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E-filing

24 IN THE UNITED STATES DISTRICT COURT

25 FOR THE NORTHERN DISTRICT OF CALIFORNIA

26 CASCADES COMPUTER INNOVATION)
27 LLC,)

Plaintiff,)

v.)

28 RPX CORPORATION, HTC)
29 CORPORATION, LG ELECTRONICS, INC.,)
30 MOTOROLA MOBILITY HOLDINGS,)
31 INC., SAMSUNG ELECTRONICS CO.)
32 LTD., DELL INC.,)

Defendants.)

Case No. **CV 12 1143**

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

MEJ

1 Plaintiff Cascades Computer Innovation LLC (“Cascades”) complains of defendants
2 RPX Corporation, HTC Corporation, LG Electronics, Inc., Motorola Mobility Holdings, Inc.,
3 Samsung Electronics Co. Ltd. And Dell Inc. (collectively, “defendants”), as follows:

4 **THE PARTIES**

5 1. Cascades is an Illinois limited liability company having its principal place of
6 business at 500 Skokie Boulevard, Suite 250, Northbrook, Illinois 60062. It has the exclusive
7 right to license and enforce a portfolio of 38 patents owned by Elbrus International Limited and
8 Elbrus Svarog L.P. (collectively, “Elbrus”).

9 2. RPX Corporation is a Delaware corporation with a principal place of business at
10 One Market Plaza, Steuart Tower, Suite 700, San Francisco, California 94105. Backed by the
11 hugely successful venture capital firm Kleiner, Perkins (early investors in Amazon, Google,
12 Genentech, AOL), RPX is a patent aggregator that acquires patents for its members (now in
13 excess of 110), each of whom is granted a license in exchange for a payment ranging from
14 \$60,000 to \$6,000,000. To date, RPX has accumulated more than 1,600 patents in various fields,
15 not counting the 29,000 patents for which it recently acquired exclusive licensing rights.

16 3. HTC Corporation (“HTC”) is a foreign corporation with corporate headquarters at
17 23 Xinghua Road, Taoyuan 330, Taiwan. HTC does substantial business in this judicial district
18 including the marketing, sale, offering for sale, and importation of cellular telephone devices
19 which are accused of patent infringement in this case.

20 4. LG Electronics, Inc. (“LG”) is a foreign corporation having a place of business at
21 LG Twin Towers 20, Yeouido dong, Yeongdeungpo-gu, Seoul, Republic of Korea 150-721 with
22 its United States headquarters at 10101 Old Grove Road, San Diego CA 92131. LG does
23 substantial business in this judicial district including the marketing, sale, offering for sale, and
24 importation of cellular telephone devices.

1 commerce all within the meaning of the Sherman Act (15 U.S.C. §§ 1, 2 and 6(a)).

2 11. The violations of law described in this Complaint have been and are being carried
3 out in the United States and in this judicial district. Venue in this judicial district is proper under
4 15 U.S.C. §§ 15 and 22 and 28 U.S.C. §§ 1391(c) and (d).

5 **Cascades and Elbrus**

6 12. After 40 years with the Russian government's Institute of Precision Mechanics
7 and Computer Technology (where he led the development of the Elbrus supercomputers
8 underpinning the Russian space mission control center), the lead inventor of the Cascades/Elbrus
9 patents, Boris Babaian, turned his focus to private industry. As chairman and chief technologist
10 of Elbrus International, he (and the same team that developed three generations of
11 supercomputers) developed pioneering software technology like that covered, for example, by
12 United States Patent No. 7,065,750, entitled "Method and Apparatus for Preserving Precise
13 Exceptions in Binary Translated Code," issued June 20, 2006 (the "'750 patent"). Mr. Babaian is
14 an Intel Fellow and the chairman and chief technologist of Elbrus International and oversees a
15 design team that traces its roots to the days of Sputnik, the Soviet space satellite often cited as
16 the catalyst for the scientific research that led to many Western technological innovations, such
17 as the Internet. As noted above, Cascades acquired the exclusive right to license and enforce
18 more than 35 Elbrus patents, including the '750 patent: 5,418,975, 5,781,924, 5,794,029,
19 5,889,985, 5,923,871, 5,958,048, 5,983,336, 6,243,822, 6,265,896, 6,301,706, 6,313,691,
20 6,320,446, 6,323,688, 6,351,155, 6,363,405, 6,366,130, 6,373,149, 6,412,105, 6,424,181,
21 6,516,462, 6,516,463, 6,526,573, 6,549,903, 6,560,775, 6,564,372, 6,567,831, 6,584,611,
22 6,594,824, 6,668,316, 6,718,541, 6,732,220, 6,751,645, 6,820,255, 6,954,927, 7,003,650,
23 7,065,750, 7,069,412, 7,143,401. Elbrus granted a license to Intel under its patents for a
24 substantial lump-sum payment. Various of these patents are infringed by the manufacturing

1 defendants and all are subject to the group boycott and concerted refusal to deal complained of
2 herein.

3 **The Cascades Patents And Google's Android Operating Systems**

4 13. Google's Android operating system has become the dominant mobile operating
5 system in the world, achieving a 40% market share. The manufacturing defendants dominate the
6 Android market in the United States as device suppliers that use the Android operating systems
7 (HTC (41%), Motorola (35%), Samsung (17%) and LG (4%)). Dell has a market share below
8 4% but, together with the other manufacturing defendants, sells more than 90% of all cellular
9 phones sold in the United States that use the Android operating systems. More than 300,000
10 applications are available for use on Android devices. An operating system of some kind is
11 installed on more than 130 million devices and more than 10 billion applications are downloaded
12 on those devices each year. Only devices that meet Google's compatibility requirements can
13 install such applications on Android-based phones and tablets. The technology of the '750
14 patent, and others in the Cascades portfolio, facilitates the installation and use of such
15 applications on Android devices (such as smart phones), through dependency trees, which
16 permits the optimization of the bytes code used in an application, thus, increasing the speed and
17 value of the application. The '750 patent covers such optimization techniques.

18 14. Defendant Motorola owns more than 17,000 patents in the area of mobile phone
19 technology, making it one of the dominant patent holders in the mobile telephone market.
20 Google has agreed to acquire Motorola for \$12.5 billion to gain control of its patent portfolio.
21 Together with the other defendants, Motorola (and Google) and RPX own or control many of the
22 patents of significance for mobile phone technology. The number of U.S. patents owned or now
23 controlled by each defendant is approximately: Google/Motorola, 22,046; Samsung, 47,348;
24 LG, 16,823, HTC, 222; Dell, 2,461; and RPX, 1,600. Recently, RPX became an agent for

1 licensing Alcatel-Lucent's portfolio of 29,000 issued United States patents, allowing it to
2 effectively control the licensing of those patents as well. Together the defendants own or control
3 nearly 120,000 U.S. patents. Cascades owns or controls less than 100.

4 **The Anti-Troll/Anti-NPE Conspiracy**

5 15. The term "patent troll" was created in 2002 by Peter Detkin, then head of
6 litigation for Intel Corporation. "Trolling for Dollars," The Recorder, Sandburg, B. (July 30,
7 2001) (Exhibit A). Intel had been sued for patent infringement and, later, for defamation for
8 calling its opponent in the then-pending litigation "a patent extortionist." According to Detkin, a
9 patent troll is "somebody who tries to make a lot of money off a patent that they are not
10 practicing and have no intention of practicing and in most cases never practiced." Detkin is a
11 co-founder of Intellectual Ventures, one of the biggest patent aggregators and (thus, by his own
12 definition) patent trolls in now existence. Intellectual Ventures accumulated more than 30,000
13 patents on the pledge that it was only acquiring patents for defensive purposes. That pledge was
14 quickly broken in a string of high-profile patent infringement cases Intellectual Ventures brought
15 in Delaware.

16 16. The troll label has been extended to non-manufacturing entities (called "NPEs")
17 who are companies like Cascades that do not manufacture or sell products covered by patents
18 they own or control. Of course, each of the defendants also owns or controls numerous patents
19 that cover products they neither manufacture nor sell.

20 17. RPX is a spin-off of Intellectual Ventures and was originally backed by three
21 venture capital firms, including Kleiner Perkins. RPX's stated goal is to protect its members
22 from patent infringement claims from NPEs. In most cases, like in this case, an inventor turns to
23 an NPE for financial or strategic assistance in asserting his or her patent rights, since inventors
24 oftentimes lack the financial wherewithal or experience to do so themselves. Thus, if an inventor

1 like Mr. Babaian cannot afford the extraordinary expense of patent enforcement (commonly, \$3
2 million to \$8 million per litigation through trial) or is not knowledgeable about how patent
3 licensing and enforcement works in this country, he or she must turn to a company like Cascades
4 to provide financial and other support to license the patents. As in this case, the companies that
5 infringe an inventor's patents are frequently large multinational companies with vast resources to
6 devote to the defense of any patent claims, regardless of merit. Cascades and other NPE
7 companies try to level the playing field on which the large corporations and the individual
8 inventor or small patent holder play, by providing financial and other assistance to make it a
9 more equal contest.

10 18. Law firms like Winston & Strawn that represent two of the defendants (Motorola
11 and Dell) and others, like Sony-Ericsson who infringe the Cascades patents, have openly
12 encouraged their clients and potential clients not to negotiate settlements, accept licenses or settle
13 independently with NPEs, regardless of the merits ([http://wfllegalpulse.com/2010/09/22/web-](http://wfllegalpulse.com/2010/09/22/web-seminar-makes-case-for-patent-troll-lawsuit-targets-to-fight-back)
14 [seminar-makes-case-for-patent-troll-lawsuit-targets-to-fight-back](http://wfllegalpulse.files.wordpress.com/2010/09/troll-presentation-5.pdf); [http://wfllegalpulse.files.](http://wfllegalpulse.files.wordpress.com/2010/09/troll-presentation-5.pdf)
15 [wordpress.com/2010/09/troll-presentation-5.pdf](http://wfllegalpulse.files.wordpress.com/2010/09/troll-presentation-5.pdf)).

16 **The RPX Business Model**

17 19. RPX has more than 110 members, including each of the named manufacturing
18 defendants and other infringers of the '750 patent and various other Cascades patents, including
19 ASUSTEK Computer, Inc., Hynix Semiconductor, Inc., Philips Koninklijke Electronics, N.V.,
20 Sharp Electronics Corp., Sony-Ericsson and Pantech Wireless, Inc., each of which have also
21 been sued for infringement of a Cascades patent. In 2010, RPX contacted Cascades about the
22 possibility of acquiring license rights in the Elbrus portfolio and made a substantial offer on
23 behalf of its members.

24 20. RPX frequently acts as the agent or intermediary of its members for purposes of

1 acquiring patents and negotiating licensing and purchase terms on behalf of its members
2 collectively. Funding is provided by members and each can renew its membership periodically
3 by paying additional monies to RPX. Although the contracts RPX has with its members
4 purportedly give members the ability to deal independently in their own self-interest, the whole
5 purpose of RPX and the reason for joining RPX is to form an industry group that can force
6 individual inventors, patent owners and NPEs to deal collectively with RPX as an agent for its
7 members acting in concert with each other, rather than having each member deal separately and
8 independently with the patent holder. RPX selects its members based upon the frequency that
9 they have been sued for patent infringement by NPEs. Currently, RPX has targeted for
10 membership 275 companies that have been sued at least twice by an NPE.

11 21. On its website, RPX boasts about its ability to force lower prices through
12 coercive, collective action on behalf of its members against NPEs:

13 But even after an NPE has acquired an asset, RPX can help. NPEs acquire
14 patents and in the process, take on the significant cost and risk of litigating against
15 a large number of companies. RPX is often able to achieve “wholesale” pricing
16 terms, where we can acquire rights for our members at significantly reduced cost
17 relative to what the NPE might charge an individual company on its own. RPX
18 believes we have saved our members tens of millions of dollars through these
19 wholesale-priced transactions.

17 Our approach enables our client network to manage patent litigation risks and
18 costs through collective defensive patent initiatives, superior patent intelligence,
19 and special advisory services.

19 <http://www.rpxcorp.com/index.cfm?pageid=43>.

20 22. RPX also gathers intelligence and data on patent acquisition opportunities, patent
21 litigation and licensing activities and trends, all for the purpose of forcing lower royalty
22 payments for licensing by combining the efforts of its members at the expense of their
23 independent interests.

24 23. RPX has been accused of using coercive tactics with potential members to force

1 them to join RPX. A potential RPX member, Kaspersky Labs, claimed that RPX engaged in
2 extortive and fraudulent practices by threatening that, if Kaspersky Labs did not join RPX, it
3 could face lawsuits on patents RPX might acquire or that patents RPX already owned could be
4 released to RPX members Kaspersky Labs had sued for infringement for possible retaliatory use
5 against Kaspersky Labs ([http://gametimeip.com/2011/05/31/patent-aggregator-rpx-accused-of-](http://gametimeip.com/2011/05/31/patent-aggregator-rpx-accused-of-extortion-racketeering-wire-fraud)
6 [extortion-racketeering-wire-fraud](http://gametimeip.com/2011/05/31/patent-aggregator-rpx-accused-of-extortion-racketeering-wire-fraud)).

7 24. RPX announced that its intention was to develop a new solution for dealing with
8 NPEs:

9 that will increase the value we provide for our current and prospective clients.
10 For example, we intend to facilitate joint defense agreements and cross-licensing
11 arrangements among our clients. A joint defense agreement is an agreement
12 among multiple defendants in a lawsuit to appoint one legal counsel or group of
13 legal counsel to represent multiple defendants. A cross-licensing arrangement is
14 an agreement among two or more parties to license some or all of their patent
15 portfolios to each other. As part of our potential joint defense solution, we are
16 developing a plan to establish a risk retention group to help our clients cover costs
17 incurred in defending patent infringement claims.

18 RPX Corporation, S.E.C. Registration Statement (Form S-1), at 16 (Jan. 21, 2011), *available at*
19 <http://www.secinfo.com/d14D5a.qbPx.htm>.

20 25. By facilitating and funding joint defense arrangements, RPX enables its members
21 to effectively act in concert in dealing with NPEs seeking to license their patents and eliminates
22 the ability of its individual members to act independently.

23 26. RPX has recently offered NPE patent insurance to companies that may be sued
24 for patent infringement by an NPE. This insurance, like the joint defense efforts, encourages
25 group, not individual, efforts at negotiating or accepting patent licenses.

26 **The RPX-Led Concerted Refusal to Deal**

27 27. Initially, RPX negotiated with Cascades to acquire license rights under all of the
28 Cascades patents for its 100-plus members (including each of the other defendants). The

1 manufacturing defendants were required to contribute to the settlement, which would have
2 resulted in a high seven-figure payment to Cascades for a fully paid-up license. RPX's initial
3 offer to license demonstrates its recognition of the validity and value of the Cascades patents.

4 28. RPX terminated negotiations with Cascades and withdraw its offer because one or
5 more of its members allegedly would not fund the license deal. This demonstrated that all
6 members either had to agree to a license or none would agree. On information and belief, after
7 negotiations with Cascades ended, RPX and the other defendants conspired and agreed that none
8 of them would separately negotiate with Cascades for a license and that all would act together to
9 oppose Cascades' efforts to license and enforce the '750 and other Cascades patents, including
10 through the mechanism of a joint defense arrangement among several of the defendants. On
11 information and belief, the individual manufacturing defendants all agreed among themselves
12 and with RPX not to negotiate independently with Cascades and to present a unified, concerted
13 effort to oppose licensing and enforcement of the Cascades patents, with the objective of causing
14 Cascades to abandon its efforts, accept a below-market-value offer by RPX or go out of business
15 by virtue of the expense of litigation.

16 29. RPX members sign an agreement with RPX that effectively limits their freedom
17 to negotiate licenses independently. RPX represents that, by negotiating licenses through it,
18 royalty amounts can be reduced. By penalizing those who do not renew and continue their
19 membership in RPX, members are effectively encouraged not to deal independently with patent
20 owners like Cascades. RPX boasts that "more NPE activity spurs companies to join our
21 network" -- the network being the 110 RPX members that, together with RPX, combine and
22 conspire to accept, reject or negotiate licenses with NPEs.

23 30. As evidence of the conspiracy, the manufacturing defendants (HTC, LG,
24 Motorola, Samsung and Dell) have clearly acted against their individual economic interests. In

1 January 2012, Cascades offered each of LG, Motorola, Samsung and HTC an identical license
2 proposal that would have required a lump-sum royalty payment of \$5 million for a fully paid-up
3 license under all the Cascades patents with the right to recover up to all of the payment based on
4 25% of the licensing revenues that Cascades received from any other infringer. Thus, for
5 example, if any individual defendant had accepted the offer and paid its \$5 million and Cascades
6 subsequently received an additional \$15 million of licensing revenues from other sources, the
7 defendant would recoup \$3.75 million (25% of \$15 million), so its net cost would be \$1.25
8 million. If Cascades subsequently received \$20 million or more, then the defendant would
9 recoup all its costs. No manufacturing defendant even responded to the offer, clearly showing
10 that the combination, agreement and conspiracy between them caused each individual defendant
11 to act contrary to its own private economic interests.

12 31. Defendants have contracted, combined and conspired to restrain trade by jointly
13 refusing to negotiate or accept licenses under the Cascades patents. Defendants' goal is to force
14 either a drastically reduced royalty for rights under the Cascades patents or no royalty payment at
15 all.

16 32. Google, who is also a member of RPX, benefits from the group boycott as well
17 because it lessens the royalty burden on its Android operating system. Google, like RPX,
18 encourages others not to accept licenses under patents owned by NPEs.

19
20 **FIRST CLAIM FOR RELIEF**
21 **VIOLATION OF THE FEDERAL ANTITRUST LAWS**
22 **AGAINST ALL DEFENDANTS**

23 33. This claim is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§
24 15 and 26): (a) to recover damages sustained by Cascades as a result of its being injured in its
25 business and property by reason of defendants' violations of the antitrust laws, particularly

1 Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), (b) to obtain injunctive relief
2 against threatened loss or damage as a result of such violations, and (c) to recover the expense of
3 bringing and maintaining this action, including reasonable attorneys' fees.

4 34. Cascades has the exclusive right to license and enforce the '750 patent, as well as
5 more than 30 other patents owned by Elbrus. Though the '750 patent is used as an example,
6 efforts to license the entire portfolio of Cascades/Elbrus patents is impacted by the combination
7 and conspiracy among the defendants and other RPX members.

8 35. The '750 patent relates to software embedded in mobile phones and tablet
9 computers that permits optimization of applications when Android operating systems are used.
10 Cascades has actively sought to license the '750 patent, together with its other patents, so that the
11 patented technology could be legally shared with the entire mobile phone and tablet industry that
12 uses Android operating systems and related, relevant submarkets. There is a separate submarket
13 for licenses under the '750 patent, the other Cascades/Elbrus patents and the patented technology
14 itself within the meaning of the antitrust laws. The geographic scope of this market or submarket
15 is nationwide.

16 36. As part of its business, Cascades has offered to license its '750 patent (and its
17 other patents) under nearly identical terms to those entities (like HTC, LG, Motorola, Samsung
18 and Dell) that sell devices that use Android operating systems and want to lawfully practice the
19 inventions of the Cascades' patents. Cascades has continuously sought to grant licenses to users
20 of its patented technology. Many separate companies have been repeatedly contacted over the
21 last year alone, including the defendants and other manufacturers (such as ASUS, Pantech
22 Wireless, Philips Electronics and Sharp Electronics). Dell and Pantech each made token offers
23 of less than \$100,000 for a fully paid-up license under all the Cascades patents, offers which
24 Cascades believes were spurious and made in bad faith. Other than these token offers, no

1 manufacturing entity has engaged in independent, good-faith discussions or negotiations with
2 Cascades or even acknowledged letters offering licenses, thus, acting contrary to their own
3 private interests and, ultimately, the public good. As noted above, Motorola, LG, Samsung and
4 HTC, who dominate the Android market, refused to even discuss a license, despite being offered
5 terms that could effectively result in a zero royalty. Motorola and others chose to negotiate only
6 through RPX.

7 37. Currently, each of the manufacturing defendants, and numerous others in the
8 industry, have openly and notoriously infringed the '750 patent (and other Cascades patents)
9 and/or contributed to or induced the infringement of others of the '750 patent. But, with the
10 exception of RPX (which effectively sought to negotiate a bulk license at a single price for all of
11 its hundreds of members, including the manufacturing defendants, and then withdrew its offer
12 when its members agreed to boycott Cascades), everyone has refused to engage in any serious
13 license negotiations of any kind or even, in some cases, to acknowledge Cascades' efforts to
14 license.

15 38. Hence, despite its efforts to license the '750 patent (and other patents), Cascades
16 has been unsuccessful with the named manufacturing defendants who control more than 95% of
17 the Android market in the United States. These defendants have market power in the Android
18 market. Prospective licensees have made no independent contact with Cascades because of
19 concerted efforts on the part of defendants (as counseled by RPX and by the Winston & Strawn
20 firm) and others like them in the relevant industry to refuse licenses under the Cascades patents.
21 This behavior has continued despite defendant RPX's purported one-time interest in purchasing
22 license rights for its members under the Cascades patents and granting licenses to its members.
23 This uniformity of action (indeed, of inaction) strongly demonstrates a group effort to refuse to
24 license, thereby forcing license prices below a competitive level at monopsony prices. Such

1 actions are buyer or licensee boycotts and illegal *per se*.

2 **Combination And Conspiracy In Restraint Of Trade**

3 39. Under the auspices of agreements with RPX, joint defense agreements, NPE
4 insurance, common counsel, meetings, phone calls, emails and discussions with RPX and
5 otherwise, defendants have met, conferred, conspired, combined and agreed among themselves
6 and, on information and belief, with other potential licensees of the Cascades patents, that they
7 would not accept licenses from Cascades under terms and conditions offered by Cascades (even
8 with the potential of no royalty) but, instead, have decided they would infringe without the
9 payment of any royalties and, thus, would collectively continue to jointly refuse to license the
10 Cascades patents. This has become clear from the uniformity of action by defendants, even
11 against their own economic interests.

12 40. As one example, many of the manufacturing defendants have used common
13 counsel, the law firm of Winston & Strawn, to not only coordinate efforts in the defense of
14 pending lawsuits for patent infringement, but also to create uniform action in refusing to consider
15 or accept (or, for that matter, even discuss) a license under the Cascades patented technology.
16 The common representation has been solicited and then used to be certain that the defendants do
17 not operate independently in evaluating the terms and conditions of a license under the Cascades
18 patents. Winston publishes a website in which its partners have urged companies not to
19 negotiate licenses with NPEs.

20 41. Based on the uniformity of action, the '750 patent has been discussed by
21 defendants, and agreements and understandings have been made to attack the '750 patent rather
22 than to accept a license under it. RPX, which itself accumulates patents, was involved in the
23 combination and conspiracy and knows that the manufacturing defendants have combined to
24 refuse any reasonable license offer. Like Winston, RPX encourages individual entities not to

1 independently accept licenses from NPEs.

2 42. RPX has suggested that companies join its organization to gain leverage in
3 obtaining licenses from patent owners like Cascades at lower prices. It has also threatened those
4 who do not join its pool with the risk that RPX might sell some of its patents to direct
5 competitors for enforcement.

6 43. In furtherance of the conspiracy and combination, defendants have now jointly
7 engaged in a common defense against the '750 patent and the other Cascades patents. In that
8 way, they effectively have agreed to limit their individual freedom of action in dealing with
9 Cascades, even against their private economic interests; they have shared information through
10 RPX and others (including the Winston & Strawn law firm) concerning their purported separate
11 and independent negotiations with Cascades; they have agreed to cooperate and to share
12 expenses for and to assist each other in attacking the Cascades patents; they have, through RPX,
13 also attempted to persuade other potential licensees not to discuss or accept a license from
14 Cascades under any terms or conditions; and, they have agreed not to negotiate with or accept
15 licenses from Cascades without consulting and agreeing with other members of the conspiracy
16 concerning the acceptability of the terms offered by Cascades, all for the purpose of assuring
17 uniformity of action in accepting or rejecting Cascades' efforts to grant licenses under its patents
18 and, thus, controlling the royalty rate and terms under which the patents are licensed. On
19 information and belief, others in the industry are also involved with the named defendants and
20 have discussed and agreed upon joint courses of action in dealing with the Cascades patents.

21 44. Based on their uniformity of action, defendants have not negotiated separately and
22 independently with Cascades but have, in fact, been sharing information via RPX, Winston &
23 Strawn and otherwise concerning their boycott of any license negotiations and have been acting
24 jointly and in combination. The various meetings, discussions and communications between

1 defendants and others have taken place for the express purpose and with the effect of creating a
2 uniform, agreed upon course of action among them in refusing to accept a license under the
3 Cascades patents except upon terms which defendants could jointly dictate. Defendants have not
4 acted independently, but instead have conspired and agreed to restrict their independent action in
5 negotiating a license with Cascades.

6 45. As a consequence of the above-referenced combination and joint action,
7 defendants, in combination with others, have prevented Cascades from licensing its patents
8 separately and independently to each of the members of the relevant industry, and have jointly
9 dictated the terms and conditions of any license that would be acceptable.

10 **Effects Of The Conspiracy And Combination**

11 46. Defendants HTC, LG, Motorola, Samsung and Dell sell more than 95% of all
12 mobile phones and tablets that use the Android operating systems in the United States and are an
13 important part of the Android market and related, relevant sub-markets (including products that
14 require a license from Cascades under its patented technology). The manufacturing defendants
15 constitute nearly the total demand for the licensing of Cascades' patented technology and
16 collectively enjoy substantial market power in that market and, together with others in the
17 industry, have exercised their power to control the acceptance and terms and conditions of
18 licenses from Cascades. This power is augmented by the willingness and agreement of the
19 manufacturing defendants to infringe Cascades' patents until such time as Cascades capitulates
20 by either going out of business, declining to enforce the patents or offering defendants patent
21 license terms below fair market value.

22 47. As a direct and proximate result of the aforesaid conspiracy, Cascades has been
23 unable to independently negotiate a single license with any of the defendants, or others in the
24 industry, on terms and conditions that would have been established by the forces of supply and

1 demand in an unrestrained market; Cascades has been unable to consummate a license with any
2 defendant; it has been prevented from obtaining royalties and other compensation it would
3 otherwise have received for licenses under the Cascades patents; and, it has been forced to incur
4 the expense of enforcing the Cascades patents against defendants and others. That not a single
5 major supplier of mobile phones using the Android operating systems would even discuss or
6 consider a license or even acknowledge Cascades' letters or efforts to grant licenses shows the
7 uniformity of the boycott. The common defense agreements (whether reduced to writing or not)
8 share a common purpose: do not settle with Cascades; do not discuss the possibility of a license;
9 do not negotiate independently; act consistently with each other. Further, by agreeing to
10 negotiate only through RPX, the manufacturing defendants have effectively sought a license at a
11 much lower price than if they acted independently. Indeed, although some defendants acting
12 through RPX initially supported the idea of accepting a license, that support eroded and the
13 defendants then joined forces and effectively agreed not to accept a license at any price.

14 48. The conspiracy complained of by Cascades has unreasonably restrained
15 competition in the market or submarket for the licensing by Cascades of its patented technology
16 in violation of the rule of reason and Section 1 of the Sherman Act.

17 49. The conduct complained of by Cascades also constitutes a *per se* illegal
18 combination or conspiracy by defendants to fix the prices, terms and conditions of licenses under
19 Cascades' patented technology and thereby violates Section 1 of the Sherman Act.

20 50. The conduct complained of by Cascades also constitutes a horizontal boycott and
21 concerted refusal to deal by defendants which violates both the *per se* rule and the rule of reason
22 and accordingly violates Section 1 of the Sherman Act.

23 51. The aforesaid violations are continuing, and unless enjoined by this Court, will
24 continue to cause irreparable harm to Cascades for which there is no adequate remedy at law.

Injury To Competition

1
2 52. The acts of defendants complained of herein have injured competition in at least
3 the following ways. Defendants' combination and concerted activities have the purpose and
4 effect of artificially and unlawfully diminishing the value of products and services in the relevant
5 market, i.e., licenses. Such artificial devaluation has the purpose and effect of reducing
6 plaintiff's and any NPE's incentives to innovate or support innovation, and restricting plaintiff's
7 activities in pursuit of its business purpose of developing or supporting the development of
8 technology for new and useful products that would compete in the marketplace with the existing
9 products of the manufacturing defendants. Thus, output of new technologies is restricted, and
10 prices of existing technologies are inflated. Further, by acting together to boycott Cascades (and
11 most other NPEs), defendants as a group, and RPX and its members, have created a buyer cartel,
12 the object of which is to force the price for a license below a competitive level, indeed, to
13 monopsony prices or, in this case, no price at all.

14 53. Defendants' conduct also has the purpose and effect of driving plaintiff Cascades
15 out of business. By refusing a license at any price and further concentrating market power
16 (through the accumulation of patents), RPX and the other defendants have effectively raised
17 prices and reduced output in products covered under the relevant patents.

18 54. Defendants' conduct also has the purpose and effect of raising barriers to entry in
19 the market for licenses. With buyers setting interdependent, collusive and artificially diminished
20 prices, chances of any NPE entering the marketplace are reduced. Defendants know this and are
21 implementing a plan to eliminate all NPEs (at least those that seek to license their patent rights),
22 effectively eliminating a major source of innovation and new invention.

Injury To Cascades

23
24 55. As a direct result of the aforesaid combination and conspiracy among defendants,

1 and the actions taken pursuant thereto, Cascades has been injured in its business and property as
2 follows:

3 a. Cascades has been unable to effect any license agreements with
4 defendants or anyone else under reasonable terms and conditions which it otherwise
5 would have been able to accomplish, and has lost substantial royalty income as a result;

6 b. Cascades has been precluded from business growth which it would
7 otherwise have achieved;

8 c. Cascades has been required to incur extraordinary legal expenses to
9 enforce its patents against the manufacturing defendants and others; and,

10 d. Cascades has otherwise been injured in its business and property.

11 WHEREFORE, Cascades prays for relief as set forth below.

12 **SECOND CLAIM FOR RELIEF**
13 **MONOPSONIZATION, CONSPIRACY TO MONOPSONIZE**
14 **AND ATTEMPT TO MONOPSONIZE**
15 **AGAINST ALL DEFENDANTS**

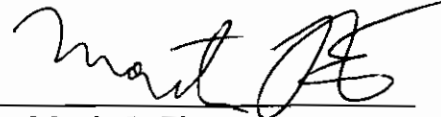
16 56. Cascades realleges and reincorporates paragraphs 1 through 55 above as though
17 specifically set forth herein.

18 57. Defendants have combined and conspired for the specifically anticompetitive
19 purpose and with the effect of eliminating competition between themselves in the purchase of
20 licenses from Cascades under its patented technology and also for the specifically
21 anticompetitive purpose and with the effect of obtaining and maintaining the power to control the
22 royalty rate (i.e., prices) and terms and conditions under which such patented technology would
23 be licensed. Defendants have accordingly conspired to monopsonize (i.e., accumulate market
24 power over the buyer's side of the market sufficient to confer effective control of that market) the
25 relevant market and submarkets alleged herein in violation of Section 2 of the Sherman Act.

JURY DEMAND

Cascades demands a trial by jury of all issues so triable.

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By: 
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Cascades Computer Innovation LLC

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