

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

MOTOROLA MOBILITY LLC,
a limited liability company

and

GOOGLE INC.,
a corporation.

File No. 121-0120



**RESPONDENTS' INITIAL COMPLIANCE REPORT
PURSUANT TO COMMISSION RULE OF PRACTICE 2.33
AND THE AGREEMENT CONTAINING CONSENT ORDER**

Respondents Motorola Mobility LLC (“Motorola”) and Google Inc. (“Google”) (collectively, “Respondents”) hereby submit the following compliance report pursuant to Commission Rule of Practice 2.33, 16 C.F.R. § 2.33, and Paragraph 5 of the Agreement Containing Consent Order (the “ACCO”) entered in the above-referenced proceeding on January 3, 2013 (the “Agreement Date”).

As required by Paragraph 5 of the ACCO, Part I of this report describes “in detail the manner in which [Respondents] have complied, are complying and will comply with the Consent Agreement and the Decision and Order.” Part II of this report “include[s] information sufficient to demonstrate that all negotiations and license agreements pertaining to standard essential patents that have occurred or been entered into since the signing of the Consent Agreement . . . comply with the terms of the Decision and Order.” Finally, while not specifically required by the ACCO, Part III of this report describes, as provided in Paragraph VI.A of the Decision and Order, “the status of each Action that contained a request for Covered Injunctive Relief as of the date Respondents signed the Agreement Containing Consent Order, a description of all pending requests for Covered Injunctive Relief and how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patent and an assurance that such sale or assignment complies with Paragraph V.B of th[e] Order.”

Portions of this report contain highly confidential business information of Respondents. Respondents therefore request that, at minimum, those portions be afforded confidential treatment pursuant to FTC Rules of Practice 4.9(c), 4.10(a)(2), and § 6(f) of the FTC Act, 15 U.S.C. §46(f), as more fully set forth in the transmittal letter accompanying this report.

I. DETAILED DESCRIPTION OF RESPONDENTS' COMPLIANCE EFFORTS

As required by the ACCO, this section describes the manner in which Respondents “have complied, are complying and will comply with the Consent Agreement and the Decision and Order.” Specifically, the actions Respondents have taken and are taking to comply with each Paragraph of the Order are described below.

To assure *future* compliance with the Order, Respondents have instructed the members of their respective Legal Departments having responsibility for the licensing and enforcement of Respondents' FRAND Patents, and who therefore have responsibility for the decision to seek Covered Injunctive Relief on the basis of the alleged Infringement of such FRAND Patents, of the requirements of the Order and of their responsibility to ensure compliance with the Order. The specific contents of those instructions reflect confidential legal advice and are protected from disclosure pursuant to the attorney-client privilege and the work product doctrine.

Because the Order principally restricts Respondents' decision to seek Covered Injunctive Relief, which is already subject to the supervision and control of their respective Legal Departments in the ordinary course of Respondents' business, Respondents are confident that those instructions are sufficient to ensure compliance with the Order. Nonetheless, where Respondents believe that additional measures are prudent to further compliance with specific provisions of the Order, they are further described below.

A. Paragraph I of the Order

Paragraph I of the Order contains only definitions. Respondents therefore do not have any relevant compliance obligations pursuant to Paragraph I.

B. Paragraph II of the Order

1. Paragraph II.A

Respondents have not “revoked or rescinded any FRAND Commitments” since the Agreement Date.

Respondents' decision to revoke or rescind a FRAND Commitment would, under Respondents' ordinary business practices, involve engagement with the Motorola or Google Legal Department, as appropriate. Once engaged, Legal Department representatives will assure that such revocation or rescindment would be consistent with the requirements of the Order.

2. Paragraph II.B

Respondents have not, since the Agreement Date, directly or indirectly made any new claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent.

3. Paragraph II.C

Respondents have not, since the Agreement Date, “obtain[ed] or enforce[d] Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that [was] pending” as of the Agreement Date, and will not do so “unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought.” For reference, a list of such pending claims is included below in Part III of this report.

4. Paragraph II.D

Respondents have not, since the Agreement Date, “obtain[ed] or enforce[ed] Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date th[e] Order was accepted for public comment, (ii) during the pendency of a Qualified Request for a FRAND Determination that complies with Paragraph IV.C of th[e] Order, or (iii) after a Potential Licensee accepts Respondents’ Offer to Arbitrate.”

5. Paragraph II.E

Respondents have not, since the Agreement Date, asserted in any Court that a Potential Licensee’s written confirmation as requested in a FRAND Terms Letter “constitutes a specific agreement to license on any particular terms.”

C. Paragraph III of the Order

Paragraph III establishes certain procedures that would come into effect should Respondents and a Potential Licensee “agree to enter into the procedure described in . . . Paragraph III, or any other mutually agreed to procedure that specifically references . . . Paragraph III, as the exclusive means for determining the terms of a License Agreement covering Respondents’ patents that are Essential to the Covered Standards and, if either party seeks Reciprocity, the Potential Licensee’s patents that are Essential to the Covered Standards to the extent not already licensed.”

Respondents have not entered into any such agreement with a Potential Licensee since the Agreement Date and have therefore not “file[d] a claim seeking, or otherwise obtain[ed] or enforce[d], Covered Injunctive Relief that violates” the terms of such an agreement, as provided in Paragraph III.F of the Order.

D. Paragraph IV of the Order

1. Paragraphs IV.A-IV.D of the Order

Respondents have not, since the Agreement Date, “file[d] any claim seeking, or otherwise obtain[ed] or enforce[d], Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent.”

2. Paragraphs IV.E-IV.G of the Order

Paragraphs IV.E through IV.G do not require Respondents to take, or to cease and desist from taking, any action. Respondents therefore do not have any relevant compliance obligations pursuant to Paragraphs IV.E, IV.F or IV.G of the Order.

E. Paragraph V of the Order

1. Paragraph V.A of the Order

[REDACTED]

Respondents have informed the employees responsible for the licensing of Respondents' FRAND Patents of the requirements of Paragraph V.A and the need to ensure a timely response to any request for a license.

2. Paragraph V.B of the Order

On or about December 19, 2012, Google agreed to sell Motorola Home, the business of Motorola that produces set-top boxes among other products, to Arris Group Inc.

Paragraph 6.07(b) of the Acquisition Agreement by and among Arris Group, Inc., Arris Enterprises I, Inc., Arris Enterprises II, Inc., General Instrument Holdings, Inc. and Motorola Mobility LLC, dated as of December 19, 2012 (the "Arris Purchase Agreement") provides that:

Purchaser agrees to (i) be bound and cause its Affiliates (including the Company and the Company Subsidiaries) and any subsequent assignee to be bound by any obligations imposed by any Governmental Order entered prior to Closing applicable to any Patents included in the Company Intellectual Property, if any, that are "essential" (as defined by the rules of any standard-setting bodies, industry groups or consortia or by such Governmental Order) or are otherwise required to be licensed on fair, reasonable and non-discriminatory

or royalty-free terms pursuant to the promises, declarations and commitments referenced in clause (ii)(x) below, provided that Seller shall provide to Purchaser a copy of any such Governmental Order prior to the Closing Date, (ii) be bound and cause its Affiliates (including the Company and the Company Subsidiaries) and any subsequent assignee to be bound by the Liabilities arising from the promises, declarations and commitments made by or otherwise binding upon Seller or its Affiliates, including the Company and the Company Subsidiaries, concerning any of the Patents included in the Company Intellectual Property, (x) in connection with the standard-setting bodies, industry groups or consortia (or their members or implementers of their standards or specifications) that are set forth in Section 6.07(b)(ii)(x) of the Seller Disclosure Schedule and (y) pursuant to the Contracts that are set forth in Section 6.07(b)(ii)(y) of the Seller Disclosure Schedule, and (iii) notify in writing any subsequent purchaser of any of the Patents included in the Company Intellectual Property of the existence of promises, declarations and commitments made to the standard-setting bodies, industry groups or consortia set forth in Section 6.07(b)(ii)(x) of the Seller Disclosure Schedule (to the extent applicable to such Patents) and to require such subsequent purchasers to notice terms substantially the same as those set forth in this Section 6.07(b)(ii).

The Arris Purchase Agreement, including but not limited to Paragraph 6.07(b)(ii), satisfies Respondents' obligation under Paragraph V.B of the Order to ensure that Arris agrees "to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent[s are] subject to such FRAND Commitments."

The Arris Purchase Agreement, including but not limited to Paragraph 6.07(b)(i), satisfies Respondents' obligation under Paragraph V.B of the Order to ensure that Arris agrees "not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent[s] except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of th[e] Order."

The Arris Purchase Agreement, including but not limited to Paragraph 6.07(b) (in particular its reference to subsequent assignees), satisfies Respondents' obligation under Paragraph V.B of the Order to ensure that Arris agrees "to condition further assignment of the FRAND Patent[s] on the assignee agreeing to the terms of this subparagraph V.B" of the Order.

F. Paragraph VI of the Order

Paragraph VI imposes obligations on Respondents that are effective "[w]ithin thirty (30) days after th[e] Order has been issued" and annually thereafter on the anniversary of the date th[e] Order becomes final. It therefore does not impose any current compliance obligation on Respondents. Nonetheless, Respondents have written this initial compliance report pursuant to Paragraph 5 of the ACCO consistent with the requirements of Paragraph VI.A of the Order.

Respondents have charged appropriate in-house and outside counsel with preparing and submitting future compliance reports as required by Paragraph VI of the Order.

G. Paragraph VII of the Order

Paragraph VII of the Order requires that Respondents “notify the Commission at least thirty (30) days prior to” the acquisition, merger, consolidation or dissolution of Motorola Mobility LLC or Google Inc., or certain other events that “might affect” Respondents’ compliance obligations under the Order. None of the specified events have occurred subsequent to the Agreement Date and Respondents have no reason to believe that any of the specified events will occur within 30 days of the date of this report. Respondents therefore have no present obligation to submit a notification pursuant to Paragraph VII of the Order.

Any action requiring a notification pursuant to Paragraph VII of the Order would require the prior involvement of the Motorola or Google Legal Departments, as applicable, which will ensure the filing of an appropriate notification.

H. Paragraph VIII of the Order

Respondents have not, since the Agreement Date, received any requests for access from authorized representatives of the Commission pursuant to Paragraph VIII of the Order. Should they receive such requests, Respondents will comply with the requirements of Paragraph VIII of the Order.

I. Paragraph IX of the Order

Paragraph IX of the Order does not impose any relevant compliance obligations on Respondents.

II. NEGOTIATIONS AND LICENSE AGREEMENTS RELATED TO STANDARD-ESSENTIAL PATENTS

Paragraph 5 of the ACCO requires that this compliance report “include information sufficient to demonstrate that all negotiations and license agreements pertaining to standard essential patents that have occurred or been entered into since the signing of the Consent Agreement or the previous compliance report, whichever is later, comply with the terms of the Decision and Order.”

Other than the requirements in Paragraph V.A of the Order that are triggered by Respondents’ receipt of a written request for a license to Respondents’ FRAND Patents Essential to one or more Standards (with which Respondents are complying, as described above), the Decision and Order do not restrict Respondents’ freedom to negotiate license agreements for their standard essential patents (including Respondents’ FRAND Patents, as defined in the Order). All of Respondents’ negotiation and license agreements pertaining to standard essential patents that have occurred or been entered into since the

signing of the Consent Agreement have, therefore, complied with the terms of the Decision and Order.

III. STATUS OF PENDING REQUESTS FOR COVERED INJUNCTIVE RELIEF AND SALES OR ASSIGNMENTS OF FRAND PATENTS

A. Pending Requests for Covered Injunctive Relief

The following is a list of all Actions that contained a request for Covered Injunctive Relief as of the Agreement Date (January 3, 2013) and the current status of such Actions:

1. Apple, Inc. et al. v. Motorola, Inc. et al., N.D. Ill. No. 11-CV-8540

On June 22, 2012 the court dismissed Motorola's claims for injunctive relief related to Apple's alleged infringement of U.S. Patent No. 6,359,898. Prior to the court's June 22, 2012 order, the court also dismissed Motorola's claims for patent infringement of U.S. Patent No. 5,311,516 and found non-infringement of U.S. Patent No. 6,175,559. All three patents qualify as FRAND Patents under the Order.

[REDACTED]

[REDACTED]

2. In re Certain Wireless Communication Devices, Portable Music and Data Processing Devices, Computers and Components Thereof, Int'l Trade Comm'n Inv. No. 337-TA-745

On August 24, 2012, the International Trade Commission issued a final determination of no violation of Section 337 with respect to the asserted claims of U.S. Patent No. 5,636,223 and U.S. Patent No. 6,246,697, the only patent claims qualifying as FRAND Patents under the Order remaining in Inv. No. 337-TA-745. As of January 3, 2013, Motorola had a pending appeal to the U.S. Court of Appeals for the Federal Circuit (Case No. 12-1666). By order dated December 10, 2012, the Federal Circuit extended Motorola's time to file its brief until February 6, 2013.

[REDACTED]

3. In re Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof, Int'l Trade Comm'n Inv. No. 337-TA-752

As of January 3, 2013 Motorola was seeking an exclusion order from the International Trade Commission in this proceeding based on Microsoft's infringement of three patents, two of which qualified as FRAND Patents pursuant to the Order: U.S. Patent No. 6,980,596 and U.S. Patent No. 7,162,094 (the "H.264 patents").

Although not required to do so under the terms of the Order, Motorola voluntarily moved to terminate the investigation with respect to the H.264 patents. The ALJ granted Motorola's motion on January 11, 2013. The only remaining patent at issue in the investigation is U.S. Patent No. 6,060,896. While essential to the 802.11 standard, the '896 patent is not being asserted against Microsoft's implementation of the 802.11 standard (or any standard) and therefore does not qualify as a FRAND Patent under the Order.

Motorola is therefore no longer able to obtain or enforce Covered Injunctive Relief in this proceeding.

4. Motorola Mobility, Inc., et al. v. Microsoft Corp., W.D. Wisc. No. 10-cv-700

By order dated January 21, 2011, this Action is presently stayed pending a determination in ITC Investigation No. 337-TA-752, which has a target date for completion of July 23, 2013, although the court reserved the right to lift the stay at an earlier point.

To the extent this Action includes claims for Covered Injunctive Relief, those claims were pending as of the Agreement Date and therefore do not constitute "future claims for Covered Injunctive Relief" covered by Paragraph II.B of the Order. Moreover, unless they are resolved prior to the Commission's final entry of the Decision and Order, they will be "pending on the date this Order is issued" as provided in Paragraph II.C of the Order.

Because Motorola has neither obtained nor enforced Covered Injunctive Relief in this Action, and will not do so unless and until Respondents have satisfied the applicable requirements of the Order, Motorola's continued prosecution of the Action, when and if the stay is lifted, will fully comply with the Order.

5. Motorola Mobility Inc. v. Microsoft Corp., W.D. Wash. Case No. 10-cv-1408

By order dated July 20, 2012, this Action is presently stayed pending further order of the Court.

To the extent this Action includes claims for Covered Injunctive Relief, those claims were pending as of the Agreement Date and therefore do not constitute “future claims for Covered Injunctive Relief” covered by Paragraph II.B of the Order. Moreover, unless they are resolved prior to the Commission’s final entry of the Decision and Order, they will be “pending on the date this Order is issued” as provided in Paragraph II.C of the Order.

Because Motorola has neither obtained nor enforced Covered Injunctive Relief in this Action, and will not do so unless and until Respondents have satisfied the applicable requirements of the Order, Motorola’s continued prosecution of the Action, when and if the stay is lifted, will fully comply with the Order.

6. General Instrument Corp. v. Microsoft Deutschland GmbH, Mannheim 2 O 240/11 / 2 O 373/11

The Regional Court of Mannheim granted Motorola’s request (made through its subsidiary General Instrument Corp.) for injunctive relief based on Microsoft’s infringement of EP Patent No. 0 538 667 and EP Patent No. 0 615 384 on May 2, 2012. Motorola has not moved to enforce that injunction, however, and has been prohibited from doing so pursuant to orders of the U.S. District Court for the Western District of Washington dated May 14, 2012 and November 30, 2012.

The ’667 patent expired on October 6, 2012, precluding any further effort to enforce Covered Injunctive Relief on the basis of that patent.



B. Sales and Assignments of FRAND Patents

Respondents have not sold or assigned any FRAND Patents subsequent to the Agreement Date.

Respondents’ pending sale of Motorola Home, which, when completed, is expected to include certain patents that may qualify as FRAND Patents, is described above in section II(E)(2) of this report. Such sale will comply with Paragraph V.B of the Order.

CERTIFICATION ON BEHALF OF MOTOROLA MOBILITY LLC

Pursuant to 28 U.S.C. § 1746, I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 31, 2013.

A handwritten signature in black ink, appearing to read "S Offer", written over a horizontal line.

Scott Offer
Vice President & General Counsel
Motorola Mobility LLC

CERTIFICATION ON BEHALF OF GOOGLE INC.

Pursuant to 28 U.S.C. § 1746, I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 31, 2013.



Donald Harrison
Vice President, Corporate Development
Google Inc.