUSE OF ACTION**

##### **(Declaratory Judgment of Non-Infringement of the '022 Patent)**

91. Core Wireless incorporates by reference its responses to Paragraphs 1-90 of this Answer to Apple's Counterclaims as if fully set forth herein.

92. Denied.

93. Denied.

**TWENTY FOURTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '022 Patent)**

94. Core Wireless incorporates by reference its responses to Paragraphs 1-93 of this Answer to Apple's Counterclaims as if fully set forth herein.

95. Denied.

96. Denied.

**TWENTY FIFTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '664 Patent)**

97. Core Wireless incorporates by reference its responses to Paragraphs 1-96 of this Answer to Apple's Counterclaims as if fully set forth herein.

98. Denied.

99. Denied.

**TWENTY SIXTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '664 Patent)**

100. Core Wireless incorporates by reference its responses to Paragraphs 1-99 of this Answer to Apple's Counterclaims as if fully set forth herein.

101. Denied.

102. Denied.

**TWENTY SEVENTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement of the '689 Patent)**

103. Core Wireless incorporates by reference its responses to Paragraphs 1-102 of this Answer to Apple's Counterclaims as if fully set forth herein.

104. Denied.

105. Denied.

**TWENTY EIGHTH CAUSE OF ACTION**

**(Declaratory Judgment of Invalidity of the '689 Patent)**

106. Core Wireless incorporates by reference its responses to Paragraphs 1-105 of this Answer to Apple's Counterclaims as if fully set forth herein.

107. Denied.

108. Denied.

**TWENTY NINTH CAUSE OF ACTION**

**(Breach of Contract)**

109. Core Wireless incorporates by reference its responses to Paragraphs 1-108 of this Answer to Apple's Counterclaims as if fully set forth herein.

110. Core Wireless admits that Nokia is an ETSI member and declared the asserted patents as essential to UMTS and/or GSM through declarations submitted to ETSI. Core Wireless admits that it acquired its rights in the asserted patents subject to a commitment to respect certain Nokia commitments to ETSI. Core Wireless admits that it is willing to license Core Wireless' Standard Essential Patents, including the asserted patents, to Apple and ETSI members on FRAND terms. Core Wireless denies the remaining allegations of this paragraph.

111. Core Wireless admits that Core Wireless acquired the asserted patents subject to a commitment to respect certain Nokia commitments to ETSI. Core Wireless admits that it is willing to license Core Wireless' Standard Essential Patents, including the asserted patents, to Apple and ETSI members on FRAND terms. Core Wireless denies the remaining allegations of this paragraph.

112. Denied.

113. Denied.

114. Denied.

### **CORE WIRELESS' AFFIRMATIVE DEFENSES TO APPLE'S COUNTERCLAIMS**

Core Wireless asserts the following defenses to Apple's counterclaims. In addition to the defenses asserted herein, Core Wireless reserves the right to assert additional defenses as they become known during the course of discovery.

#### **First Defense (Waiver, Release, and/or Estoppel)**

Apple's counterclaims are barred, in whole or in part, by the doctrines of waiver, release, and/or estoppel.

#### **Second Defense (Unclean Hands)**

Apple's counterclaims are barred, in whole or in part, by the doctrine of unclean hands.

#### **Third Defense (Performance)**

Apple's counterclaims are barred, in whole or in part, by Core Wireless' performance of its alleged duty of tendering a FRAND license offer, and by Apple's rejection of said performance.

**Fourth Defense (Failure to Mitigate)**

Apple's counterclaims are barred, in whole or in part, by Apple's failure to mitigate the alleged damages, including by its refusal to negotiate and accept FRAND terms.

**Fifth Defense (Apple's Breach)**

Apple's counterclaims are barred, in whole or in part, by Apple's breach, anticipatory breach, and/or repudiation of the asserted contract.

**COUNTERCLAIMS OF CORE WIRELESS**

Plaintiff Core Wireless, for its counterclaims against Apple, alleges:

**THE PARTIES**

1. Plaintiff, Core Wireless, is a corporation duly organized and existing under the laws of the Grand Duchy of Luxembourg, having a principal place of business at 16, Avenue Pasteur L-2310 Luxembourg. Core Wireless has a regular and established place of business and does business relating to the patents-in-suit in connection with its wholly-owned subsidiary, Core Wireless Licensing Ltd. ("Core Wireless USA"), a corporation duly organized and existing under the laws of the State of Texas, having a principal place of business at 5700 Granite Parkway, Suite 960, Plano, TX 75024, which is within the Eastern District of Texas. All pertinent documents and discovery relevant to this matter either reside at Core Wireless USA's local address or will be produced at such address.

2. Defendant, Apple, is a corporation duly organized and existing under the laws of the State of California, having a principal place of business at 1 Infinite Loop, Cupertino, CA 95014. Apple's registered agent, registered with the Texas State Secretary of State's Office, is CT Corp. Systems at 350 N. St. Paul Street, Suite 2900, Dallas, TX 75201.

### **JURISDICTION**

3. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizen of a State and citizen or subject of a foreign state. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332, 1367, 2201, and/or 2202.

4. This Court has personal jurisdiction over Apple because Apple has established minimum contacts with the Eastern District of Texas. Apple manufactures (directly or indirectly through third party manufacturers) and/or assembles products that are and have been used, offered for sale, sold, and purchased in the Eastern District of Texas. Apple, directly and/or through its distribution network, places wireless communication devices within the stream of commerce, which stream is directed at this district, with the knowledge and/or understanding that such products will be sold in the State of Texas. Jurisdiction over Apple in this matter is also proper inasmuch as Apple has voluntarily submitted itself to the jurisdiction of the courts commencing litigations within the State of Texas and by registering with the Texas Secretary of State, a registered agent. Therefore, the exercise of jurisdiction over Apple is appropriate under the applicable jurisdictional statutes and would not offend traditional notions of fair play and substantial justice.

### **VENUE**

5. Venue is proper in this judicial district because Core Wireless' counterclaims arise out of the same transaction or occurrence as the original action for patent infringement, for which venue is proper under 28 U.S.C. §§1391(b), (c), (d) and 1400(b).

## FIRST COUNT

### **(Breach of Contract—Apple Breached Its License Agreement with Core Wireless)**

6. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-5 of this Counterclaim as though fully set forth herein.

7. The patents asserted in the First through Fourteenth claims for relief are among the approximately 1,300 Standard Essential Patents owned by Core Wireless. Core Wireless became the owner of these Standard Essential Patents on or around September 1, 2011. On September 1, 2011, Core Wireless obtained all right, title and interest in, to and under the asserted patents, including, but not limited to, any and all legal rights entitled by the original owner of the asserted patents. On the same day, Core Wireless also obtained all right, title and interest in, to and under all causes of action and enforcement rights, whether known, unknown, currently pending, filed, or otherwise, for the asserted patents.

8. These patents are declared essential to various telecommunication standards developed by ETSI, a non-profit Standard Setting Organization (SSO) headquartered in France, such as the GSM/GPRS standard and the UMTS standard.

9. GSM technology is a second generation (2G) mobile wireless technology. Development of GSM began in Europe with the formation of the Groupe Special Mobile within the European Conference of Postal and Telecommunications Administrations (“CEPT”). In 1989, development of GSM was transferred to the auspices of ETSI, where standardization of GSM was completed.

10. Subsequent generations of the GSM standard have featured technical enhancements that permit greater data rates and increased voice capacity. Many GSM carriers have adopted a technology known as GSM Packet Radio Service (“GPRS”), a 2.5G technology.

In addition, a technology known as Enhanced Data Rates for GSM Evolution (“EDGE”) is employed by most carriers as an add-on to the GPRS standard to achieve higher data rates.

11. The third generation of the GSM family is the UMTS standard, which employs wide-band CDMA (“WCDMA”) technology. The UMTS standard was designed to efficiently support significantly increased speeds and capacity over limited spectrum bandwidth, thereby enabling new and enhanced services and applications such as mobile e-commerce, broadcast television, position location, and mobile multimedia web browsing, including music and video downloads.

12. UMTS has been standardized by an organization called 3<sup>rd</sup> Generation Partnership Project (3GPP) and is the most widely adopted 3G telecommunication standard worldwide. 3GPP is a collaboration of six Standard Setting Organizations (SSOs) from around the world, one of which is ETSI.

13. The asserted patents were originally invented and filed by Nokia, which is and has been a member of ETSI.

14. Apple takes the position that it is a party to license agreement(s), express or implied, to those patents that have been declared essential to an ETSI standard. *See* Apple’s First Amended Counterclaims ¶ 110, *Dkt.* 107 (“Nokia entered into contractual commitments with . . . ETSI’s members (including Apple) . . . These commitments imposed ongoing, continuing contractual obligations on the Core Wireless Asserted Patents.”).

15. Additionally, according to Apple’s letter to another owner of declared essential patents, an agreement is formed by virtue of “the [ETSI] IPR policies at issue [that] require participants claiming to own essential IPR to commit to license those IPR on FRAND terms to any implementer of the standard” and Apple’s acceptance of the license “when Apple began to

implement the [ETSI] standard.” According to Apple, such license agreements are subject only to agreement on the terms of a FRAND royalty as compensation for Apple’s licensed use.<sup>3</sup>

16. Apple similarly has stated in other litigation that it considers itself to be licensed to patents that have been declared standard essential because of the commitment to license such patents on fair, reasonable, and non-discriminatory (FRAND) terms. Specifically, in *Apple Inc. v. Samsung Electronics Co., Ltd.*, No. 11-1846 (N.D. Cal. Nov. 8, 2011) (“*Apple v. Samsung* case”), Apple stated that “Apple is licensed to Samsung’s declared-essential patents,”<sup>4</sup> because “the [ETSI] IPR policies at issue here require participants claiming to own essential IPR to commit to license those IPR on FRAND terms to any implementer of the standard.”<sup>5</sup>

17. The Core Wireless asserted patents have likewise been declared essential to the UMTS standard and Core Wireless’ assertion of those patents is subject to the ETSI IPR

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<sup>3</sup> Letter from Boris Teksler of Apple Inc. to Seongwoo Kim of Samsung Electronics Corp. (Apr. 30, 2012), stating:

*Apple is presently licensed to Samsung’s declared-essential patents by virtue of Samsung’s FRAND commitments to ETSI and Apple’s acceptance of Samsung’s offer of a FRAND licenses [sic] when Apple began to implement the UTMS standard. Accordingly, the only remaining issue for Apple and Samsung to negotiate is the FRAND rate for Apple’s present license.*

Samsung’s MOTION for Judgment as a Matter of Law, New Trial and/or Remittitur Pursuant to Federal Rules of Civil Procedure and 50 and 59, Exhibit 18 in *Apple Inc. v. Samsung Electronics Co., Ltd.*, No. 11-1846 (N.D. Cal. Oct. 02, 2012) at 2, attached hereto as Exhibit 3.

<sup>4</sup> Apple Inc.’s Memorandum of Point and authorities in Opposition to Samsung’s Motion Counterclaims in *Apple Inc. v. Samsung Electronics Co., Ltd.*, No. 11-1846 (N.D. Cal. Dec. 20, 2011) at 17:11-17, attached hereto as Exhibit 4.

<sup>5</sup> Counterclaim Defendant Apple Inc.’s Amended Answer, Defenses, and Counterclaims in Reply to Samsung’s Counterclaims in *Apple Inc. v. Samsung Electronics Co., Ltd.*, No. 11-1846 (N.D. Cal. Nov. 8, 2011) at 35:16-18 (“Apple’s Answer in *Apple v. Samsung* case”), attached hereto as Exhibit 5. The theory of existing license between Apple and a Standard Essential Patent owner was proposed by Apple in *Apple v. Samsung* case. This theory was not accepted by the court in that case, however. See Order Granting in Part and Denying in Part Motion to Dismiss Amended Counterclaims, *Apple Inc. v. Samsung Electronics Co., Ltd.*, No. 11-1846

(Continued...)

licensing obligations. Thus, by Apple's own acknowledgment, by electing to practice the UMTS standard, Apple considers itself licensed to the asserted patents owned by Core Wireless.

18. By its actions, Apple entered into an agreement with Standard Essential Patent owners to negotiate a FRAND royalty in good faith. Those actions include Apple's implementing the GSM/GPRS and/or the UMTS standards in its products and becoming a member of the relevant standards organizations, including ETSI.

19. Apple breached its license with Core Wireless to Core Wireless' Standard Essential Patents, and its agreement with the Standard Essential Patent owner, Core Wireless, to negotiate a FRAND royalty in good faith, by (1) Apple's refusal to negotiate a FRAND royalty with Core Wireless, (2) Apple's refusal to timely respond to Core Wireless' FRAND royalty offer, and consequently (3) Apple's refusal to pay a FRAND royalty for Core Wireless' Standard Essential Patents.

20. On the other hand, Core Wireless has performed its contractual obligations both to ETSI and to Apple as an implementer of the standards incorporating the Core Wireless Standard Essential Patents. Core Wireless has negotiated in good faith and has offered a FRAND royalty rate to Apple.

21. On February 29, 2012, the day this present lawsuit was filed, Core Wireless, through its outside counsel, sent an email to Apple to indicate its interest in an early resolution of

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(...Continued)

(N.D. Cal. May 14, 2012) at 19-21, attached hereto as Exhibit 6. Core Wireless pleads this theory here assuming Apple will take the same position as it did in the *Apple v. Samsung* case.

the underlying dispute without the need for extensive litigation.<sup>6</sup> This offer was ignored by Apple.

22. Core Wireless' outside counsel next reached out a few weeks later, in mid-March, to Apple's local counsel, again indicating Core Wireless' interest in meeting with Apple, and the response back from Apple was that a discussion would be premature.<sup>7</sup>

23. On May 10, 2012 and July 24, 2012, Core Wireless sent two letters to Apple, proposing that the parties negotiate a license on FRAND terms.<sup>8</sup> These offers were also ignored by Apple.

24. On October 30, 2012, Apple sent a letter demanding that Core Wireless provide a FRAND royalty rate to Apple.<sup>9</sup> In this letter, after refusing Core Wireless' offers for over eight months, Apple set a two-week deadline in which it required Core Wireless to respond to Apple's demand by November 14, 2012. Furthermore, Apple expressly stated, "Please note that this letter is not pursuant to Rule 408 of the Federal Rules of Evidence, and we likewise request that Core Wireless respond with a non-Rule 408 letter."

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<sup>6</sup> A true and correct copy of the February 29, 2012 email from Henry Bunsow, counsel for Core Wireless, to Noreen Krall, Senior Director of IP Law and Litigation at Apple is attached hereto as Exhibit 7.

<sup>7</sup> A true and correct copy of the May 10, 2012 letter from Phil Shaer, Manager at Core Wireless, to Noreen Krall, Senior Director of IP Law and Litigation at Apple is attached hereto as Exhibit 8.

<sup>8</sup> A true and correct copies of the May 10, 2012 and July 24, 2012 letters from Phil Shaer, Manager at Core Wireless, to Noreen Krall, Senior Director of IP Law and Litigation at Apple are attached hereto as Exhibits 8 and 9.

<sup>9</sup> A true and correct copy of the October 30, 2012 letter from Boris Teksler, Director of Licensing at Apple, to Phil Shaer, Manager at Core Wireless is attached hereto as Exhibit 1.

25. In sending the October 30, 2012 letter Apple had no intention of negotiating a FRAND license with Core Wireless, but rather was strictly looking for information to strengthen its positions in FRAND-related litigations.

26. On November 6, 2012, following Core Wireless' receipt of Apple's October 30, 2012 letter, Apple's lead counsel in this case indicated to Core Wireless' outside counsel that Apple "did not feel a meeting with Core was ripe yet."

27. Nevertheless, Core Wireless timely responded to Apple on November 14, 2012 and asked Apple again to meet for the purpose of providing a FRAND offer and negotiating a mutually acceptable FRAND license.

28. Yet again, Apple refused to agree to such an offer and meeting by failing to respond Core Wireless's November 14, 2012 letter.

29. In a January 30, 2013 letter, Apple set another two-week deadline in which it required Core Wireless to provide a FRAND royalty rate to Apple by February 14, 2013, without responding, or referring, to Core Wireless's November 14, 2012 letter.<sup>10</sup>

30. Faced with Apple's intentional refusal to meet or negotiate, Core Wireless made a specific FRAND royalty rate offer to Apple in writing on February 22, 2013, and asked Apple to respond by March 15, 2013. As part of that offer, Core Wireless offered, in the alternative, to negotiate FRAND rates for the asserted patents. Apple has not responded to Core Wireless' FRAND license offer.

31. Apple has gained profits by virtue of its breaches of the license agreement with Core Wireless to pay a FRAND royalty for its use of the Standard Essential Patents and its

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<sup>10</sup> A true and correct copy of the January 30, 2013 letter from Boris Teksler, Director of Licensing at Apple, to Phil Shaer, Manager at Core Wireless is attached hereto as Exhibit 2.

agreement with the Standard Essential Patent owner, Core Wireless, to negotiate a FRAND royalty in good faith.

32. As a direct, proximate, and foreseeable result of Apple's refusal to negotiate a FRAND royalty with Core Wireless and refusal to timely respond to Core Wireless FRAND royalty offer, Core Wireless has suffered harm as a Standard Essential Patents owner. This harm includes, among other things: being denied of the adequate and fair reward, *i.e.*, a FRAND royalty for the use of its Standard Essential Patents, and being forced to resolve this matter through unnecessary litigation in which Core Wireless has to pay unnecessary litigation expense and attorneys' fees.

33. Core Wireless has been and will continue to be damaged by Apple's conduct.

## **SECOND COUNT**

### **(Breach of Contract—Apple Breached Its Agreement with ETSI)**

34. Core Wireless incorporates by reference the allegations set forth in Paragraphs 1-33 of this Counterclaim as though fully set forth herein.

35. As Apple has admitted in its First Amended Counterclaim, Apple is a member of ETSI. *See* Apple's First Amended Counterclaim ¶ 3, *Dkt.* 107 ("ETSI and its members—including Apple"). Apple also admitted in the *Samsung v. Apple* case, "Apple entities are and have been members of ETSI."<sup>11</sup> "For standards developed under the 3GPP umbrella, participants, such as [Apple], were required to follow the IPR Policy of the organizations in

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<sup>11</sup> Counterclaim Defendant Apple Inc.'s Amended Answer, Defenses, and Counterclaims in Reply to Samsung's Counterclaims, Exhibit 5 at 30:3.

which it held membership.<sup>12</sup> As a member of ETSI, therefore, [Apple] was bound to follow the ETSI IPR Policy in connection with all of its relevant activities.”<sup>13</sup> Further, as Apple has also admitted, “ETSI members participating in 3GPP are required to comply with the ETSI IPR policy.”<sup>14</sup>

36. The ETSI IPR Policy is set forth in Annex 6 of its Rules of Procedure. Clause 3.2 of the policy states (emphasis added):

IPR holders whether members of ETSI and their AFFILIATES or third parties, should be adequately and fairly rewarded for the use of their IPRs in the implementation of STANDARDS and TECHNICAL SPECIFICATIONS.<sup>15</sup>

37. By its membership in ETSI and its implementation of the ETSI standards, Apple is required to comply with this ETSI IPR Policy, including the requirement to adequately and fairly reward the Standard Essential Patent owner for the use of its patents in the implementation of GSM/GPRS and/or UMTS standards.

38. Core Wireless acquired the asserted Standard Essential Patents from an ETSI member, Nokia, on or around September 1, 2011, and therefore, became one of the “third parties” addressed in Clause 3.2 of the ETSI IPR Policy and an intended third party beneficiary of Apple’s acceptance of this ETSI IPR Policy.

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<sup>12</sup> Third Generation Partnership Project (3GPP) Partnership Project Description (During the meeting held in Copenhagen, 2 – 4 December 1998), at 46, attached hereto as Exhibit 10.

<sup>13</sup> Counterclaim Defendant Apple Inc.’s Amended Answer, Defenses, and Counterclaims in Reply to Samsung’s Counterclaims, Exhibit 5 at 39-40.

<sup>14</sup> Apple Inc.’s Memorandum of Point and Authorities in Opposition to Samsung’s Motion Counterclaims, Exhibit 4 at 2:26-27

<sup>15</sup> ETSI IPR Policy Annex 6, at 1, attached hereto as Exhibit 11.

39. Apple breached its duty to ETSI by its (1) refusal to negotiate a FRAND royalty with Core Wireless, (2) refusal to timely respond to Core Wireless FRAND royalty offer, and (3) refusal to pay a FRAND royalty for Core Wireless' Standard Essential Patents.

40. Apple has gained profits by virtue of its breach of contractual duty.

41. As a direct, proximate, and foreseeable result of Apple's refusal to negotiate a FRAND royalty with Core Wireless, refusal to timely respond to Core Wireless FRAND royalty offer, and refusal to pay a FRAND royalty for Core Wireless' Standard Essential Patents, Core Wireless has suffered harm as a Standard Essential Patent owner. This harm includes, among other things: being denied of the adequate and fair reward, *i.e.*, a FRAND royalty for the use of its Standard Essential Patents, and being forced to resolve this matter through unnecessary litigation in which Core Wireless has to pay unnecessary litigation expenses and attorneys' fees.

42. Core Wireless has been and will continue to be damaged by Apple's conduct.

### **THIRD COUNT**

#### **(Unjust Enrichment)**

43. Core Wireless incorporates by reference the allegations set forth in Paragraphs 1-42 of this Counterclaim as though fully set forth herein.

44. As the owner of the Standard Essential Patents, Core Wireless, through the previous owner, Nokia, has provided valuable benefit to the GSM and/or UMTS standards, and the parties implementing these standards, such as Apple, for example, by contributing technical proposals and aspects of the standards that are covered by the asserted patents.

45. Apple has produced products that operate in accordance with the technical specifications set forth in the GSM and/or UMTS standards.

46. By implementing the relevant GSM and/or UMTS standards, Apple has thus has benefited from the patented contributions.

47. Apple has refused to negotiate a FRAND royalty with Core Wireless, has refused to timely respond to Core Wireless FRAND royalty offer, and has not paid a FRAND royalty for the benefit of using this patented technology.

48. As a result of the conduct alleged herein, Apple has been unjustly enriched to Core Wireless' detriment.

### **PRAYER FOR RELIEF**

In response to Apple's Prayer for Relief, Core Wireless denies that Apple is entitled to any relief, and in particular to any of the relief requested in paragraphs (a)-(g) of Apple's Prayer for Relief, and further requests that the Court enter such preliminary and final orders and judgments as are necessary to provide Core Wireless with the following requested relief:

- A. A Judgment in favor of Core Wireless on Apple's Counterclaims that the asserted patents are valid and enforceable and that Apple infringes one or more of the Patents-in-Suit;
- B. An Order dismissing Apple's Counterclaims in their entirety and with prejudice;
- C. For an accounting of all damages sustained by Plaintiff as the result of Apple's acts of infringement;
- D. For enhanced damages pursuant to 35 U.S.C. § 284;
- E. For a mandatory future royalty payable on each and every product sold by Apple in the future that is found to infringe one or more of the patents-in-suit and on all future products which are not colorably different from products found to infringe;

- F. For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise permitted by law;
- G. For all costs of suit;
- H. On Core Wireless' First Counterclaim for relief, a judgment declaring that Apple has breached its license agreement with Core Wireless to Core Wireless' asserted Standard Essential Patents, that Apple has breached its agreement with Core Wireless to negotiate a FRAND royalty in good faith, and that Apple has breached its agreement with Core Wireless to pay a FRAND royalty to Core Wireless;
- I. On Core Wireless' Second Counterclaim for relief, a judgment declaring that Apple has breached its duty to ETSI that provides third parties' with adequate and fair rewards for the use of their IPRs;
- J. On Core Wireless' First and Second Counterclaims of relief, judgment declaring that Apple is not a willing licensee to Core Wireless' asserted Standard Essential Patents;
- K. On Core Wireless' First and Second Counterclaims of relief, a judgment ordering Apple to specifically perform its obligation to pay a FRAND royalty to Core Wireless according to the agreement between Apple and Core Wireless and/or according to Apple's duty to ETSI, including a determination of the FRAND royalty rate owed by Apple to Core Wireless;
- L. On Core Wireless' First and Second Counterclaims of relief, a judgment against Apple for the amount of damages Core Wireless proves at trial;

- M. On Core Wireless' Third Counterclaim for relief, a judgment for restitutionary relief against Apple including disgorgement of wrongfully obtained profits and any other appropriate relief, and
- N. For such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule CV-38, Plaintiff demands a trial by jury of this action.

Dated: July 2, 2013

Respectfully Submitted,

By: /s/ Henry C. Bunsow

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed.R.Civ.P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of this document via email, facsimile and/or U.S. First Class Mail.

By: /s/ Henry C. Bunsow  
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