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16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19

20 XPERTUNIVERSE, INC.,
a Delaware Corporation,

21 Plaintiff,

22 v.

23 CISCO SYSTEMS, INC.,
24 A California Corporation

25 Defendant.

Case No. 17-cv-3848

Hon. Richard Seeborg

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

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27
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Plaintiff, XpertUniverse, Inc. (“XpertUniverse”), makes the following allegations in support of its First Amended Complaint¹ against Defendant, Cisco Systems, Inc. (“Cisco”):

THE NATURE OF THE ACTION

1. This is an action for patent infringement, arising out of Cisco’s deliberate, willful, and ongoing infringement of XpertUniverse’s well-established patent rights. Cisco has embedded XpertUniverse’s patented technology in its most critical and successful commercial offerings.

2. Cisco first pursued a business relationship with XpertUniverse in 2004 in connection with XpertUniverse’s innovative expert location technology and live customer interaction and management solutions. Cisco initiated discussions with XpertUniverse to explore the possibility of forming a partnership in order to commercialize XpertUniverse’s patent technology.

3. Cisco and XpertUniverse memorialized their relationship in a mutual non-disclosure agreement that was entered into by the parties in August 2004.

4. With Cisco’s continued encouragement, XpertUniverse worked closely with Cisco for approximately two and a half years. As part of this relationship, XpertUniverse disclosed to Cisco all of its intellectual property, including its patent applications and patented technology, and directed all of its resources and efforts toward the proposed partnership with Cisco involving XpertUniverse’s technology.

5. Instead of partnering with XpertUniverse, Cisco abruptly ended the relationship with XpertUniverse in 2007. Shortly thereafter, XpertUniverse became aware that Cisco was introducing and commercializing competing expert location software products and technology.

6. In March 2009, XpertUniverse brought suit against Cisco in the United States District Court for the District of Delaware for patent infringement (as well as fraud and other causes of action), stemming from Cisco’s unauthorized use and infringement of two of XpertUniverse’s patents, which covered and protected technology at the heart of XpertUniverse’s

¹ XpertUniverse files this First Amended Complaint in accordance with the Court’s Case Management Scheduling Order and Clerk’s Notice pertaining thereto (ECF 52 & 53), in which the Court authorized XpertUniverse to amend its pleading regarding willful infringement on or before January 31, 2018.

1 business: *XpertUniverse, Inc. v. Cisco Systems, Inc.*, Case No. 1:09-cv-00157-RGA (the “First
2 Case”).

3 7. After more than four years of litigation, the jury reached a verdict in the First Case:
4 (1) upholding the validity of XpertUniverse’s patents; and (ii) finding that Cisco had infringed
5 both patents. The jury specifically found that one of Cisco’s expert location software products,
6 branded by Cisco as “Remote Expert,” practiced XpertUniverse’s patented technology and, as
7 such, infringed XpertUniverse’s U.S. Patent No. 7,499,903 (“the ’903 Patent”). The jury also
8 found that Cisco had failed to prove that either of the patents was invalid as anticipated or obvious
9 despite Cisco’s extensive arguments seeking to prove otherwise based on various prior art
10 references. Based on these findings, the jury awarded damages to XpertUniverse for Cisco’s
11 patent infringement.

12 8. Following the jury verdict, Cisco requested the court to set aside the jury’s findings
13 and to determine as a matter of law that Cisco had not infringed XpertUniverse’s patents, and that
14 both patents were invalid and unenforceable. The Delaware court denied Cisco’s request and
15 upheld the jury’s verdict of patent infringement. The District Court also rejected Cisco’s renewed
16 attempts to challenge the validity and enforceability of XpertUniverse’s patents.

17 9. In addition to patent infringement, the jury also found that Cisco had committed
18 fraud by concealment, and awarded XpertUniverse \$70 million in damages. In its post-trial
19 rulings, however, the court set aside the jury’s verdict and damage award based on the fraud claim.

20 10. XpertUniverse appealed the court’s post-trial rulings concerning the fraud claim to
21 the U.S. Court of Appeals for the Federal Circuit, which culminated in the issuance by the Federal
22 Circuit of its decision on January 21, 2015, upholding the Delaware court’s post-trial rulings.

23 11. Cisco did not appeal any aspects of the jury verdict or the court’s post-trial rulings
24 against it pertaining to Cisco’s infringement, or the validity and enforceability, of XpertUniverse’s
25 two patents.

26 12. The First Case constitutes a final judgment against Cisco with respect to Cisco’s
27 infringement of XpertUniverse’s patents and a final decision concerning the issues of patent
28 validity and enforceability, both of which were confirmed.

1 13. With disregard for the jury verdict and final judgment in the First Case, Cisco has
2 not only continued to infringe XpertUniverse's patents but also, on information and belief, its
3 infringement has grown dramatically and become widespread.

4 14. For example, on information and belief, since the First Case, Cisco has continued
5 to develop, sell, and distribute various products and technologies that use and infringe upon
6 XpertUniverse's patented inventions, including several subsequent versions of the Remote Expert
7 product that were found to infringe XpertUniverse's patents in the First Case, as well as other
8 products and components that incorporate, rely upon, or are designed to operate in conjunction
9 with Cisco's Remote Expert technology.

10 15. According to publicly available information regarding Cisco's subsequent versions
11 of Remote Expert released after the trial in the First Case, these products still include the same
12 infringing features and functionality that were included in the earlier versions of the product and
13 that were found to infringe XpertUniverse's '903 Patent.

14 16. On information and belief, Cisco has embedded these infringing products and
15 technologies as critical components of an extensive and interconnected suite of product offerings,
16 including Cisco's "Unified Communications" and "Contact Center" products, which Cisco
17 promotes as its groundbreaking solution for connecting consumers with the multi-trillion dollar
18 market referred to as the "Internet of Things" or the "Internet of Everything."

19 17. In summary, XpertUniverse's patents were determined by a jury verdict and final
20 judgment in the First Case to be infringed by Cisco's adoption of the patented inventions as part of
21 its Remote Expert family of software products and certain other Cisco technologies, solutions, and
22 offerings. The validity and enforceability of XpertUniverse's patents were upheld by the jury and
23 court despite extensive challenges raised by Cisco. On information and belief, Cisco has
24 continued a pattern of willful infringement and misconduct that is a direct and blatant violation of
25 XpertUniverse's valuable patent rights. On information and belief, Cisco has continued to
26 knowingly and willfully infringe XpertUniverse's patents on a wide scale by incorporating
27 XpertUniverse's patented inventions into the heart of Cisco's Remote Expert products, solutions,
28

1 and offerings, as well as various other related technologies, solutions and offerings, including
2 Cisco's Unified Communications product suite and Contact Center product suite.

3 18. XpertUniverse is filing this lawsuit to put an end to, and seek redress for, Cisco's
4 ongoing, widespread, and willful infringement of XpertUniverse's patented technology.

5 **THE PARTIES**

6 19. XpertUniverse is a Delaware corporation with a principal place of business located
7 at 366 Broadway, Suite 410, Jericho, New York 11753.

8 20. On information and belief, Cisco is a California corporation with a principal place
9 of business within this judicial district at 170 West Tasman Drive, San Jose, California.

10 21. Cisco offers for sale, sells, and distributes expert location and collaboration
11 systems, products, offerings, and solutions, including its Remote Expert family of software
12 products and solutions, which infringe XpertUniverse's '903 Patent.

13 **JURISDICTION AND VENUE**

14 22. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1,
15 *et seq.* Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
16 1338(a).

17 23. Cisco is subject to this Court's personal jurisdiction because it is incorporated in
18 the State of California and has a principal place of business within this District, and also because it
19 is doing and has done substantial business in this District, including business related to the
20 development, sale and/or distribution of infringing products and services, and is committing and
21 has committed acts of infringement in this District from which it has derived and continues to
22 derive substantial revenue.

23 24. Venue is proper in this District under 28 U.S.C. § 1400(b) because, among other
24 reasons, Cisco is subject to personal jurisdiction in this District, is incorporated in the State of
25 California and has a principal place of business in this District, has committed and continues to
26 commit acts of infringement in this District, and a substantial part of the events giving rise to the
27 claims occurred in this District.

BACKGROUND**XpertUniverse's Patented Technology**

25. XpertUniverse is a technology company, which, since its formation in 1999, has been dedicated to developing innovative computer software and systems related to expert location, real-time interaction, and business intelligence solutions. XpertUniverse has devoted considerable resources and time creating new and improved computerized expert location systems that are designed to, among other things, facilitate customer interactions and relationships, increase customer retention and satisfaction, streamline business transactions and services, and optimize resource management.

26. XpertUniverse has focused on developing improved computer-based systems and techniques that enable individuals (such as customers or employees) who need assistance or have questions about certain topics to connect and interact in real-time with the best available experts who have the appropriate knowledge and expertise.

27. XpertUniverse has employed many engineers and computer experts to address the shortcomings in the existing technology, namely: connecting live experts having the best skills and knowledge with consumers who need assistance via a system architecture that is flexible and easily scalable (e.g., to meet the needs of larger organizations and companies across a wide range of industries, including financial services, healthcare, manufacturing, retail, energy, government services, and education).

28. Expert location and connection mechanisms were and continue to be utilized by companies to provide different forms of contact centers and real-time customer or user assistance, including telephone-based call centers and Internet-based help services.

29. Although some contact centers existed prior to the time when XpertUniverse invented and developed its patented technology, XpertUniverse discovered that the then-existing computer-based expert location systems suffered from substantial drawbacks and limitations.

30. For example, the existing computer-based expert location systems were ineffective and inefficient because they merely connected users with the next (or any) available agent or expert, rather than locating and assigning the best available expert, who could immediately

1 provide the necessary guidance to a customer or individual seeking assistance, thereby
2 significantly improving the quality of service and reducing the time and cost associated with
3 assisting customers.

4 31. The existing computer-based expert location systems typically required all of the
5 necessary expert location data to be hard-coded and manually entered into the system. This
6 included manual entry of the categories and sub-categories of assistance and the available experts,
7 as well as manual construction of fixed, direct links between each expert and one or more
8 categories for which the expert has relevant skills or knowledge. As a result, these systems
9 required a manual, time-consuming construction and the resulting systems were fixed and fragile
10 (*i.e.*, difficult to modify or update, such as when the categories of assistance evolved or experts
11 needed to be added or removed from the system).

12 32. The existing computer-based expert location systems also relied upon fixed, hard-
13 coded rules for providing the routing and connection process between an individual seeking
14 assistance and an identified expert. Thus, these existing systems lacked the capability to take
15 advantage of new or alternate methodologies and algorithms for locating experts and/or new
16 communication technologies and modalities for establishing connections between individuals and
17 experts.

18 33. As another example, the existing computer-based expert location systems were
19 custom-made and manually constructed for a particular organization. As a result, these existing
20 systems were not flexible or scalable (*e.g.*, to support multiple organizations) and typically
21 required a time-consuming and labor-intensive complete rewrite of the system in response to
22 changes in the organization (*e.g.*, a merger).

23 34. Through substantial innovation and effort, XpertUniverse invented and developed
24 new and improved computer hardware and software based expert location technology platforms
25 and solutions that utilize novel algorithms, database structures, data representation architectures,
26 and multi-layered interfaces in order to locate the best available experts to connect with
27 individuals who are seeking assistance. XpertUniverse's much improved computer-based expert
28 location systems and methods provide significant benefits over the prior computer-based

1 technologies and address many problems with these prior computer-based systems, including the
2 drawbacks and limitations discussed above.

3 35. XpertUniverse has protected various aspects of its inventive solutions and cutting-
4 edge technologies with a range of intellectual property rights. In particular, as a result of its
5 significant innovations, XpertUniverse has been granted a number of patents by the U.S. Patent
6 and Trademark Office (“the Patent Office”), which protect various aspects of its expert location
7 technology.

8 36. Among the patents that XpertUniverse has been awarded is the ’903 Patent, entitled
9 “Semantic to Non-Semantic Routing For Locating a Live Expert.” The ’903 Patent was filed on
10 January 24, 2005 and issued on March 3, 2009.

11 37. XpertUniverse is the owner by assignment of the ’903 Patent, with ownership of all
12 substantial rights in the ’903 Patent, including the right to exclude others and to sue and recover
13 damages for the past and future infringement thereof. A true and correct copy of the ’903 Patent is
14 attached hereto as Exhibit A.

15 38. The Patent Office examined the ’903 Patent over a period of several years. After
16 this thorough examination, the Patent Office found that the inventions described and claimed in
17 the ’903 Patent are both new and not obvious in light of prior patents, publications, and other art,
18 and determined that the claimed systems and methods are inventive and patentable.

19 39. The claims of the ’903 Patent are generally directed to, *inter alia*, new and
20 improved computer-based expert location systems and methods that utilize a novel data
21 representation architecture and multi-layered interface to locate appropriate experts and connect
22 them with individuals who need assistance with a particular inquiry. For example, certain of these
23 systems generally include at least two networked, multimedia computing devices, a host server
24 configured to establish real-time interactive communication sessions between experts and
25 individuals seeking assistance, and databases that store a number of predetermined, semantically
26 expressed inquiry types that are organized from an underlying plurality of criteria groupings, and
27 may be presented to and selected by individuals who are seeking assistance, as well as various
28 associations between the experts, inquiry types, and criteria groupings. Based on a particular

1 inquiry type selected by an individual, certain of these systems use a unique numerical identifier to
2 locate an appropriate expert (or experts) from a skill-set database having the relevant skills or
3 expertise pertaining to the selected inquiry type and/or its underlying criteria. After an appropriate
4 expert has been identified, certain of these systems may then establish a real-time interactive
5 communication session between the individual and the expert via a network connection.

6 40. The improved computer-based expert location systems and methods described and
7 claimed in the '903 Patent provide significant advantages and benefits over the prior art
8 computerized expert matching systems. For example, the claimed systems utilize a novel, multi-
9 layered data structure that provides different interfaces for organizing the available topics or
10 categories of assistance (*e.g.*, inquiry types) and enables the system to be automatically
11 customized and individualized based on the particular user or type of user who is seeking
12 assistance. As another example, the novel data architecture used by the claimed invention
13 provides a much more flexible, configurable, and scalable computer-based expert location
14 platform that enables changes and updates (*e.g.*, new categories, inquiries, experts, etc.) to be
15 made with substantially less time and effort.

16 **The Prior Patent Infringement Verdict Against Cisco**

17 41. On information and belief, Cisco is a public company, with more than 49 billion
18 dollars of revenue in fiscal year 2016, and is in the business of developing and commercializing a
19 wide array of technology products and services, including networking solutions, communications
20 hardware, unified contact center, data center, and collaboration product suites, business
21 intelligence solutions, and consumer electronics.

22 42. In 2004, rather than pursuing independent product development in connection with
23 Cisco's anticipated expert location needs, Cisco sought out and established a relationship with
24 XpertUniverse for its innovative expert location solutions and intellectual property. The parties
25 memorialized their relationship by signing a mutual non-disclosure agreement in August 2004.
26 Under the guise of forming a partnership to further develop and commercialize XpertUniverse's
27 technology, and while (upon information and belief) considering the possibility of purloining the
28

1 technology for itself, Cisco maintained the relationship with XpertUniverse for approximately two
2 and a half years.

3 43. During this two and a half year period, XpertUniverse disclosed its proprietary
4 technologies, patented inventions, and intellectual property to Cisco and focused all of its efforts
5 and resources on furthering its cooperation with Cisco in an effort to collaborate with Cisco on the
6 development of a Cisco branded technology incorporating XpertUniverse's proprietary expert
7 location and customer interaction and management systems.

8 44. Instead of partnering with XpertUniverse, however, Cisco abruptly ended the
9 parties' relationship in 2007, and introduced and commercialized its own competing expert
10 location software products and offerings, which unlawfully incorporated XpertUniverse's patented
11 solutions and technology and infringed its intellectual property rights, including the '903 Patent.

12 45. In March 2009, XpertUniverse filed the First Case against Cisco, seeking redress
13 for, among other things, Cisco's infringement of the '903 Patent.

14 46. In connection with the First Case, one of Cisco software products, solutions, and
15 offerings that was found to infringe the claims of the '903 Patent was Cisco's Remote Expert
16 product suite.

17 47. In general, Cisco's Remote Expert software products provided a computer-based
18 expert location system that allowed users to either directly, or with the assistance of a "concierge,"
19 select categories of assistance or inquiry topics through a graphical user interface and then connect
20 and interact in real-time with experts who had the relevant skills to assist the user with the selected
21 inquiry.

22 48. As XpertUniverse proved in the First Case, Cisco's Remote Expert software
23 products included, among other things: (i) a database storing a number of "expert types," which
24 were descriptions of categories of assistance (*i.e.*, semantically-expressed inquiry types); (ii) an
25 expert database storing a list of experts (*i.e.*, a skill-set database) and related information,
26 including one or more expert skills associated with each expert (*i.e.*, criteria groupings); (iii) IVR
27 phone numbers for linking the available expert types and experts to the expert skills (*i.e.*, unique
28 numerical identifiers); and (iv) a "multi-lingual support" feature and/or "Locales" functionality

1 that enabled the expert types to be represented and stored in multiple different languages and/or
 2 dialects, thereby allowing the system to present different interfaces to different users (*i.e.*, multiple
 3 layers of inquiry types).

4 49. After more than four years of litigation, the First Case culminated in a jury trial and
 5 verdict on March 22, 2013. Notwithstanding Cisco's extensive arguments throughout the case and
 6 during the trial that its accused products did not infringe, the jury in the First Case found, among
 7 other things, that Cisco had infringed XpertUniverse's '903 Patent.

8 50. As shown in the following excerpt from the jury verdict in the First Case, the jury
 9 specifically found that Cisco's Remote Expert software product (and another Cisco product called
 10 Expert Advisor) infringed the '903 Patent.

11 2. Did XpertUniverse prove, by a preponderance of the evidence, that
 12 Cisco infringed claim 12 of U.S. Patent No. 7,499,903? (*Please answer Yes or No*
 13 *for each accused product*)

14 Expert Advisor: Answer "Yes" or "No": Yes

15 Remote Expert: Answer "Yes" or "No": Yes

16
 17 51. Following the jury verdict, Cisco filed a post-trial motion requesting that the court
 18 set aside the jury's infringement verdict. The Delaware court upheld the jury's verdict with
 19 respect to patent infringement, including the finding that Cisco's Remote Expert products
 20 infringed the '903 Patent.

21 52. The jury awarded XpertUniverse damages for Cisco's infringement of the '903
 22 Patent, which was upheld by the Delaware court's post-trial rulings.

23 53. The damages award was based on Cisco's representations that it had very limited
 24 sales and distribution of the infringing products (*e.g.*, a pilot program with only one customer for
 25 its Remote Expert product).

26 54. Throughout the litigation in the First Case, Cisco raised a number of alternate
 27 theories and arguments in an attempt to challenge the validity and enforceability of
 28 XpertUniverse's '903 Patent.

55. For example, in each of its answers to XpertUniverse's original and amended complaints, Cisco raised affirmative defenses and/or filed counterclaims asserting that the '903 Patent was invalid under 35 U.S.C. §§ 101-103 and 112 and/or unenforceable.

56. Similarly, in its preliminary invalidity contentions, Cisco challenged the validity of the '903 Patent claims as anticipated under § 102 and/or obvious under § 103 based on numerous asserted prior art references. Cisco also argued that one or more claims of the '903 Patent were indefinite under § 112 for lack of written description support.

57. Cisco subsequently moved the Delaware court for summary judgment on various issues, including that: (i) Cisco had not infringed the '903 Patent; (ii) the '903 Patent was invalid under §§ 102 and 103; and (iii) the '903 Patent was unenforceable due to alleged inequitable conduct during its prosecution at the Patent Office. On March 13, 2013, the Delaware court rejected Cisco's summary judgment motion, denying it with respect to all grounds related to the '903 Patent.

58. Following the jury trial in the First Case, during which Cisco once again argued that the '903 Patent was invalid under §§ 102 and 103, the jury upheld the validity of the '903 Patent.

59. As shown in the following excerpt from the jury verdict in the First Case, the jury specifically found that Cisco had failed to prove that the '903 Patent was invalid based on Cisco's extensive anticipation or obviousness arguments.

3. Did Cisco prove, by clear and convincing evidence, that claim 12 of U.S. Patent No. 7,499,903 is invalid due to anticipation?

Answer "Yes" or "No": No

4. Did Cisco prove, by clear and convincing evidence, that claim 12 of U.S. Patent No. 7,499,903 is invalid due to obviousness?

Answer "Yes" or "No": No

60. In its post-trial motion, Cisco argued that the jury's verdict concerning validity should be set aside and the court should find as a matter of law that the '903 Patent was invalid. Cisco also reiterated its arguments that the court should find the '903 Patent unenforceable for

1 inequitable conduct. The Delaware court, however, upheld the jury's findings that Cisco had
2 failed to prove that the '903 Patent was invalid and, once again, rejected Cisco's arguments that
3 the patent was unenforceable.

4 61. Notwithstanding Cisco's extensive and repeated attempts to challenge the validity
5 and enforceability of the '903 Patent during the First Case, both the jury and the Delaware court
6 upheld the validity and enforceability of XpertUniverse's '903 Patent.

7 62. Cisco chose not to appeal any of the jury findings or the Delaware court's post-trial
8 rulings concerning the '903 Patent and, therefore, the First Case constitutes a final judgment of
9 patent infringement against Cisco.

10 63. Cisco had a full and fair opportunity to challenge the validity and enforceability of
11 the '903 Patent and, in fact, did challenge the patent's validity and enforceability under numerous
12 theories, during the First Case. These issues of the validity and enforceability of the '903 Patent
13 were fully adjudicated and decided in the First Case and were critical and necessary to the jury's
14 ultimate verdict that Cisco had infringed the '903 Patent.

15 64. As a result, Cisco is precluded from rearguing any issues related to the validity
16 and/or enforceability of the '903 Patent in any lawsuit following the First Case.

17 **Cisco's Continued Infringement**

18 65. Undeterred by the final judgment of patent infringement in the First Case, Cisco
19 has willfully continued to infringe XpertUniverse's '903 Patent.

20 66. Cisco's infringing products, services, offerings, solutions, and technology include,
21 but are not limited to, its expert location software products and technology. On information and
22 belief, these products include systems for storing data pertaining to various inquiry topics or
23 categories of assistance and experts or agents who have skills and/or knowledge related to these
24 topics and categories, and enabling individuals who are in need of assistance to submit inquiries
25 and locate and connect in real-time with an appropriate expert or agent based on the selected
26 inquiry.

27 67. By way of example, with disregard for the '903 Patent and the determination
28 reached in the First Case, Cisco has continued and is continuing to offer for sale, sell and

1 distribute its Remote Expert family of products, which comprise software for locating and
2 connecting experts in real-time with customers or other individuals needing assistance with
3 various inquiries. As stated on Cisco's website, "Remote Expert creates a virtual pool of
4 specialists, manages their availability, and quickly connects customers with experts across
5 multiple channels and devices, using high-quality audio and video."

6 68. On information and belief, with disregard for the '903 Patent and the determination
7 reached in the First Case, Cisco has also introduced and commercialized various other software
8 products, platforms, offerings, and solutions that incorporate Cisco's infringing Remote Expert
9 software and technology as a critical component within certain interconnected suites of product
10 and service offerings, including, for example, Cisco's Unified Communications and Unified
11 Contact Center product suites and solutions.

12 69. By way of example, with disregard for the '903 Patent and the determination
13 reached in the First Case, Cisco has continued and is continuing to offer for sale, sell and
14 distribute its Unified Contact Center Enterprise ("UCCE") and Unified Contact Center Express
15 ("UCCX") family of products, which comprise software for locating and connecting agents (i.e.,
16 experts) in real-time with customers or other individuals needing assistance with various inquiries.

17 70. As stated on Cisco's website, UCCE "[r]oute[s] customers to the most appropriate
18 resource for their needs, anywhere in the enterprise" and provides a "web-based agent desktop
19 [that] makes it easy to provide customer information."

20 71. Similarly, according to Cisco's website, UCCX "offers sophisticated call routing
21 and comprehensive contact management capabilities" that delivers a "customer interaction
22 management solution for up to 400 agents."

23 72. On information and belief, all of the versions of Cisco's Remote Expert family of
24 software products that were released during the post-trial proceedings and appeal of the First Case
25 and/or following the First Case (i.e., release 1.9 and all versions released thereafter), including the
26 latest version, referred to by Cisco as "Remote Expert Release 11.0," include, among other things:
27 (i) a database storing a number of "expert types," which describe categories of assistance; (ii) an
28 expert database storing a list of experts and information pertaining to the experts, including one or

1 more expert skills associated with each expert; (iii) IVR phone numbers for linking the available
2 expert types and experts to the expert skills; and (iv) “Locales” that represent and store the expert
3 types in multiple layers corresponding to different languages and/or dialects.

4 73. During the First Case, on information and belief, Cisco misrepresented to the
5 Delaware court that it had designed-around XpertUniverse’s patents in the new versions of its
6 Remote Expert products.

7 74. Notwithstanding Cisco’s representations to the Delaware court during the First
8 Case that it was implementing a workaround in Remote Expert and that its subsequent versions of
9 these products (beginning with release 1.9) would no longer be infringing XpertUniverse’s ’903
10 Patent, on information and belief, Cisco’s purported modifications are wholly unrelated to the
11 subject matter of the inventions described and claimed in the ’903 Patent and, as such, have no
12 impact on the infringement determination.

13 75. On information and belief, Cisco knew or should have known that its alleged
14 “workaround” would not take the subsequent versions of the Remote Expert products outside the
15 scope of the claimed invention in the ’903 Patent.

16 76. According to Cisco, it based the alleged workaround on certain testimony presented
17 by XpertUniverse’s technical expert, Dr. Nourbakhsh, at trial during the First Case regarding the
18 use of Google Translate to provide for real-time translation of the multiple layers of inquiry types
19 as a possible alternative to the use of the “multi-lingual support” feature that the jury found to be
20 infringing in the Remote Expert products. *See* Declaration of William Dry in Support of Cisco’s
21 Answering Brief in Opposition to XpertUniverse, Inc.’s (i) Motion to Alter or Amend the
22 Judgment Pursuant to Federal Rule of Civil Procedure 59(e); and (ii) Motion for Attorney’s Fees
23 Pursuant to 35 U.S.C. § 285, First Case, D.I. 741 (attached hereto as Exhibit B) at p. 5.; *see also*
24 Trial Volume 4, First Case, D.I. 676 (attached hereto as Exhibit C) at pp. 361-363.

25 77. Cisco also represented to the Delaware court that it had incorporated Google
26 Translate into its new versions of Remote Expert, and asserted that the mere addition of Google
27 Translate in these products was enough to no longer infringe the ’903 Patent. *See* Exhibit B at p.
28 5.

1 78. Cisco failed to so much as allege that (let alone explain how) the Google Translate
2 functionality was performed in *real-time*, i.e., while a seeker is using the system to connect with
3 an expert, in these new versions of Remote Expert, as would be necessary to have any conceivable
4 relevance to the claimed invention of the '903 Patent. *See generally* Exhibit B.

5 79. Instead, Cisco's lead software architect for the Remote Expert products, Mr. Dry,
6 admitted that the new Google Translate functionality would be used solely during the initial set-up
7 or configuration of the Remote Expert products. Exhibit B at pp. 5-6. Specifically, Mr. Dry
8 testified that "when the customer's Remote Expert administrator wants to configure the system to
9 display choices in multiple languages, he or she will identify the different languages in the Remote
10 Expert Administrative console [and] [t]he system will then take the current English text on each
11 Remote Expert screen and use the Google Translate API (application interface) to convert the
12 English text to the other languages." *Id.*

13 80. In other words, Cisco's own explanation of the alleged "workaround" makes clear
14 that "Google Translate is simply a translation crutch that the newe[r] version[s] of Remote Expert
15 makes use of *for an Administrator's convenience during the execution of configuration and setup*
16 *using the Remote Expert Administrator Console utility.*" *See* Declaration of Prof. Illah R.
17 Nourbakhsh in support of XpertUniverse, Inc.'s (i) Motion to Alter or Amend the Judgment
18 Pursuant to Federal Rule of Civil Procedure 59(e); and (ii) Motion for Attorney's Fees Pursuant to
19 35 U.S.C. § 285, First Case, D.I. 749 (attached hereto as Exhibit D) at pp. 1-4 (emphasis added).

20 81. This was further confirmed by Cisco's documentation for the subsequent versions
21 of its Remote Expert products (that only became available following the trial in the First Case), all
22 of which makes clear that Google Translate is merely used as an optional translation assistance
23 tool by system administrators during setup or configuration of the Remote Expert products, and is
24 not even available, much less used, during the real-time operation of these products by a seeker
25 who is seeking assistance with an inquiry from an expert.

26 82. Given that, as acknowledged by Cisco, the addition of Google Translate in its new
27 versions of the Remote Expert products did not have any impact on the *real-time* operation of
28 these products, Cisco knew, or should have known, that its alleged "workaround" was not a

1 workaround at all, and had no relevance to the scope of the claimed invention of the '903 Patent,
2 nor the jury's infringement verdict in the First Case.

3 83. Thus, Cisco chose to release, offer for sale, and sell the new versions of the Remote
4 Expert products despite the fact that it knew or should have known its alleged "workaround" was
5 wholly ineffective, in willful disregard of the '903 Patent and the determination of infringement
6 in the First Case.

7 84. Additionally, on information and belief, Cisco chose to release, offer for sale, and
8 sell these new versions of Remote Expert with certain other features that it knew, or should have
9 known, continued to infringe XpertUniverse's '903 Patent.

10 85. For example, during the First Case, XU showed that, separate and apart from the
11 "multi-lingual support" feature, the use of "Locales" (i.e., separate layers of inquiry types
12 corresponding to different languages and/or dialects) in Cisco's Remote Expert products was also
13 infringing the '903 Patent. *See, e.g.*, Exhibit D at pp. 2-3.

14 86. Cisco did not even allege that its purported Google Translate "workaround" had
15 any bearing whatsoever on this infringing "Locales" feature, and, in fact, failed to so much as
16 address this feature altogether. *See generally* Exhibit B.

17 87. Cisco chose to continue to include these very same features in its Remote Expert
18 products despite the fact that Cisco knew or should have known that these features would continue
19 to infringe the '903 Patent.

20 88. On information and belief, Cisco did not perform a reasonable investigation or
21 analysis to evaluate whether the foregoing features (as well as other features) in the new versions
22 of its Remote Expert products infringed the '903 Patent.

23 89. Instead, on information and belief, Cisco chose to proceed without a basis for
24 believing that these products no longer infringed the '903 Patent.

25 90. As a sophisticated and experienced software engineering company, on information
26 and belief, Cisco was well aware of the difference between ineffectually (for purposes of
27 attempting to avoid ongoing infringement of the '903 Patent) modifying its Remote Expert
28 products by merely incorporating Google Translate as an optional setup feature into its Remote

1 Expert products, on one hand, and doing so *in real-time*, on the other hand, and therefore, the
2 purported modifications would do nothing to recognize and honor the jury's finding of
3 infringement.

4 91. Further, as a sophisticated and experienced software engineering company, on
5 information and belief, Cisco was well aware that, even if it had incorporated Google Translate in
6 real-time (which it did not), this alleged workaround would still not address other features of its
7 Remote Expert product (*e.g.*, the "Locales" feature) that were infringing the '903 Patent.

8 92. In view of the foregoing, during the post-trial proceedings in the First Case, Cisco
9 misrepresented the nature and relevance of its alleged workaround in the Remote Expert products
10 to the Delaware court.

11 93. In sum, Cisco knew or had reason to know that the irrelevance of the alleged
12 workaround with respect to the '903 Patent and the judgment of infringement against Cisco would
13 lead a reasonable person – let alone a sophisticated and experienced software company such as
14 Cisco – to realize that its actions following the First Case were fraught with unreasonable risk of
15 continuing to infringe the valid patent rights of XpertUniverse. Cisco's conduct amounts to
16 egregious and willful infringement of the '903 Patent.

17 94. On information and belief, with respect to the claimed invention in the '903 Patent,
18 the subsequent versions of Cisco's Remote Expert family of products include precisely the same
19 functionality and features as the previous versions of the product that were found to infringe by the
20 jury in the First Case. Therefore, these so-called "modified" versions of Remote Expert infringe
21 the '903 Patent for at least the same reasons as their predecessors.

22 95. Cisco is precluded from re-litigating its claim that these Remote Expert products do
23 not infringe the '903 Patent.

24 96. XpertUniverse continues to be grievously harmed by Cisco's flagrant unauthorized
25 use and infringement of XpertUniverse's patented solutions and technologies. Cisco has received
26 substantial revenue and increased market share by selling and distributing its various software
27 products, solutions, and offerings, as well as related hardware, software, and services that
28 improperly incorporate and rely upon XpertUniverse's patented technology.

CAUSE OF ACTION FOR
INFRINGEMENT OF U.S. PATENT NO. 7,499,903

97. XpertUniverse incorporates by reference the preceding averments set forth in paragraphs 1-96.

98. On March 3, 2009, the Patent Office duly and legally issued the '903 Patent, entitled "Semantic to Non-Semantic Routing For Locating a Live Expert." A true and correct copy of the '903 Patent is attached hereto as Exhibit A.

99. XpertUniverse is the owner, by assignment, of all right, title, and interest in and to the '903 Patent, including the right to recover damages for past and future infringement.

100. Cisco has been and is directly infringing, literally and/or under the doctrine of equivalents, the '903 Patent in violation of 35 U.S.C. § 271 by, among other things, making, using, selling, offering for sale, and/or causing others to make, use, sell, and/or offer for sale in the United States systems and methods which comprise hardware and software systems, products, services and/or technology, including, but not limited to, Cisco's Remote Expert products, as well as other products, platforms, offerings, and solutions that incorporate Cisco's Remote Expert products or similar technology (including, but not limited to, Cisco's Unified Communications and Unified Contact Center product suites), which locate experts and connect them in real-time with individuals seeking assistance in a manner covered by one or more claims of the '903 Patent, including, but not limited to, claim 12.

101. On information and belief, at least with respect to the subject matter of the inventions described and claimed in the '903 Patent, all of the subsequently-released versions of Cisco's Remote Expert products, starting with release 1.9 up through and including its latest version, referred to as Remote Expert Release 11.0 ("RE 11.0"), include the same, or substantially the same, features and functionality that were in the earlier versions of Remote Expert, including the versions that the jury in the First Case found to be infringing claim 12 of the '903 Patent (collectively referred to below as the "Prior Infringing RE Versions") and, therefore, all of these subsequently-released versions of Remote Expert directly infringe at least claim 12 of the '903 Patent.

1 102. By way of example, on information and belief, Cisco's most recent version of its
2 Remote Expert family of products, RE 11.0, is directly infringing at least claim 12 of the '903
3 Patent.²

4 103. On information and belief, Cisco's RE 11.0 solution is a match and route system
5 operable to locate a live expert. Like with the Prior Infringing RE Versions, Cisco's RE 11.0
6 solution locates an expert (or agent) and establishes a real-time connection between the expert and
7 a customer or other individual (*i.e.*, a seeker) based on the type of assistance requested by the
8 seeker. For example, Cisco describes its Remote Expert solutions as "delivering a superior, on-
9 demand customer video collaboration experience—an immersive, lifelike experience between
10 customers and subject-matter experts wherever they may be located."

11 104. On information and belief, Cisco's RE 11.0 solution includes at least first and
12 second multimedia computers connected to a communication network, each multimedia computer
13 including a bidirectional audio or audio/visual device. Like with its Prior Infringing RE Versions,
14 Cisco's RE 11.0 solution uses various multimedia computing systems and devices connected to a
15 network in order to enable real-time bidirectional communications between experts and seekers.
16 For example, Cisco describes its RE 11.0 solution as requiring the use of one or more PCs,
17 touchscreens, TelePresence Endpoints, Webcams, and/or Optical Scanners that are connected to a
18 network (e.g., the Internet) at both the expert's location and the seeker's location.

19 105. On information and belief, Cisco's RE 11.0 solution includes a host server
20 connected to the communication network and operable to support interactive communication
21 between a seeker and an expert. Like with the Prior Infringing RE Versions, Cisco's RE 11.0
22 solution includes various servers connected to the network in order to establish and facilitate real-
23 time interactive communications between the experts and seekers. For example, Cisco describes
24 its RE 11.0 solution as including Remote Expert Manager (REM), Remote Expert Session

25 ² In addition to the exemplary infringement contentions for Cisco's Remote Expert, Release 11.0, set forth in the
26 paragraphs below, XpertUniverse's Disclosure of Asserted Claims and Infringement Contentions was served on Cisco
27 in this action on November 25, 2017, which includes detailed infringement contentions and claim charts mapping a
28 number of Cisco's products (including, for example, multiple versions of the Remote Expert family of products and
Cisco's UCCE and UCCX products) to claim 12 of the '903 Patent.

1 Controller (RESC), and Interactive Experience Manager (IEM) servers, each of which are
2 connected to the Internet and are used, among other things, to establish, manage, and/or control
3 the interactive, real-time communication sessions between experts and seekers.

4 106. On information and belief, the host server of Cisco's RE 11.0 solution is
5 communicably connected with an inquiry-type database and a skill-set database. Like with the
6 Prior Infringing RE Versions, Cisco's RE 11.0 solution includes and/or interfaces with a number
7 of databases that contain various types of information, such as information pertaining to experts or
8 agents, expert types, skill and resource groups, and Locales, as well as interrelationships and
9 mappings therebetween. For example, Cisco's RE 11.0 solution includes a database of "expert
10 types," which represent categories of assistance, such as "home mortgage," "private banking,"
11 retirement savings" (*i.e.*, a database of inquiry types). As another example, Cisco's RE 11.0
12 solution includes a database of "experts," who are "the call center agents designated as remote
13 experts in the Remote Expert Manager." Each expert is associated in the database(s) with one or
14 more expert types and/or Locales, and are "assigned to different skill group[s] or resource group[s]
15 . . . so that they can receive selective calls" (*i.e.*, a skill-set database).

16 107. On information and belief, the inquiry-type database in Cisco's RE 11.0 solution
17 contains at least two layers of inquiry types, the layers of inquiry types organized from an
18 underlying plurality of criteria groupings that are humanly understandable descriptors, wherein at
19 least one layer of inquiry types comprises predetermined semantically-expressed inquiry types.
20 For example, Cisco's RE 11.0 solution includes a database of "expert types," which represent
21 predefined categories of assistance expressed in human-understandable language, such as "home
22 mortgage," "private banking," retirement savings" from which a seeker can choose (*i.e.*, a layer of
23 predetermined, semantically-expressed inquiry types). Like with the Prior Infringing RE
24 Versions, Cisco's RE 11.0 solution includes a "Locale" feature, which provides separate layers for
25 the representing the expert types in multiple different languages or dialects, such as an English
26 layer of expert types and a French layer of expert types (*i.e.*, two or more layers of inquiry types).
27 On information and belief, these layers of inquiry types are, in turn, organized from predefined
28 skill groups and/or resource groups, each of which correspond to a "common set of skills" or

1 categories of “services,” such as types of caller needs, which are represented in humanly
2 understandable language (*i.e.*, organized from an underlying plurality of criteria groupings that are
3 humanly understandable descriptors).

4 108. On information and belief, the skill-set database of Cisco’s RE 11.0 solution
5 contains at least one entry that associates the expert with one of the inquiry types and its
6 underlying criteria grouping. For example, like with the Prior Infringing RE Versions, Cisco’s RE
7 11.0 solution includes a database of “experts,” each of whom are associated with one of the expert
8 types (*i.e.*, inquiry types) and assigned to the skill groups and/or resource groups corresponding to
9 that expert type (*i.e.*, the underlying criteria grouping).

10 109. On information and belief, Cisco’s RE 11.0 solution includes a unique numeric
11 routing identifier linked to each skill-set database entry and to the associated inquiry type in the
12 inquiry-type database. For example, like with the Prior Infringing RE Versions, Cisco’s RE 11.0
13 solution utilizes “IVR Phone Numbers,” which are unique numbers linked to a particular expert
14 type and Locale combination and a particular expert or group of experts associated with the
15 corresponding underlying skill and/or resource group, and used to route calls from seekers to the
16 appropriate experts (*i.e.*, a unique numeric routing identifier).

17 110. On information and belief, upon the receipt of a user request for assistance with at
18 least one of the predetermined semantically-expressed inquiry type, the host sever of Cisco’s RE
19 11.0 solution, is operable to identify the expert associated with the predetermined semantically-
20 expressed inquiry type requested by the user by use of the numeric routing identifier. For
21 example, like with the Prior Infringing RE Versions, when a user requests assistance by selecting a
22 particular expert type, Cisco’s RE 11.0 solution utilizes the unique IVR number (and/or other
23 unique identifiers) linked to that expert type and Locale in order to identify the expert (or group of
24 experts) associated with the expert type (*i.e.*, inquiry type) requested by the user.

25 111. At all relevant times, Cisco’s acts of infringement of the ’903 Patent have been
26 committed and are being committed with full knowledge of XpertUniverse’s rights in the ’903
27 Patent.

28

1 112. XpertUniverse disclosed its patented technologies and intellectual property,
2 including the patent application that ultimately issued as the '903 Patent, to Cisco during their two
3 and a half year relationship from around 2004-2007 pursuant to the parties' mutual non-disclosure
4 agreement. Cisco was made aware of the '903 Patent again when XpertUniverse filed the First
5 Case and notified Cisco of its infringement. Since the final judgment of patent infringement
6 against Cisco in the First Case, Cisco has known that its Remote Expert product infringes the '903
7 Patent.

8 113. With no regard for the patent infringement verdict in the First Case, Cisco has
9 continued to deliberately and wantonly infringe the '903 Patent by, among other things, selling,
10 offering for sale, and distributing its Remote Expert products and technology.

11 114. On information and belief, Cisco has acted and is continuing to act despite an
12 objectively high likelihood that its actions constitute infringement of a valid patent and Cisco
13 knew or should of known of that objectively high risk.

14 115. On information and belief, during the post-trial proceedings and appeal in the First
15 Case, and following the First Case, Cisco did not conduct a reasonable investigation to ascertain
16 whether its new version of the Remote Expert products infringed the '903 Patent; but, rather,
17 deliberately chose to continue selling the products without a reasonable basis for believing that
18 they no longer infringed the '903 Patent .

19 116. On information and belief, Cisco misrepresented to the Delaware court that it had
20 implemented an alleged Google Translate workaround in its Remote Expert products and that
21 these products would no longer infringe the '903 Patent.

22 117. On information and belief, Cisco knew or should have known that its alleged
23 "workaround" in the new versions of the Remote Expert products was wholly ineffective, did not
24 even address certain infringing features in these products, and did nothing to bring these products
25 outside the scope of the claimed invention of the '903 Patent.

26 118. As a sophisticated and experienced software engineering company, on information
27 and belief, Cisco was well aware that its alleged "workaround" in these Remote Expert products
28

1 would do nothing to address the jury's finding of infringement, nor to address other features of its
2 Remote Expert products (e.g., the "Locales" feature) that were infringing the '903 Patent.

3 119. Cisco knowingly continued to release, offer for sale, and sell new versions of
4 Remote Expert with precisely the same features that were found to be infringing in the First Case.
5 Thus, Cisco's alleged "workaround" in the new versions of its Remote Expert products was not a
6 workaround at all, and, on information and belief, was made in bad faith.

7 120. Cisco's acts constitute egregious and willful infringement, entitling XpertUniverse
8 to enhanced damages under 35 U.S.C. § 284, as well as its reasonable attorneys' fees and costs.

9 121. As a direct and proximate result of Cisco's infringement of the '903 Patent,
10 XpertUniverse has suffered and continues to suffer damage. XpertUniverse is entitled to recover
11 from Cisco the damages adequate to compensate for such infringement, in an amount to be
12 determined at trial.

13 122. As a direct and proximate result of Cisco's acts of infringement, XpertUniverse has
14 been irreparably harmed and will continue to be harmed unless and until Cisco's infringing acts
15 are enjoined and restrained by order of this Court.

16 **PRAYER FOR RELIEF**

17 Wherefore, XpertUniverse respectfully requests that this Court enter judgment and provide
18 relief as follows:

19 A. A judgment in favor of XpertUniverse declaring that Cisco has infringed and is
20 infringing one or more claims of the '903 Patent;

21 B. A judgment declaring that Cisco's infringement of the '903 Patent has been and
22 continues to be egregious and willful;

23 C. A judgment and order declaring that Cisco and its officers, directors, agents,
24 employees, representatives, servants, attorneys, and all others acting in privity or in concert with
25 them, and their subsidiaries, divisions, successors and assigns be permanently enjoined from
26 further infringement of the '903 Patent;

27 D. A judgment and order awarding XpertUniverse all damages, costs, and expenses
28 adequate to compensate for Cisco's infringement of the '903 Patent, and in no event less than a

1 reasonable royalty, for Cisco's acts of infringement, with pre-judgment and post-judgment interest
 2 thereon pursuant to 35 U.S.C. § 284;

3 E. An accounting for any infringing sales not presented at trial and an award by the
 4 Court of additional damages for any such infringing sales;

5 F. A judgment and order increasing the amount of damages as a result of Cisco's
 6 infringement of the '903 Patent to three times the amount found or assessed by the Court because
 7 of the willful and deliberate nature of the infringement in accordance with 35 U.S.C. § 284;

8 G. A judgment and order finding this case to be exceptional pursuant to 35 U.S.C. §
 9 285 and awarding XpertUniverse its reasonable attorneys' fees and costs incurred in connection
 10 with this action; and

11 H. Any and all such further equitable and legal relief which the Court may deem just
 12 and proper under the circumstances.

13 **DEMAND FOR JURY TRIAL**

14 XpertUniverse hereby respectfully requests a trial by jury on all issues raised in this
 15 Complaint so triable by right pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

17 Dated: January 31, 2018

K. Lee Marshall
BRYAN CAVE LLP

19
 20 By: /s/ K. Lee Marshall
 K. Lee Marshall
 Attorneys for XpertUniverse, Inc.