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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Edith Ramirez, Chairwoman** **Julie Brill** **Maureen K. Ohlhausen** **Joshua D. Wright**

In the Matter of **MOTOROLA MOBILITY LLC,** **a limited liability company** **and GOOGLE INC.,** **a corporation**	**Docket No. C-4410**

COMPLAINT

Pursuant to Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Respondent Google Inc. ("Google" or "Respondent") has engaged in conduct that violates the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

Nature of the Case

1. Through this action, the Commission challenges a course of conduct, whereby Google, and its predecessor in interest, Motorola Mobility, Inc. ("Motorola"), engaged in unfair methods of competition by breaching its commitments to standard-setting organizations ("SSOs") to license its standard essential patents ("SEPs") on fair, reasonable, and non-discriminatory ("FRAND") terms. Google violated its FRAND commitments by seeking to enjoin and exclude willing licensees of its FRAND- encumbered SEPs.

2. Manufacturers ensure compatibility for consumer electronic devices by agreeing on standards based on shared technologies that incorporate patents. These standards encourage adoption of a common platform among rival producers, which in turn fosters

competition among these producers and spurs entry of complementary products. Holders of SEPs typically agree to license their patents royalty-free or on FRAND terms before the technology becomes part of the standard. When participants breach their FRAND commitments by engaging in patent hold-up and threatening to keep products out of the market, consumers and the competitive process will likely be harmed.

3. Google's conduct will harm consumers by either excluding products from the market entirely as a result of an injunction, or by leading to higher prices because manufacturers using Google's SEPs would be forced, by the threat of an injunction, to pay higher royalty rates which would be passed on to consumers. This conduct will deter innovation by increasing the costs of manufacturing to a standard and undermining the integrity and value of the standard-setting process.

4. Left unchecked, such conduct may in the future cause or threaten to cause substantial injury to competition and to consumers.

Respondents

5. Respondent Motorola Mobility LLC (formerly Motorola Mobility Inc.), is a limited liability company with its principal place of business at 600 North U.S. Highway 45, Libertyville, IL 60048, and is a wholly-owned subsidiary of Respondent Google Inc.

6. Respondent Google is a Delaware corporation with its principal office or place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

7. Google is a global technology company. Among other things, Google owns and promotes the Android operating system for use in mobile devices such as cellular phones and tablet computers. Google also develops and sells, often through its subsidiary Motorola, mobile phones, tablet computers, and devices providing home internet access. Google owns an extensive patent portfolio, including patents that cover technologies used in wireless cellular voice and data transmission standards, standards for Wireless Local Area Networks (WLAN), and video compression standards.

8. Google actively participates in numerous SSOs, including the Institute of Electrical and Electronics Engineers ("IEEE"), the European Telecommunications Standards Institute ("ETSI"), and the International Telecommunications Union ("ITU"). Collectively, this Complaint refers to these SSOs as the Relevant SSOs.

9. At all times relevant herein, Google has been, and is now, a corporation as "corporation" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and at all times relevant herein, Google has been, and is now, engaged in commerce as "commerce" is defined in the same provision.

Technology Standards Enhance Competition and Consumer Welfare

10. Firms in the information technology and telecommunications industries frequently ensure interoperability of their products through voluntary standard setting conducted through

SSOs. Interoperability standards can benefit consumers by increasing competition, innovation, product quality and choice.

11. The Relevant SSOs publish technology standards that include cellular wireless communication standards such as GSM, EDGE, CDMA, UMTS, EV-DO and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and the H.264 video compression standards (published by ITU Telecommunications Standardization Sector). These are collectively referred to as the "Relevant Technology Standards" throughout this Complaint.

12. Manufacturers seeking to market mobile phones, tablet computers, and "smart" devices providing internet access such as gaming systems, laptops, and set-top boxes, must typically comply with one or more of the Relevant Technology Standards.

Patent Hold-Up Undermines Standard Setting

13. Inclusion of a patented technology into a standard can confer substantial market power on the holder of that patent. Prior to adoption of a standard, alternative technologies often compete to be included in the standard. Once a standard is adopted, implementers begin to make investments tied to the implementation of the standard. Because all of these participants may face substantial switching costs in abandoning initial designs and substituting a different technology, an entire industry may become "locked in" to a standard, giving a SEP owner the ability to demand and obtain royalty payments based not on the market value of its patents over alternative technologies, but on the costs and delays of switching away from the standardized technology.

14. The increase in the value of the patent based on the switching costs after it becomes a SEP is known as its "hold-up" value. The owner of a SEP may have the power to engage in hold-up by extracting higher royalties or other licensing terms that reflect the absence of competitive alternatives. Consumers of the products using the standard would be harmed if those higher royalties were passed on in the form of higher prices. The threat of hold-up also tends to reduce the value of standard setting, leading firms to rely less on the standard-setting process and depriving consumers of the substantial procompetitive benefits of standard setting.

FRAND Commitments Mitigate the Risk of Hold-Up

15. Requiring FRAND commitments is an important mechanism for SSOs and SSO participants to mitigate the risk of patent hold-up. A SEP-holder that makes a voluntary FRAND commitment promises to license its SEPs on fair and non-discriminatory terms to anyone willing to accept a license, *i.e.*, a "willing licensee," and thus relinquishes its right to exclude a willing licensee from using technologies covered by its SEPs to implement a standard.

16. An implementer of a SEP is a willing licensee when it manifests its willingness to accept terms that are determined to be FRAND, either because such terms have been voluntarily negotiated or have been determined to be FRAND by a court or other neutral third party.

17. The Relevant SSOs generally take into account whether patents are subject to a FRAND commitment when determining which technology to incorporate into a standard, and require a patentee to disclose whether it commits to licensing its patents on FRAND terms. If a patentee refuses to make a FRAND commitment for a patent at the time the Relevant SSOs are deciding which technologies to include in a standard, the Relevant SSOs will generally not include the technology subject to that patent.

The Threat of Injunctive Relief Undermines the FRAND Commitment, Reinstating the Risk of Patent Hold-Up

18. After a FRAND commitment is made, the patentee and the implementer typically will negotiate a royalty and other license terms or, in the event they are unable to agree, may seek determination of reasonable terms by a judge or other neutral arbiter.

19. A licensing negotiation that occurs under threat of an injunction or exclusion order, however, is weighted toward the patentee in a fashion inconsistent with the FRAND commitment. In the presence of an injunctive threat, the negotiation between a patentee and the implementer is linked to the implementer's potential lost revenues from the sales of the enjoined products, rather than to the market value of the patent as compared to alternatives. This change in the stakes raises the maximum royalty rate the potential licensee is willing to pay, tending to push that rate upwards and out of the FRAND range.

Relevant Markets

20. The relevant product market consists of the technology covered by any Google-owned SEP and all substitutes for that technology.

21. The inclusion of MMI's technology and the subsequent adoption of the Relevant Technology Standard by the industry eliminated viable technology alternatives for implementers and conferred monopoly power which otherwise would not have existed.

Motorola and Google Made Irrevocable FRAND Commitments

22. Motorola has been a longstanding member of the Relevant SSOs and irrevocably committed to license on FRAND terms all of its SEPs incorporated in the Relevant Technology Standards. These FRAND commitments enabled the incorporation of Motorola's patented technology into the Relevant Technology Standards.

23. In reliance on Motorola's FRAND commitments, implementers invested billions of dollars in designing and manufacturing products compliant with the Relevant Technology Standards.

24. Upon acquiring Motorola, Google assumed the FRAND commitments made by Motorola and affirmed its obligation to abide by Motorola's FRAND commitments.

Google Violated its FRAND Commitments by Seeking to Enjoin and Exclude Willing Licensees

25. Motorola breached its FRAND obligations by seeking to enjoin and exclude implementers of its SEPs, including some of its competitors, from marketing products compliant with some or all of the Relevant Technology Standards. Google continued Motorola's exclusionary campaign after acquiring Motorola. Google used these threats of exclusion orders and injunctions to enhance its bargaining leverage against willing licensees and demand licensing terms that tended to exceed the FRAND range. At all times relevant to this Complaint, these implementers were willing licensees of Google's FRAND-encumbered SEPs.

26. Motorola filed, and Google prosecuted, patent infringement claims before the United States International Trade Commission ("ITC"). The only remedy for patent infringement at the ITC is an exclusion order, and filing before the ITC on a FRAND-encumbered SEP therefore significantly raises the risk of patent hold-up.

27. Motorola also filed for, and Google prosecuted, claims for injunctive relief related to its FRAND-encumbered SEPs in federal district court in parallel with its ITC filings. *See* Complaint, *Motorola Mobility, Inc. v. Apple, Inc.*, No. 1:10-cv-6385, slip op. at 10 (E.D. Ill. Oct. 6, 2010); Complaint for Patent Infringement, *Motorola Mobility, Inc. v. Microsoft Corp.*, No. 10-cv-699, slip op. at 8 (W.D. Wis. Nov. 10, 2010); Complaint for Patent Infringement, *Motorola Mobility, Inc. v. Microsoft Corp.*, No. 10-cv-700, slip op. at 12 (W.D. Wis. Nov. 10, 2010); Complaint for Patent Infringement, *Motorola Mobility, Inc. v. Microsoft Corp.*, No. 1:10-cv-24063, slip op. at 14 (S.D. Fla. Nov. 10, 2010).

The Likely Anticompetitive Effects of Google's Conduct Outweigh Any Potential Benefits

28. The likely anticompetitive effects of Google's breach of its FRAND commitments include:

    a. Depriving end consumers of competing products that comply with the Relevant Technology Standards, including mobile phones, tablet computers, and "smart" devices providing internet access such as gaming systems, laptops, and set-top boxes;

    b. Increasing costs to produce consumer devices that comply with the Relevant Technology Standards, which manufacturers will likely pass through to consumers;

    c. Undermining the integrity and efficiency of the standard-setting process and decreasing the incentives to participate in the process and adopt published standards; and

d. Raising the costs of Google's competitors and thereby dampening competition between Google and makers of competing products, including, but not limited to, mobile phone operating systems, mobile phones, video compression technologies, and devices providing home internet access.

29. There is no legitimate efficiency justification sufficient to outweigh the harm to competition and consumers threatened by Google's conduct.

Substantial Consumer Injury

30. If Google's practices are allowed to continue, many consumer electronics manufacturers will agree to pay unreasonable royalties simply to avoid an injunction or exclusion order. Manufacturers will likely pass on some portion of these costs to end consumers.

Violation Alleged

31. Google's conduct constitutes an unfair method of competition in violation of Section 5 of the FTC Act. This conduct, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-third day of July, 2013, issues its Complaint against Respondent Motorola Mobility LLC and Respondent Google Inc.

By the Commission, Commissioner Ohlhausen dissenting and Commissioner Wright recused.

Donald S. Clark
Secretary

SEAL: