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ATTORNEYS FOR PLAINTIFF MAX SOUND CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAX SOUND CORPORATION and
VEDANTI SYSTEMS LIMITED,

Plaintiffs,

v.

GOOGLE, INC., YOUTUBE, LLC, and
ON2 TECHNOLOGIES, INC.,

Defendants.

Case No. 5:14-cv-04412-EJD

Honorable Judge Edward J. Davila

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Max Sound Corporation (“Max Sound”) files this First Amended Complaint for patent infringement against Defendants Google, Inc. (“Google”), YouTube, LLC (“YouTube”), On2 Technologies, Inc. (“On2”) (collectively the “Google Defendants”), and Vedanti Systems Limited (“VSL”) and allege as follows:

1. This case arises out of the Google Defendants’ willful infringement of United States Patent No. 7,974,339 entitled “Optimized Data Transmission System and Method” (the ‘339 Patent”) and the Google Defendants’ incorporation of this patented technology into products made, used, sold, offered for sale, and/or imported, including, but not limited to, VP8, VP9, WebM, H.264, YouTube, Google AdSense, Google Play, Android, Google TV, Chromebook, Google Drive, Google Chromecast, Google Play-per-view, Google Glasses, Google+, Google’s Simplify, Google Maps and Google Earth. In short, the Google Defendants’ infringement pervades virtually every website and product offered by the Google Defendants and their subsidiaries.

2. Despite Google’s well-publicized Code of Conduct — “Don’t be Evil” — which it explains is “about doing the right thing,” “following the law,” and “acting honorably,” Google, in fact, has an established pattern of conduct that is the exact opposite of its claimed piety.

3. Indeed, time and time again, Google has willfully infringed the patents and used the proprietary information of others without offering to compensate the owners of those patents and/or proprietary information. This case is yet another example of the many occasions in which Google has unlawfully misappropriated, rather than developed for itself and/or paid for, valuable and proprietary technology that is core to the functioning of its many businesses and products.

PARTIES

4. Plaintiff Max Sound is a Delaware corporation having its principal place of business at 2902A Colorado Avenue, Santa Monica, California 90404.

5. Defendant VSL is a British company having its principal place of business at 43 Overstone Road, London, United Kingdom W6 0AD. VSL may be served with process by

1 serving Constance Nash, the President and an officer of VSL. VSL is named as a Defendant in
2 this action as the owner of the '339 Patent.

3 6. Defendant Google is a corporation organized under the laws of the State of
4 Delaware, and has a principal place of business at 1600 Amphitheatre Parkway, Mountain View,
5 California 94043 and/or is conducting business through an affiliate located at this address.
6 Defendant Google has been served with process and has appeared in this action.

7 7. On information and belief, Defendant YouTube is a limited liability company
8 organized under the laws of the State of Delaware, and headquartered in San Bruno, California.
9 YouTube is a wholly-owned subsidiary of Google. YouTube is in the business of the sharing and
10 display of user-generated and corporate media video. Available content on YouTube includes
11 video clips, TV clips, music videos, and other content such as video blogging, short original
12 videos, and educational videos. Defendant YouTube has been served with process and has
13 appeared in this action.

14 8. On information and belief, Defendant On2 is a corporation organized under the
15 laws of the State of Delaware, and has a principal place of business in Clifton Park, New York.
16 On2 is a wholly-owned subsidiary of Google. On2, formerly known as The Duck Corporation,
17 engaged in the business of developing video compression technologies known as codecs. In
18 February 2010, Google acquired On2 for an estimated \$124.6 million. On2 claims the authorship
19 of a number of video codecs, including video codecs known as VP8 and VP9. On2 has been
20 served with process and has appeared in this action.

21 **JURISDICTION AND VENUE**

22 9. This civil action for patent infringement arises under the Patent Laws of the United
23 States, 35 U.S.C. §§ 1, *et seq.* This Court has jurisdiction over the claims presented herein
24 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

25 10. The Google Defendants have been served with process and appeared in this action.

26 11. VSL entered into a contract with Max Sound in the State of California pursuant to
27 which VSL granted Max Sound certain rights with respect to the '339 Patent (the "VSL
28

Agreement”) and has engaged in other business in California directly related to the `339 Patent. This Court, therefore, has specific personal jurisdiction over VSL.

12. The Google Defendants make, import, use, sell, and/or offer for sale the accused instrumentalities identified in this amended complaint within the United States, including this District, that infringe one or more claims of the `339 Patent.

13. The `339 Patent was duly and legally issued by the United States Patent and Trademark Office on July 5, 2011. A true and correct copy of the `339 Patent is attached hereto as Exhibit 1.

14. VSL is the owner by assignment of all rights, title, and interests in the `339 Patent and is entitled to sue for past and future infringement thereof.

15. The VSL Agreement entered into between Max Sound and VSL provides that Max Sound shall have the exclusive right to enforce VSL’s patent rights on VSL’s behalf. In particular, the VSL Agreement confers upon Max Sound an indefeasible right to exclude the Google Defendants from practicing the patent and expressly provides that VSL has granted Max Sound the exclusive right to sue the Google Defendants for infringement of the `339 Patent and to settle any claim for infringement of the `339 Patent. VSL, pursuant to the VSL Agreement, also granted to Max Sound a worldwide license to VSL’s Optimized Data Transmission System and Method technology, including the technology claimed in the `339 Patent, for all fields of use. Thus, Max Sound has standing to assert the claims for infringement of the `339 Patent against the Google Defendants as set forth below.

16. VSL is listed as a named defendant in the event the Court deems VSL to be a necessary party to this action.

17. A “codec” is a device or computer program capable of encoding or decoding a digital data stream or signal.

18. The Google Defendants are engaged in the business of making, using, selling and/or offering for sale a variety of video computer programs, including those commonly referred to as the VP8, VP9, H.264, and WebM video codecs (collectively the “Accused Codec Instrumentalities”).

19. The Google Defendants embed these Accused Codec Instrumentalities into products that the Google Defendants make, use, and sell, including in this District, such as the Android operating system used in many mobile phones and tablet computers (collectively “the Accused Android Instrumentalities”).

20. The Google Defendants use these Accused Codec Instrumentalities to deliver video content from the Google Defendants’ websites and products such as VP8, VP9, WebM, YouTube.com, Google Adsense, Google Play, Google TV, Chromebook, Google Drive, Google Chromecast, Google Play-per-view, Google Glasses, Google+, Google’s Simplify, Google Maps and Google Earth (collectively the “Accused Website and Product Instrumentalities”).

21. The Google Defendants distribute software such as the Chrome web browser that implements the Accused Codec Instrumentalities (collectively the “Accused Software Instrumentalities”).

22. Collectively, the Accused Codec Instrumentalities, the Accused Android Instrumentalities, the Accused Website and Product Instrumentalities, and the Accused Software Instrumentalities comprise the “Accused Instrumentalities.”

23. On information and belief, the Google Defendants directly and/or indirectly import, manufacture, use, offer for sale, and/or sell the Accused Instrumentalities within the United States, including this District, that infringe one or more claims of the `339 Patent.

24. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b).

GENERAL ALLEGATIONS

VSL and the `339 Patent

25. In 2001, Constance Nash, one of the two named inventors of the `339 Patent, had the goal of offering to the public an Internet subscription service to deliver digitized video of musical concerts via the Internet.

26. After reviewing and testing numerous video compression and decompression technologies for use with such a subscription service, Ms. Nash concluded that none of the then-existing video compression technologies could provide the level of video quality necessary to launch the project.

1 37. MPEG LA, LLC (“MPEG LA”), a Colorado-based firm, licenses patent pools that
2 cover essential patents necessary for use in various video codec standards. MPEG LA is not
3 related to the Moving Pictures Experts Group.

4 38. MPEG LA was initially founded in the late 1990s by several international
5 companies that owned patents necessary to practice the MPEG-2 video standard in order to pool
6 those patents under a single entity for purposes of granting pooled licenses to those patents and to
7 generate patent royalties.

8 39. Since that time, MPEG LA has asserted that multiple video standards, including
9 H.264, require a license to its pooled patents, and hundreds of companies have obtained licenses
10 from MPEG LA for the rights to the H.264 patent pool.

11 40. For many years Google refused to obtain a license from MPEG LA to cover its
12 implementations of the H.264 standard, despite multiple notices from MPEG LA that Google
13 required a license.

14 41. Rather than obtaining a license from MPEG LA for Google’s implementations of
15 H.264, Google decided instead to seek alternatives to H.264 that would not require paying
16 royalties to MPEG LA.

17 42. VP8 is a video compression standard released by Defendant On2 in September
18 2008.

19 43. As of September 2008, MPEG LA had not established a patent pool that covered
20 the VP8 codec.

21 44. In August 2009, Google targeted VP8 as a potential alternative to H.264 and
22 initiated negotiations to acquire On2.

23 45. In February 2010, Google completed the acquisition of On2.

24 46. Through its acquisition of On2, Google obtained ownership of the VP8 codec and
25 On2’s patents and pending patent applications covering the VP8 codec, and possessed a potential
26 alternative to avoid paying licensing royalties to MPEG LA.

27 47. In May 2010, Google announced that its new WebM video file format would
28 incorporate the VP8 codec.

1 57. On December 16, 2010, Google's employees shipped back to VSL materials that
 2 VSL had provided to Google pursuant to the NDA. Ms. Majerus included a cover letter that
 3 provided an itemized list of documents and other things being returned to VSL pursuant to the
 4 NDA, with the only apparent missing components being the claim charts comparing the inventions
 5 claimed in the `339 Patent to the H.264 standard.

6 58. On information and belief, Google began to incorporate VSL's patented technology
 7 into WebM/VP8 soon after it initiated negotiations with VSL and received from VSL confidential
 8 information regarding VSL's portfolio of patent rights.

9 59. In addition, subsequent to the meeting between Google and VSL, Google and On2
 10 incorporated various claims of the `339 Patent into patent applications without disclosing to the
 11 United States Patent and Trademark Office the `339 Patent or its underlying application as prior
 12 art or Ms. Nash or Mr. Krichevsky as prior inventors. This incorporation of claims of the `339
 13 Patent by Google and On2 into their patent applications reflects the Defendants' understanding
 14 that that they were incorporating VSL's patented technology into WebM/VP8 but wanted to
 15 conceal such unauthorized use of VSL's technology and falsely claim that technology to their
 16 own.

17 60. Furthermore, upon information and belief, Google monitored the status of the
 18 application for the `339 Patent and became aware of the issuance of the `339 Patent shortly after
 19 its issuance.

20 **CLAIM FOR RELIEF**

21 **(Infringement of the `339 Patent)**

22 61. Paragraphs 1 through 60 are incorporated as though fully set forth herein.

23 62. Upon information and belief, the Google Defendants have been and now are
 24 directly infringing one or more claims of the `339 Patent by making, importing, using (including
 25 use for testing purposes), offering for sale, and/or selling the patented inventions, including but not
 26 limited to the various accused instrumentalities identified above (collectively the "Accused
 27 Instrumentalities").

1 63. In addition and/or in the alternative, the Google Defendants have been and/or now
2 are indirectly infringing one or more claims of the `339 Patent by inducing customers, consumers,
3 and end users to use the Accused Instrumentalities to directly infringe one or more claims of the
4 `339 Patent in violation of 35 U.S.C. § 271(b).

5 64. Upon information and belief, the Google Defendants became aware of the existence
6 of the `339 Patent prior to the initiation of litigation against them for infringement of the `339
7 Patent by Plaintiff.

8 65. In spite of such notice, the Google Defendants and their subsidiaries have intended,
9 and continue to intend, to induce patent infringement by its customers and users of the Accused
10 Instrumentalities, and have had knowledge that the inducing acts would cause infringement or,
11 alternatively, have been willfully blind to the possibility that its inducing acts would cause
12 infringement, including but not limited to infringement of claims 1, 2, 3, 6, 7, 9, 10 and 12 of the
13 `339 Patent.

14 66. The Accused Instrumentalities comprise the systems claimed in one or more claims
15 of the `339 Patent, and, when used as described in the Google Defendants' technical publications,
16 perform the method(s) described and claimed in the `339 Patent.

17 67. The Google Defendants have engaged in indirect infringement by providing their
18 customers and end users with the infringing Accused Instrumentalities or access to those Accused
19 Instrumentalities, and by providing instructions to enable those customers and end users to use the
20 Accused Instrumentalities so as to practice the method(s) claimed in one or more claims of the
21 `339 Patent.

22 68. By way of example, and not as a limitation, the Google Defendants induce such
23 infringement by at least making its Internet websites available to customers and end users and
24 providing links and/or other directions on its websites and/or the Internet to instruct and teach
25 users to use the Accused Instrumentalities in an infringing manner.

26 69. Upon information and belief, the Google Defendants, prior to the institution of
27 litigation against them for infringement of the `339 Patent by Plaintiff, have engaged in such
28 activities inducing direct infringement by their customers and end users with knowledge of the

1 `339 Patent and with the knowledge that such activities induced customers and end users to
2 directly infringe the `339 Patent, or with willful blindness to such infringement.

3 70. In addition, or, in the alternative, upon information and belief, the Google
4 Defendants, prior to the institution of litigation against them for infringement of the `339 Patent by
5 Plaintiff and with knowledge of the `339 Patent, have supplied the Accused Codec
6 Instrumentalities to customers and end users with the knowledge that such Accused Codec
7 Instrumentalities are especially made or adapted for use by their customers and end users in an
8 infringing use of one or more claims of the `339 Patent.

9 71. In particular, the Google Defendants have supplied various products, including but
10 not limited to, VP8, VP9, WebM, H.264, YouTube, Google AdSense, Android, Google Play,
11 Google TV, Chromebook, Google Drive, Google Chromecast, Google Play-per-view, Google
12 Glasses, Google+, Google's Simplify, Google Maps and Google Earth to their customers and end
13 user consumers with the intention that those products be used in an infringing manner.

14 72. Upon information and belief, the Google Defendants have engaged in such activity
15 with the knowledge that their customers and end users configure the Accused Codec
16 Instrumentalities to encode and/or decode digital video resulting in direct infringement of one or
17 more of the claimed method(s) of the `339 Patent by those customers and end users.

18 73. Upon information and belief, the Accused Codec Instrumentalities supplied by the
19 Google Defendants to their customers and end users are material to the functionality of the
20 products made by those customers and end users using the Accused Codec Instrumentalities that
21 infringe the `339 Patent, and there are no substantial non-infringing uses of the Accused Codec
22 Instrumentalities by these customers and end users.

23 74. The Google Defendants' infringement of the `339 Patent is and has been willful.
24 Upon information and belief, the Google Defendants have had knowledge of the `339 Patent prior
25 to the institution of litigation against them for infringement of the `339 Patent by Plaintiff.
26 Further, the Google Defendants have engaged in their acts of infringement despite an objectively
27 high likelihood that its actions constituted infringement of the `339 Patent, and this risk was
28 known or so obvious that it should have been known to the Google Defendants.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Max Sound hereby demands a trial by jury of all issues so triable.

Dated: January 23, 2015

WALKUP, MELODIA, KELLY & SCHOENBERGER

/s/ Khaldoun A. Baghdadi

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