Kelly, Andrea

From: JDL
Sent: Tuesday, December 11, 2012 9:58 PM
To: 'Quinter, Neil (Judiciary-Dem)'
Cc: Bumpus, Jeanne
Subject: RE: letter for you from Senator Feinstein

Sorry if I went from zero to sixty but it has been a long day. We'll also write back a more appropriate, formal response to the Senator shortly.
Jon :)

From: JDL
Sent: Tuesday, December 11, 2012 9:55 PM
To: 'Quinter, Neil (Judiciary-Dem)'
Cc: Bumpus, Jeanne
Subject: RE: letter for you from Senator Feinstein

Hi Neil,
I know Eric Schmidt is going around the Hill claiming we are leaking stuff but my strong belief is that the vast majority of items come from Google itself or complainants against Google. While I can't say with certainty nothing came from us let me assure you that we take confidentiality very seriously and that we have NEVER had this problem on any conduct case since I've been on the Commission. NEVER.
Jeanne will send you around a memo on confidentiality that I sent to staff last month.
Not Responsive

Hope all is well,
Jon

From: Quinter, Neil (Judiciary-Dem) [mailto:Neil_Quinter@Judiciary-dem.senate.gov]
Sent: Tuesday, December 11, 2012 2:36 PM
To: JDL
Cc: Bumpus, Jeanne
Subject: letter for you from Senator Feinstein

Thanks for your consideration of this.

Neil

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Sunday, December 30, 2012 10:11 PM
To: Feinstein, Richard
Cc: 'nshanbhag@google.com'; 'matthewbye@google.com'; Renner, Christopher
Subject: RE: ACCO

Will do.

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Feinstein, Richard [mailto:rfeinstein@ftc.gov]
Sent: Sunday, December 30, 2012 10:05 PM
To: Harkrider, John D.
Cc: 'nshanbhag@google.com'; 'matthewbye@google.com'; Renner, Christopher
Subject: Re: ACCO

Please send us your specific proposals regarding the Complaint by tomorrow morning, if possible, so that we can undertake the final "best efforts" process that Jon and David discussed in a timely manner. Thanks.
Rich

From: Feinstein, Richard
Sent: Sunday, December 30, 2012 09:50 PM
To: 'JDH@avhlaw.com' <JDH@avhlaw.com>
Cc: 'nshanbhag@google.com' <nshanbhag@google.com>; 'matthewbye@google.com' <matthewbye@google.com>
Subject: Re: ACCO

Thanks, John.
RAF

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Sunday, December 30, 2012 09:37 PM
To: Feinstein, Richard
Cc: Nikhil Shanbhag <nshanbhag@google.com>; Matthew Bye <matthewbye@google.com>
Subject: ACCO

HIGHLY CONFIDENTIAL
FRE 408

Thanks Rich for following up.

We are submitting the executed signature pages for the ACCO (b)(3):6(f),(b)(4) (b)(3):6(f),(b)(4) Order will not change from the last draft sent by the FTC to Google, except for as many of Google's proposed changes as the Commission will

accept. If at any time it appears that the Commission is not prepared to abide by our agreement, please return the signature pages to me.

Again, thanks for all of your hard work over the last few weeks to bring these matters to closure.

John

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****

Kelly, Andrea

From: Nikhil Shanbhag <nshanbhag@google.com>
Sent: Monday, December 31, 2012 6:09 PM
To: Feinstein, Richard
Cc: Creighton, Susan; Renner, Christopher
Subject: Re: Commission statement

Hi Rich --

I've had a chance to check in with David. While his understanding was that his discussion with the Chairman only involved the sending of the signed ACCO pages, he is OK proceeding with the signed commitment letter. However, Google's agreement to be bound by the letter will still be contingent on our comfort with the substance of the Commission Statement. David is in transit right now but will be able to send me the signed letter in several hours.

On the discussion of the Commission Statement, would it be possible to schedule that discussion for tomorrow afternoon Eastern time? Since David will not be able to provide final sign-off on the agreement until that discussion happens, we would suggest scheduling it as soon as possible to allow you to move the Commission process forward.

Thanks,
Nikhil

Nikhil Shanbhag | Senior Competition Counsel | Google Inc.
nshanbhag@google.com | 650-214-5313

On Mon, Dec 31, 2012 at 4:56 PM, Feinstein, Richard <rfeinstein@ftc.gov> wrote:

Nikhil—

Thanks for your note. Chris and I have received explicit instructions from the Chairman—following his most recent telephone conversations with David Drummond—to coordinate with you on messaging as soon as we have received the signed commitment letter. We understood that both the signed ACCO and the signed commitment letter would be sent to us today. We are available as early on Wednesday as is convenient for you to have that discussion, provided that we have received the letter first.

Thanks, and Happy New Year to you and Susan as well.

Rich

From: Nikhil Shanbhag [mailto:nshanbhag@google.com]
Sent: Monday, December 31, 2012 4:27 PM
To: Feinstein, Richard
Cc: Creighton, Susan; Renner, Christopher
Subject: Re: Commission statement

Rich,

Thanks for your response. As we've discussed, having an understanding of the substance of the Commission Statement is of the utmost importance to Google and forms a critical part of our agreement with respect to resolution of the "search" investigation. Once we're able to understand the contours of that document from you, we'll be able to convey that to David Drummond, Larry Page, et al. Assuming the Statement conforms to their understanding from the various discussions with Chairman Leibowitz, we anticipate a final call from David to the Chairman and conveyance of the signed commitments letter to you.

Could you let us know when you anticipate being able to discuss the Statement so we can put this final piece into position?

Thanks and Happy New Year,

Nikhil

Nikhil Shanbhag | Senior Competition Counsel | Google Inc.
nshanbhag@google.com | 650-214-5313

On Mon, Dec 31, 2012 at 3:21 PM, Feinstein, Richard <rfeinstein@ftc.gov> wrote:

Susan--
I apologize for the delay in getting back to you--I was tied up for most of the last two hours. Is there some reason why we haven't received a signed copy of the commitment letter to the Chairman?
Rich

-----Original Message-----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Monday, December 31, 2012 12:53 PM
To: Feinstein, Richard
Cc: Nikhil Shanbhag (nshanbhag@google.com)
Subject: Commission statement

Rich: are you in position at this point to walk Nikhil and I through the Commission statement at this point? We're free at 2 if that's convenient for you, or 2:30 or 3 if that's better.

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Kelly, Andrea

From: JDL
Sent: Friday, January 04, 2013 11:40 PM
To: 'ckerry@doc.gov'
Subject: Re: Google

Thanks, Cam, for the kind words. We knew we'd face criticism for closing (though we got terrific relief on the SEP issue) but thought we wouldn't be doing the right thing if we didn't conclude the investigation.
I guess that's why they pay us the big bucks!
A happy new year, too, and hope all is well,
Jon

Sent by Jon Leibowitz from his BlackBerry

From: Kerry, Cameron [mailto:CKerry@doc.gov]
Sent: Friday, January 04, 2013 08:52 AM
To: JDL
Subject: Google

(b)(5)

Kelly, Andrea

From: JDL
Sent: Tuesday, January 01, 2013 10:21 PM
To: 'ddrummond@google.com'
Subject: Re: Hi,

Got it.
Aloha.
Jon

Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [mailto:ddrummond@google.com]
Sent: Tuesday, January 01, 2013 10:14 PM
To: JDL
Subject: Re: Hi,

Hi Jon

Happy new year to you too. I'm 5 hours behind east coast but rise pretty early.

Best
David

On Jan 1, 2013 4:02 PM, "JDL" <JDL@ftc.gov> wrote:
Hope that you had a good New Year's. Unlikely to announce anything wednesday as I think we are either trading (or, hopefully, just resolved) language re the SEPs Order. (I believe both sides are somewhere below the weed level at this point.)
I can call you tomorrow but don't want to wake you up--are you three or five hours behind Eastern time?
Best,
Jon

Sent by Jon Leibowitz from his BlackBerry

From: JDL
Sent: Saturday, December 29, 2012 05:08 PM
To: 'ddrummond@google.com' <ddrummond@google.com>
Subject: Re: Call with Chairman Leibowitz

Just had exactly the same issue calling you. (You might be beyond coverage now just as I was before.)
In any event, I'm available for the next several hours so hopefully we'll be able to catch up.
Yours,
Jon
Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [mailto:ddrummond@google.com]
Sent: Saturday, December 29, 2012 02:16 PM

To: JDL
Subject: Re: Call with Chairman Leibowitz

Tried you but wouldn't go through. Not sure if it's me or you. Will be out of coverage for a few hours but will try you then. Best, David

On Dec 29, 2012 5:13 AM, "JDL" <JDL@ftc.gov> wrote:
Hi David,
Have moved from tropical rainforests to snow covered mountains (Virginia), where cell service is much spottier.
But my afternoon will be spent in a town at a bowling alley and a gym, so just call me when you get a chance. (If you get my vm, pls shoot me an email and I'll call you back.)
Best,
Jon
Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [mailto:ddrummond@google.com]
Sent: Friday, December 28, 2012 09:11 PM
To: JDL
Subject: Re: Call with Chairman Leibowitz

Jon
Sorry I missed you. Wanted to touch base on one item. Thanks. David

On Dec 28, 2012 11:37 AM, "JDL" <JDL@ftc.gov> wrote:

Mr. Drummond,

Chairman Leibowitz has tried to return your call but he is having trouble getting through (he wonders whether you are on the beach?). He is currently driving, and his cell phone (b)(6) should have reception for the next few hours.

If you are having trouble reaching the Chairman, please call the main office at (202) 326-3400.

Kelly, Andrea

From: JDL
Sent: Monday, December 24, 2012 9:57 AM
To: 'ddrummond@google.com'
Subject: Re: Next Steps

I'll wait until it's at least 9:00 AM on the Big Island (and various smaller ones).
Jon
Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [mailto:ddrummond@google.com]
Sent: Sunday, December 23, 2012 10:26 PM
To: JDL
Subject: Re: Next Steps

Just tried you. Am in much more pedestrian Hawaii, so it sounds like we're in the same time zone. Am on my cell so any time works for me too.
Best
David

On Dec 23, 2012 4:52 PM, "JDL" <JDL@ftc.gov> wrote:
Hi,
Actually, I am in Costa Rica, which is only two hours behind CA time. (b)(6)
(b)(6)
Cell phone service is generally good--feel free to call any time.
Best,
Jon
Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [mailto:ddrummond@google.com]
Sent: Sunday, December 23, 2012 07:04 PM
To: JDL
Subject: Re: Next Steps

Jon-

Excellent news. I will check with the team on the last change. I hope we can just take it too. Am in country but 2hrs behind California time, so don't want to call in the middle of the night, so let me know how late today is OK, or I will try you first thing in the morning.

Best,
David

On Sun, Dec 23, 2012 at 9:40 AM, JDL <JDL@ftc.gov> wrote:
Hi David,
Hope all is well.
I understand we sent you back one proposed change to the complaint on the market for SEPs, which is unlikely to be material. Hopefully, you can just take it.
If so, the Commission's inclination would be to move toward closure very, very quickly in the new year, assuming we have all the documents signed, etc., etc. Once that's done, I'll get Cecelia, our head of communications, talking to Adam

about coordinating on timing (your posting, our announcement). Some other stuff we can talk about at your convenience. (Try my cell at (b)(6) I am out of the country and getting calls but having difficulty accessing vm.)
Best,
Jon
Sent by Jon Leibowitz from his BlackBerry

From: JDL
Sent: Tuesday, December 18, 2012 12:31 PM
To: 'David Drummond' <ddrummond@google.com>
Subject: RE: Re:

Just tried reaching you but, as you know, you are a hard person to track down! Call me when you get a chance.

Jon

From: David Drummond [mailto:ddrummond@google.com]
Sent: Monday, December 17, 2012 11:42 PM
To: JDL
Subject: RE: Re:

Hi Jon

Thanks for the note. I'll try you tomorrow. I can understand how frustrating the current environment must be. At your service to close this out.

Best
David

On Dec 17, 2012 6:05 PM, "JDL" <JDL@ftc.gov> wrote:

Hi David,

Thanks, just left you a vm in response to yours—and very much appreciate your note. Just give me a call when you get a chance: (b)(6) (c) tonight or (202) 326-2533 (o) tomorrow.

Best,

Jon

> **From:** David Drummond [mailto:ddrummond@google.com]
> **Sent:** Monday, December 17, 2012 6:49 PM
> **To:** JDL
> **Subject:** Re:
>
> Jon-

I think we should probably speak live. I think it's pretty unfair to ascribe these stories to Google. I can tell you that the details of the resolution included in these stories were known only to a very small group of Googlers. I do not believe any of these people participated in these stories. Indeed, those who were approached by reporters were approached with fully baked stories and provided only our canned response. We are committed to the process we discussed and I will personally make sure that we continue to follow it to the letter.

Thanks,

David

On Mon, Dec 17, 2012 at 3:21 PM, JDL <JDL@ftc.gov> wrote:

Hi David,

Happy to chat with you later today or tomorrow but you need to understand that the stories over the weekend—all of which indicated that you are receiving at most a "wrist slap"—infuriated everyone at the Commission. Over the objections of some of my colleagues, I am still committed to the process we had previously discussed. How can I be sure that your colleagues at Google (or your many outside advisers) are also committed?

Best,

Jon

From: David Drummond [mailto:ddrummond@google.com]
Sent: Monday, December 17, 2012 2:35 PM
To: JDL
Subject:

Hi Jon-

Sounds like it might make sense to chat. Do you have a free moment today?

Thanks,

David

Kelly, Andrea

From: Feinstein, Richard
Sent: Sunday, December 30, 2012 9:56 PM
To: JDL; Renner, Christopher; Levitas, Pete; Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Fw: ACCO
Attachments: Final ACCO Signature Pages.pdf

We have it.

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Sunday, December 30, 2012 09:37 PM
To: Feinstein, Richard
Cc: Nikhil Shanbhag <nshanbhag@google.com>; Matthew Bye <matthewbye@google.com>
Subject: ACCO

HIGHLY CONFIDENTIAL
FRE 408

Thanks Rich for following up.

We are submitting the executed signature pages for the ACCO (b)(3):6(f),(b)(4) (b)(3):6(f),(b)(4) Order will not change from the last draft sent by the FTC to Google, except for as many of Google's proposed changes as the Commission will accept. If at any time it appears that the Commission is not prepared to abide by our agreement, please return the signature pages to me.

Again, thanks for all of your hard work over the last few weeks to bring these matters to closure.

John

John D. Harkrider
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MOTOROLA MOBILITY LLC

Dennis Woodside
Chief Executive Officer, President & Secretary
Motorola Mobility LLC

Dated: 12/27/12

GOOGLE INC.

Donald Harrison
Vice President, Deputy General Counsel & Assistant Secretary
Google Inc.

Dated:_____

COUNSEL

John D. Harkrider
Axinn, Veltrop & Harkrider LLP
Counsel for Google Inc. and Motorola Mobility LLC

Dated:_____

FEDERAL TRADE COMMISSION

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Attorney
Bureau of Competition

APPROVED:

Nicholas A. Widnell
Deputy Assistant Director

Melanie Sabo
Assistant Director

Peter J. Levitas
Deputy Director

Richard A. Feinstein
Director

Bureau of Competition

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Chief Executive Officer, President & Secretary
Motorola Mobility LLC

Dated: _____

GOOGLE INC.

Donald Harrison
Vice President, Deputy General Counsel & Assistant Secretary
Google Inc.

Dated: 12/27/12

COUNSEL

John D. Harkrider
Axinn, Veltrop & Harkrider LLP
Counsel for Google Inc. and Motorola Mobility LLC

Dated: _____

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Director

Bureau of Competition

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_____
Dennis Woodside
Chief Executive Officer, President & Secretary
Motorola Mobility LLC

Dated:_____

GOOGLE INC.

_____
Donald Harrison
Vice President, Deputy General Counsel & Assistant Secretary
Google Inc.

Dated:_____

COUNSEL

_____
John D. Harkrider
Axinn, Veltrop & Harkrider LLP
Counsel for Google Inc. and Motorola Mobility LLC

Dated: 12/30/12

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Deputy Assistant Director

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Assistant Director

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Peter J. Levitas
Deputy Director

_____
Richard A. Feinstein
Director

Bureau of Competition

Kelly, Andrea

From: Feinstein, Richard
Sent: Sunday, December 30, 2012 7:57 PM
To: JDL
Subject: Fw: ACCO

FYI

From: Feinstein, Richard
Sent: Sunday, December 30, 2012 07:37 PM
To: 'JDH@avhlaw.com' <JDH@avhlaw.com>
Cc: Renner, Christopher
Subject: Re: ACCO

John--
We have followed up with Jon, who confirmed that the subject of possible changes to the Complaint did come up in his conversation with David. While it is likely that neither David nor Jon were distinguishing the Complaint from the Analysis during that discussion, we will adhere to his commitment to take up possible changes to the Complaint with his fellow Commissioners. But a condition precedent for that undertaking is our receipt not later than tomorrow morning of the signed ACCO. That, too, was discussed by Jon and David. I will be in the office tomorrow morning if there is any need to discuss this further, but there will be nothing to discuss without our having the signed ACCO in hand.
Best regards,
Rich

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Sunday, December 30, 2012 03:34 PM
To: Feinstein, Richard
Cc: matthewbye@google.com <matthewbye@google.com>; nshanbhag@google.com <nshanbhag@google.com>; Bayer Femenella, Peggy; Widnell, Nicholas; Renner, Christopher
Subject: Re: ACCO

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Thanks Rich -

Just landed. Flight was uneventful (which is always good!).

Our understanding was David spoke with Jon about minor changes to the tone of the Complaint and that Jon has agreed to make some changes. Have you had an opportunity to talk with Jon today?

We also understand you cannot bind the Commission but wanted to confirm we were conditioning our acceptance on certain events taking place.

On Dec 30, 2012, at 3:13 PM, "Feinstein, Richard" <rfeinstein@ftc.gov> wrote:

John--
Thanks for your note. I hope you had a smooth trip home. I wanted to make sure that I was clear about one aspect of your message. Our understanding (at the BC level) has been that Google understood that we were not authorized to make any further changes to the Complaint. Your note indicates that David Drummond requested a change to the Complaint in his discussion with Jon. We are not aware of what was requested. Is it possible that David was referring to the proposed addition to the Analysis, as to which we have already pledged our best efforts?
Also, as you know, we (BC) cannot bind the Commission in advance of it's final consideration of and vote on the proposed consent package, but that cannot occur without a signed ACCO.
Best regards,
Rich

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Saturday, December 29, 2012 11:13 PM
To: Feinstein, Richard
Cc: Matthew Bye Esq. <matthewbye@google.com>; Nikhil Shanbhag <nshanbhag@google.com>; Bayer Femenella, Peggy; Widnell, Nicholas
Subject: ACCO

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Hi Rich:

Thank you very much for working with Google to bring these matters to resolution.

We have executed the ACCO and are ready to send it to you in reliance of your express representation that: (b)(3):6(f),(b)(4) (b)(3):6(f),(b)(4) and (2) that the language in the Complaint and Order in the SEP matter will not change from the last version of these documents we received from FTC Staff on December 21, 2012 (the last version of the Complaint) and December 24, 2012 (the last version of the Order), with the only changes being those changes requested by Google in the Order (sent by Google on December 26, 2012) and the Complaint (communicated to the FTC by David Drummond) that are incorporated into the final documents approved by the Commission.

Please indicate if this is consistent with your understanding so that I can send the signature pages to you immediately.

Thanks again and look forward to hearing from you soon.

Note that I will be travelling tomorrow from 4am (Eastern Time) to approximately 3pm (Eastern Time) so if you are responding during that window please respond to Nikhil and Matthew (who are copied on this email).

John D. Harkrider
Partner
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Kelly, Andrea

From: Huber, Susan
Sent: Thursday, June 20, 2013 7:05 PM
To: Bayer Femenella, Peggy; Seidman, Mark
Cc: Ducore, Daniel P.
Subject: Fw: Google Modifications

Fyi. I am out tomorrow but will check BB. I also asked john to send comments to Peggy as well as me.

S

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Thursday, June 20, 2013 06:02 PM
To: Huber, Susan
Subject: RE: Google Modifications

Hi Susan:

I am in London presently and will be returning tomorrow afternoon. We have reviewed the mark up and have provided our comments to the client. I am checking on their reaction.

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Thursday, June 20, 2013 5:18 PM
To: Harkrider, John D.
Subject: Re: Google Modifications

Hi john,

Where are you on getting back to us? I need to report back to folks.

Thanks,

Susan

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Tuesday, June 18, 2013 11:19 AM
To: Huber, Susan; Steinthal, Russell M. <RMS@avhlaw.com>
Cc: Ducore, Daniel P.; Widnell, Nicholas; Bayer Femenella, Peggy; Seidman, Mark
Subject: RE: Google Modifications

Thanks Susan:

We understand the timing pressure at the FTC and will endeavor to turn around quickly.

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Tuesday, June 18, 2013 11:12 AM
To: Steinthal, Russell M.; Harkrider, John D.
Cc: Ducore, Daniel P.; Widnell, Nicholas; Bayer Femenella, Peggy; Seidman, Mark
Subject: Google Modifications

John and Russell,

Attached are staff's proposed modifications to the Order. These incorporate the proposed changes sent yesterday.

Susan

****

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Kelly, Andrea

From: Huber, Susan
Sent: Monday, June 24, 2013 7:57 AM
To: Bayer Femenella, Peggy; Widnell, Nicholas; Seidman, Mark; Ducore, Daniel P.
Subject: FW: Google Modifications

FYI on Google timing – should have something Wed. morning. Let me know if this timing annoys the chairwoman and I'll pass it along. S

Susan Huber
Federal Trade Commission
202.326.3331

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Sunday, June 23, 2013 9:53 PM
To: Huber, Susan
Subject: RE: Google Modifications

Thanks Susan.

Back from London. I think we're looking at getting the client's views on Tuesday (possibly West Coast time).

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Thursday, June 20, 2013 7:03 PM
To: Harkrider, John D.
Subject: Re: Google Modifications

Thanks John. When you get the comments please send them to both Peggy and me.

S

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Thursday, June 20, 2013 06:02 PM
To: Huber, Susan
Subject: RE: Google Modifications

Hi Susan:

I am in London presently and will be returning tomorrow afternoon. We have reviewed the mark up and have provided our comments to the client. I am checking on their reaction.

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street

New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Thursday, June 20, 2013 5:18 PM
To: Harkrider, John D.
Subject: Re: Google Modifications

Hi john,

Where are you on getting back to us? I need to report back to folks.

Thanks,

Susan

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Tuesday, June 18, 2013 11:19 AM
To: Huber, Susan; Steinthal, Russell M. <RMS@avhlaw.com>
Cc: Ducore, Daniel P.; Widnell, Nicholas; Bayer Femenella, Peggy; Seidman, Mark
Subject: RE: Google Modifications

Thanks Susan:

We understand the timing pressure at the FTC and will endeavor to turn around quickly.

John D. Harkrider
Partner
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114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Tuesday, June 18, 2013 11:12 AM
To: Steinthal, Russell M.; Harkrider, John D.
Cc: Ducore, Daniel P.; Widnell, Nicholas; Bayer Femenella, Peggy; Seidman, Mark
Subject: Google Modifications

John and Russell,

Attached are staff's proposed modifications to the Order. These incorporate the proposed changes sent yesterday.

Susan

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Kelly, Andrea

From: Huber, Susan
Sent: Monday, June 17, 2013 4:13 PM
To: Seidman, Mark; Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Fw: Google/Motorola - Proposed Language
Attachments: NYDOCS-#1470618-v1-Form_of_Offer_to_Arbitrate_for_FTC.DOCX

(b)(5)

S

From: Steinthal, Russell M. [mailto:RMS@avhlaw.com]
Sent: Monday, June 17, 2013 04:08 PM
To: Huber, Susan
Cc: Bayer Femenella, Peggy; Harkrider, John D. <JDH@avhlaw.com>
Subject: Google/Motorola - Proposed Language

Hi Susan:

Further to your conversation with John this morning, we have proposed language for Section V.A of the Order and the definition of "Third Party," as well as a proposed Offer to Arbitrate.

For Section V.A, we have two alternative proposals for your consideration. The first adopts specific fixes for the issues that we have previously identified (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4)

Given your suggestion of a possible alternative approach that would side-step those issues by decoupling the item V.A response from the definition of "Offer to License", we came up with the following:

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, ~~provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act~~ **respond to such request** in good faith and in conformity with their FRAND Commitments.

That would allow the parties to address issues such as the scope of the license negotiation and the need for an NDA in a manner that is more consistent with ordinary business practice and the context of the individual negotiation, without running the risk that Respondents would simply ignore license requests or refuse to license.

On the definition of "Third Party," we have attempted to address your concern that the definition only include controlled affiliates, rather than, for example, a joint venture in which the firm has a non-controlling interest. We believe the following would accomplish that goal:

BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, **including in each case any other person or entity that controls, is controlled by or is under common control with the first person or entity**, other than Respondents.

Finally, we have attached a Form of Offer to Arbitrate. In the interests of keeping the Offer as simple and straightforward as possible, we have assumed that a copy of the Order would be attached to it when sent to a Potential Licensee and have incorporated by reference definitions and detailed procedural rules from the Order.

We hope these are fairly self-explanatory given our earlier conversations, but please let us know if you have questions.

Thanks,
Russell

Russell M. Steinthal
Partner
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New York, New York 10036
(212) 728-2207
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RESPONDENTS' DRAFT - 6/17/2013
CONFIDENTIAL - FOR DISCUSSION ONLY

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT]
[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT]:

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein**.

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company).

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company. To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within [x] days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within sixty (60) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they would be determined according to default rules set forth in the Order.

3. Within a reasonable time after Google's receipt of the Company's acceptance of Binding Arbitration, we will commence an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a Proposed License Agreement that will serve as the basis for the Arbitration.

4. No later than five (5) business days after the commencement of arbitration, Google and the Company will each be required to file with the Administrator (for delivery to the arbitrators upon their selection), on behalf of themselves and their respective Affiliates, a binding and irrevocable undertaking that they will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the Commencement Date. Failure to file such an undertaking shall constitute a material breach of the arbitration agreement.

5. The Company will have sixty (60) days from the commencement of the arbitration to (i) designate all terms of the Proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the Proposed License Agreement to comply with

Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the Proposed Agreement in the License Agreement.

6. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreements between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent.

7. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company that shall be enforceable by either party to the greatest extent permitted by law.

This Offer, and any arbitration agreement formed by its acceptance, shall be construed according to the laws of the State of California.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above [and other persons or entities that control, are controlled by, or are under common control with the Company], I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Tuesday, January 01, 2013 5:39 PM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan; Seidman, Mark
Subject: RE: Revised Order

Nick –

Can you tell me if the language we discussed was added to the Analysis to Aid Public Comment? If so, can you confirm by sending me that language?

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Tuesday, January 01, 2013 4:41 PM
To: Harkrider, John D.
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan; Seidman, Mark
Subject: RE: Revised Order

John,

I've gotten some additional information on the complaint. Despite best efforts by Jon, the Commission will not make any additional changes to the complaint. Attached is the final complaint and a clean copy of the Order with the changes we have discussed. Please confirm that that Google finds all of the changes to the Order acceptable and agrees to be bound by the Order pursuant to the signed Agreement Containing Consent Order that Google executed and sent to us.

If you have any questions, I am in the office. Please feel free to give me a call.

Thanks,
Nick

Nicholas A. Widnell
Deputy Assistant Director
Anticompetitive Practices Division
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580
Phone: 202.326.2138

From: Widnell, Nicholas
Sent: Tuesday, January 01, 2013 3:37 PM

To: 'Harkrider, John D.'
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: RE: Revised Order

John,

I spoke to soon. Here is a slight revision to your language that we would prefer:

Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License).

Also, I'm not entirely sure I understood your comment about needing to see the complaint. I think what you meant is that you need to see the final version of the complaint before the Commission ultimately can vote on accepting the consent. At least as I understand it, we are no longer in a position where Google is seeking to condition anything on accepting language in the Order – we are really just addressing nits at this point. If that is not your understanding, please let me know. I'm happy to discuss on the phone.

Thanks,
Nick

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Tuesday, January 01, 2013 1:39 PM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: RE: Revised Order

HIGHLY CONFIDENTIAL
FRE 408

Thanks Nick (and rest of FTC team).

As always we appreciate your diligence.

While we have no remaining issues with the Order, we will not be able to agree to it until we are able to review the SEP Complaint. When do you expect to be able to show it to us?

Thanks again.

John

John D. Harkrider
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New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Tuesday, January 01, 2013 12:47 PM
To: Harkrider, John D.

Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: Re: Revised Order

John this change works for us. Can you confirm the other edits to the order are acceptable?

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, December 31, 2012 07:06 PM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: RE: Revised Order

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Hi Nick:

On full consideration, the best way to address the concern we identified about patents essential to multiple standards to is move the word underscored "not" as follows:

The current draft (with Commission's proposed change):

> Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any patents essential to Standards not practiced by the Potential Licensee, or to license any other patents . . .

Moved to:

> Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any patents not essential to Standards practiced by the Potential Licensee, or to license any other patents .

John D. Harkrider
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jdh@avhlaw.com
www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Monday, December 31, 2012 6:00 PM
To: Harkrider, John D.
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: Re: Revised Order

Thanks John. I'm checking on this now and will get back to you. Let me know if you identify any other concerns.

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, December 31, 2012 05:49 PM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: RE: Revised Order

Thanks.

Quick question as to your modification to IV(B)(1) to say that "Respondents … may not require the Potential Licensee to license any patents essential to Standards not practiced by the Potential Licensee…" (adding the underlined phrase). I think I understand your intent, but technically that's over-inclusive given that patents may be essential to one or more standards. I.e. assume that we have a patent that is essential to both LTE and 802.11, and we are making an Offer to License our 802.11 patents to a firm that makes Wi-Fi, but not cellular devices. Literally, the modified text would prohibit us from conditioning the Offer to License on them taking a license to that SEP for use in 802.11 implementations (which they do practice), because it is "[a] patent[] essential to" LTE, a standard that they don't practice. The original wording, while a bit awkward (in that patents and not standards are licensed) seemed to more clearly convey what I assume is still their intent --- namely that we can require the Potential Licensee to license all of our SEPs for the Standard at issue (which, by assumption, it practices, since this is a condition to our right to seek CIR against the Potential Licensee on that Standard), but not other Standards.

I suppose an alternative fix would be to say that we "may not require the Potential Licensee to license any patents that essential to only Standards not practiced by the Potential Licensee" (and then continue, as currently, "or to license any other patents or intellectual property").

Note we are still reading so this is not our only reaction. But wanted to get the question to you ASAP.

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Monday, December 31, 2012 4:58 PM
To: Harkrider, John D.
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: Revised Order

John,

I had hoped to have a quick conversation before sending you this, but in the interests of time, attached are what should be final revisions to the order. I've attached both a clean copy of the final order and a markup that identifies in redline the changes you suggested that the Commission is prepared to accept and (in comments) additional changes that we would like to make in response to proposed edits from Commissioners. The additional changes are not meant to be substantive, but are only intended to correct typos and poor wording. Email me if you would like to discuss any of these. Otherwise, could you confirm by email that Google finds all of these changes acceptable and agrees to be bound by this order pursuant to the signed Agreement Containing Consent Order that Google executed and sent to us?

Thanks,
Nick

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, January 02, 2013 8:29 AM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan; Seidman, Mark
Subject: RE: Revised Order

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Good morning FTC.

Google finds all of the changes to the Order acceptable and agrees to be bound by the Order pursuant to the signed Agreement Containing Consent Order that Google executed and sent to the FTC.

Also, please let us see the final Analysis to Aid Public Comment as soon as you are able.

Let me know if you have any questions.

As always, we appreciate your efforts to bring these matters to closure.

John

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

Duplicate

Kelly, Andrea

From: Green, Geoffrey
Sent: Saturday, December 08, 2012 8:20 PM
To: 'screighton@wsgr.com'
Cc: Blank, Barbara; Levitas, Pete
Subject: Re: 2012-12-8A FTC Rev Google letter to Chairman Leibowitz.docx

Susan,

There is a substantive (not drafting) issue about how to assure that Gg's commitments are enforceable by the Commission. On our side, this issue will not be resolved tomorrow.

Our request is that Gg respond to today's draft, of course reserving all rights with regard to the FTC's subsequent proposal on the enforcement language.

----- Original Message -----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Saturday, December 08, 2012 04:34 PM
To: Green, Geoffrey
Cc: Blank, Barbara
Subject: RE: 2012-12-8A FTC Rev Google letter to Chairman Leibowitz.docx

Geoff:

When you said that the "enforcement language" is subject to separate review, it would be helpful to understand whether that involves just the language around the question of 'reliance' by third parties, or whether it also involves the contractual concept in the opt-out. If the contractual opt-out provision (where there is a substantive and not just drafting difference) is still under review it probably doesn't make sense for us to do another turn back to you until we get a draft from the Bureau that addresses all of these issues. Do you have an understanding of what is still under review within the ambit of 'enforcement'?

From: Green, Geoffrey [GGREEN@ftc.gov]
Sent: Saturday, December 08, 2012 3:37 PM
To: Creighton, Susan
Cc: Blank, Barbara
Subject: 2012-12-8A FTC Rev Google letter to Chairman Leibowitz.docx

Attached for your review is a revised version. This is for settlement discussion purposes only. This draft has not been reviewed and/or approved by the Commission or the Bureau of Competition.
Your previous draft contained proposed changes to the “enforcement” language. These proposed changes are being reviewed by others in the Agency, and are not addressed in the attached.

We are available tomorrow to discuss the attached draft. When you have a sense of your schedule in this regard, let us know.

Geoffrey Green

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

Kelly, Andrea

From: Green, Geoffrey
Sent: Monday, December 10, 2012 3:37 PM
To: Levitas, Pete
Cc: Blank, Barbara; Sabo, Melanie
Subject: FW: 12-10-12 draft Google to FTC letter
Attachments: 12-10-1=2012 Google to FTC letter redline.docx; 2012-12-10 GOOGLE Rev Google letter to Chairman Leibowitz clean.docx

(b)(5)

-----Original Message-----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Monday, December 10, 2012 1:39 PM
To: Green, Geoffrey; Blank, Barbara
Subject: 12-10-12 draft Google to FTC letter

Geoff and Barbara: See attached, per our earlier discussion. Best regards, Susan This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

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******* DRAFT OF DECEMBER 10, 2012 *******

[DATE]

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580

Re: Google Inc., File No. 111-0163

Dear Chairman Leibowitz:

We understand that the Federal Trade Commission ("FTC" or the "Commission") has decided to close the above-captioned investigation of the business practices of Google Inc. ("Google"). Google is confident that our practices are entirely consistent with all applicable laws and regulations. However, in connection with the closing of the FTC's investigation, Google is making the commitments described below with respect to its display of content from third-party websites and with respect to its AdWords API Terms and Conditions. Google will honor these commitments for a period of five years from the date of this letter.

Google will publish the commitments on our website in a location easily accessible to the relevant audiences. Google understands that these commitments are important; and Google agrees that a material violation of these commitments would be actionable by the FTC under Section 5 of the FTC Act, 15 U.S.C. §45, and that the jurisdictional elements of such an action by the Commission would be satisfied. As more fully described below, Google will cooperate with the FTC to ensure that Google is complying with its commitments under this letter.

I. GOOGLE'S DISPLAY OF THIRD-PARTY CONTENT

Within 90 days, Google will make available a web-based notice form that provides website owners with the option to opt out from display on Google's Covered Webpages[1] of content from their website that has been crawled by

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[1] "Covered Webpages" means only Google's (i) current Shopping, G+ Local, Flights, Hotels, and Advisor webpages, and any successor products unless such products do not have the primary purpose of connecting users with merchants in a manner

Google.[2] When a website owner exercises this option, Google will cease displaying crawled content from the domain name designated by the website owner on Covered Webpages on the google.com domain in the United States.

Website owners will be able to exercise the opt-out described above by completing a web-based notice form. Google will implement the opt-out within 30 business days of receiving a properly completed notice form.

Exercise of this option will not (1) prevent content from the website from appearing in conventional search results on the google.com search results page, or (2) be used as a signal in determining conventional search results on the google.com search results page.

Beyond these specific commitments, nothing described above will impact Google's ability to (i) display content that it has sourced or derived independently even if it is the same as or overlaps with content from the opting-out web site, or (ii) otherwise crawl, organize, index and display information from the Internet or innovate in search.

II. ADWORDS API TERMS AND CONDITIONS

Within 60 days, Google will remove from its AdWords API Terms and Conditions the AdWords API Input and Copying Restrictions currently contained within Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions for all AdWords API licensees with a primary billing address in the United States.[3] In addition, Google will not add any new provisions to its AdWords API Terms and

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substantially similar to Google's current Shopping, G+ Local, Flights, Hotels, and Advisor webpages; and (ii) future or modified non-experimental specialized webpages launched within three years of the date of this letter that are linked to from the google.com search results page and have the primary purpose of connecting users with merchants in a manner substantially similar to Google's current Shopping, G+ Local, Flights, Hotels, and Advisor webpages. All other Google webpages (including but not limited to Google's current News, Image Search, Video Search, Maps, Book Search, Finance, and future or modified Google webpages falling outside of the parameters in (ii) above) are not Covered Webpages.

[2] Website owners will be permitted to exercise the opt-out on a domain name basis. For instance, a website owner may designate [www.example.com] to subject all content on that domain name to the opt-out. A website owner may not designate only individual sub-domains (such as [sub.example.com]) or individual directories within a domain (such as [www.example.com/sub]) for the opt-out. Google may use reasonable authentication measures to ensure that website owners selecting the opt-out are the legitimate owners of the website that is the subject of the web form notice.

[3] The current version of the AdWords API Terms and Conditions is located at https://developers.google.com/adwords/api/docs/terms.

Conditions, or adopt new technical requirements in connection with use of the AdWords API, that prevent an AdWords API client from (a) showing input fields for the collection or transmission of AdWords API campaign management data in the same tab or screen with (i) the content of third party ad networks or (ii) input fields for the collection or transmission of campaign management data to third party ad networks; or (b) offering functionality that copies campaign management data between AdWords and a third party ad network. Google will not treat AdWords API licensees differently from similarly situated licensees with respect to the provision or administration of the AdWords API as a result of their development or distribution of AdWords API clients that implement the functionality currently prohibited by Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions.

Nothing in the foregoing will prevent or otherwise restrict Google from maintaining minimum functionality requirements as they currently exist or as they may be modified in the future as part of Google's AdWords API Terms and Conditions or in any other provisions governing the use of the AdWords API, so long as such modifications do not have the effect of reinstating the restrictions described above.

* * *

Within 60 days, Google will file with the Secretary of the FTC, with a copy to the Bureau of Competition's Compliance Division, a report describing in reasonable detail how Google has complied with its commitments, and Google will file an update to this report annually during the duration of its commitments.

If Google receives written notice from the Commission that the Commission believes Google has acted contrary to its commitments on the display of third-party content or the AdWords API Terms and Conditions, Google will, within 60 days, address the Commission's concerns or explain to the Commission why it believes that it has acted in a manner consistent with its commitments.

In addition, if the FTC has reason to suspect that Google has violated its commitments and with reasonable prior written notice from FTC staff, subject to claims of any legally recognized privilege, Google will (1) make available electronic and paper documents related to compliance with the above commitments, and (2) in the presence of Google's legal counsel, Google will permit FTC staff to interview its officers, directors, employees and agents on subjects related to Google's compliance with these commitments.

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******* DRAFT OF DECEMBER ~~8~~10, 2012 *******

[DATE]

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580

Re: Google Inc., File No. 111-0163

Dear Chairman Leibowitz:

We understand that the Federal Trade Commission ("FTC" or the "Commission") has decided to close the above-captioned investigation of the business practices of Google Inc. ("Google"). Google is confident that our practices are entirely consistent with all applicable laws and regulations. However, in connection with the closing of the FTC's investigation, Google is making the commitments described below with respect to its display of content from third-party websites and with respect to its AdWords API Terms and Conditions. Google will honor these commitments for a period of five years from the date of this letter.

Google will publish the commitments on our website in a location easily accessible to the relevant audiences. Google understands that these commitments are important; and Google agrees that a material violation of these commitments would be actionable by the FTC under Section 5 of the FTC Act, 15 U.S.C. §45, and that the jurisdictional elements of such an action by the Commission would be satisfied. As more fully described below, Google will cooperate with the FTC to ensure that Google is complying with its commitments under this letter.

I. GOOGLE'S DISPLAY OF THIRD-PARTY CONTENT

Within 90 days, Google will make available a web-based notice form that provides website owners with the option to opt out from display on Google's Covered Webpages[1] of content from their website that has been crawled by

[1] "Covered Webpages" means only ~~(i)~~ Google's (i) current Shopping, G+ Local, ~~Travel,~~ Flights, Hotels, and Advisor webpages ~~(or any other user inferface through which~~

Google.[2] When a website owner exercises this option, Google will cease displaying crawled content from the domain name designated by the website owner on Covered Webpages on the google.com domain in the United States.

Website owners will be able to exercise the opt-out described above by completing a web-based notice form. Google will implement the opt-out within 30 business days of receiving a properly completed notice form.

Exercise of this option will not (1) prevent content from the website from appearing in conventional search results on the google.com search results page, or (2) be used as a signal in determining conventional search results on the google.com search results page.

Beyond these specific commitments, nothing described above will impact Google's ability to (i) display content that it has sourced or derived independently even if it is the same as or overlaps with content from the opting-out web site, or (ii) otherwise crawl, organize, index and display information from the Internet or innovate in search.

~~Google displays results to users),~~, and any successor products~~;~~ unless such products do not have the primary purpose of connecting users with merchants in a manner substantially similar to Google's current Shopping, G+ Local, Flights, Hotels, and Advisor webpages; and (ii) future or modified non-experimental specialized webpages ~~(or any other user interface through which Google displays results to users)~~ launched within three years of the date of this letter that are linked to from the google.com search results page and have the primary purpose of connecting users with merchants in a manner substantially similar to Google's ~~Shopping, G+ Local, Travel, Flights, Hotels, and Advisor webpages; and (iii) any current Google webpage (or any other user interface through which Google displays results to users) not enumerated in (i) above (*e.g.*, Google's Book Search) that is modified such that its primary purpose becomes connecting users with merchants in a manner substantially similar to Google's Shopping, G+ Local, Travel~~current Shopping, G+ Local, Flights, Hotels, and Advisor webpages. All other Google webpages (including but not limited to Google's current News, Image Search, Video Search, Maps, Book Search, Finance, and future or modified Google webpages falling outside of the parameters in (ii) ~~and (iii)~~ above) are not Covered Webpages.

[2] ~~Website owners will be eligible to exercise the opt-out on a domain basis.~~ Website owners will be permitted to exercise the opt-out on a domain name basis. For instance, a website owner may designate [`www.example.com`] to subject all content on that domain name to the opt-out. A website owner may not designate only individual sub-domains (such as [`sub.example.com`]) or individual directories within a domain (such as [`www.example.com/sub`]) for the opt-out. Google may use reasonable authentication measures to ensure that website owners selecting the opt-out are the legitimate owners of the website that is the subject of the web form notice.

II. ADWORDS API TERMS AND CONDITIONS

Within 60 days, Google will remove from its AdWords API Terms and Conditions the AdWords API Input and Copying Restrictions currently contained within Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions for all AdWords API licensees with a primary billing address in the United States.[3] In addition, Google will not add any new provisions to its AdWords API Terms and Conditions, or adopt new technical requirements in connection with use of the AdWords API, that prevent an AdWords API client from (a) showing input fields for the collection or transmission of AdWords API campaign management data in the same tab or screen with (i) the content of third party ad networks or (ii) input fields for the collection or transmission of campaign management data to third party ad networks; or (b) offering functionality that copies campaign management data between AdWords and a third party ad network. Google will not treat AdWords API licensees differently from similarly situated licensees with respect to the provision or administration of the AdWords API as a result of their development or distribution of AdWords API clients that implement the functionality currently prohibited by Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions.

Nothing in the foregoing will prevent or otherwise restrict Google from maintaining minimum functionality requirements as they currently exist or as they may be modified in the future as part of Google's AdWords API Terms and Conditions or in any other provisions governing the use of the AdWords API, so long as such modifications do not have the effect of reinstating the restrictions described above.

* * *

Within 60 days, Google will file with the Secretary of the FTC, with a copy to the Bureau of Competition's Compliance Division, a report describing in reasonable detail how Google has complied with its commitments, and Google will file an update to this report annually during the duration of its commitments.

If Google receives written notice from the Commission that the Commission believes Google has acted contrary to its commitments on the display of third-party content or the AdWords API Terms and Conditions, Google will, within 60 days, address the Commission's concerns or explain to the Commission why it believes that it has acted in a manner consistent with its commitments.

In addition, if the FTC has reason to suspect that Google has violated its commitments and with reasonable prior written notice from FTC staff, subject to

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[3] The current version of the AdWords API Terms and Conditions is located at https://developers.google.com/adwords/api/docs/terms.

claims of any legally recognized privilege, Google will (1) make available electronic and paper documents related to compliance with the above commitments, and (2) in the presence of Google's legal counsel, Google will permit FTC staff to interview its officers, directors, employees and agents on subjects related to Google's compliance with these commitments.

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***** **DRAFT OF DECEMBER 8~~7~~, 2012** *****

[DATE]

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580

Re: Google Inc., File No. 111-0163

Dear Chairman Leibowitz:

We understand that the Federal Trade Commission ("FTC" or the "Commission") has decided to close the above-captioned investigation of the business practices of Google Inc. ("Google"). Google is confident that our practices are entirely consistent with all applicable laws and regulations. However, in connection with the closing of the FTC's investigation, Google is making the commitments described below with respect to its display of content from third-party websites and with respect to its AdWords API Terms and Conditions. Google will honor these commitments for a period of five years from the date of this letter.

Google will publish the commitments on our website in a location easily accessible to the relevant audiences. Google understands that these commitments are important; and Google agrees that a material violation of these commitments would be actionable by the FTC under Section 5 of the FTC Act, 15 U.S.C. §45, and that the jurisdictional elements of such an action by the Commission would be satisfied. As more fully described below, Google will cooperate with the FTC to ensure that Google is complying with its commitments under this letter.

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[1] "Covered Webpages" means only (i) Google's Shopping, G+ Local, Travel, Flights, Hotels, and Advisor webpages (or any other user inferface through which Google displays results to users), and any successor products;~~, and~~ (ii) future non-

Google.[2] When a website owner exercises this option, Google will cease displaying crawled content from the ~~top-level~~ domain designated by the website owner on Covered Webpages on the google.com domain in the United States.

Website owners will be able to exercise the opt-out described above by completing a web-based notice form. Google will implement the opt-out within 30 business days of receiving a properly completed notice form.

Exercise of this option will not (1) prevent content from the website from appearing in conventional search results on the google.com search results page, or (2) be used as a signal in determining conventional search results on the google.com search results page.

Beyond these specific commitments, n~~N~~othing described above will impact Google's ability to (i) display content that it has sourced or derived independently even if it is the same as or overlaps with content from the opting-out web site, or (ii) otherwise crawl, organize, index and display information from the Internet or innovate in search.

II. ADWORDS API TERMS AND CONDITIONS

Within 60 days, Google will remove from its AdWords API Terms and Conditions the AdWords API Input and Copying Restrictions currently contained within Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions for all AdWords API licensees with a primary billing address in the United States.[3] In

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experimental specialized webpages (or any other user interface through which Google displays results to users) launched within three years of the date of this letter that are linked to from the google.com search results page and have the primary purpose of connecting users with merchants in a manner substantially similar to Google's Shopping, G+ Local, Travel, Flights, Hotels, and Advisor webpages; and (iii) any current Google webpage (or any other user interface through which Google displays results to users) ~~(*e.g.*, Book Search)~~ not enumerated in (i) above (*e.g.*, Google's Book Search) that is modified ~~in a way~~ such that its primary purpose becomes connecting users with merchants in a manner substantially similar to Google's Shopping, G+ Local, Travel, Flights, Hotels, and Advisor webpages. All other Google webpages (including but not limited to Google's News, Image Search, Video Search, Maps, Book Search, Finance, and future Google webpages falling outside of the parameters in (ii) and (iii) above) are not Covered Webpages.

[2] Website owners will be eligible to exercise the opt-out on a ~~top-level~~ domain basis. Google may use reasonable authentication measures to ensure that website owners selecting the opt-out are the legitimate owners of the website that is the subject of the web form notice.

[3] The current version of the AdWords API Terms and Conditions is located at https://developers.google.com/adwords/api/docs/terms.

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addition, Google will not add any new provisions to its AdWords API Terms and Conditions, or adopt new technical requirements in connection with use of the AdWords API, that prevent an AdWords API client from (a) showing input fields for the collection or transmission of AdWords API campaign management data in the same tab or screen with (i) the content of third party ad networks or (ii) input fields for the collection or transmission of campaign management data to third party ad networks; or (b) offering functionality that copies campaign management data between AdWords and a third party ad network. Google will not treat AdWords API licensees differently from similarly situated licensees with respect to the provision or administration of the AdWords API as a result of their development or distribution of AdWords API clients that implement the functionality currently prohibited by Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions.

Nothing in the foregoing will prevent or otherwise restrict Google from maintaining minimum functionality requirements as they currently exist or as they may be modified in the future as part of Google's AdWords API Terms and Conditions or in any other provisions governing the use of the AdWords API, so long as such modifications do not have the effect of reinstating the restrictions described above.

* * *

Within 60 days, Google will file with the Secretary of the FTC, with a copy~~ies~~ to the Bureau of Competition's Compliance Division ~~and the Bureau of Consumer Protection's Enforcement Division~~, a report describing in reasonable detail how Google has complied with its commitments, and Google will file an update to this report annually during the duration of its commitments.

If Google receives written notice from the Commission that the Commission believes Google has acted contrary to its commitments on the display of third-party content or the AdWords API Terms and Conditions, Google will, within 60 days, address the Commission's concerns or explain to the Commission why it believes that it has acted in a manner consistent with its commitments.

In addition, if the FTC has reason to suspect that Google has violated its commitments and with reasonable prior written notice from FTC staff, subject to claims of any legally recognized privilege, Google will (1) make available electronic and paper documents related to compliance with the above commitments, and (2) in the presence of Google's legal counsel, Google will permit FTC staff to interview its officers, directors, employees and agents on subjects related to Google's compliance with these commitments.

Kelly, Andrea

From: Green, Geoffrey
Sent: Friday, December 07, 2012 10:27 AM
To: Levitas, Pete
Subject: FW: draft Google letter
Attachments: 2012-12-7 FTC rev Google letter to Chairman Leibowitz.docx

-----Original Message-----
From: Blank, Barbara
Sent: Friday, December 07, 2012 10:07 AM
To: 'Creighton, Susan'; Green, Geoffrey
Cc: Green, Geoffrey
Subject: RE: draft Google letter

Hi Susan,

We've revised your draft to address some of the outstanding issues that remain between us. We understand that David Drummond will be addressing the verticals issue with the chairman later today. For now, we hope to be able to address the following issues: (i) length of commitment; (ii) no retaliation provision in the scraping section; and (iii) no discrimination provision in the API section. We've also revised the language slightly to reflect some of the materiality/ contract issues we discussed last Friday (and that were in our draft sent to you on Wednesday).

Please let us know when you'll be available to hammer out these issues (hopefully before today's meeting with the chairman).

Thanks so much.

Best Regards,

Barbara

-----Original Message-----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Thursday, December 06, 2012 8:38 PM
To: Green, Geoffrey; Blank, Barbara
Subject: draft Google letter

Geoff and Barbara: Please find attached a draft letter from Google. The attached is for settlement discussion purposes only and we request that it be accorded confidential treatment. Best regards, Susan

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

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***** **DRAFT OF DECEMBER 76, 2012** *****

[DATE]

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580

Re: Google Inc., File No. 111-0163

Dear Chairman Leibowitz:

We understand that the Federal Trade Commission ("FTC" or the "Commission") has decided to close its investigation of certain of the business practices of Google Inc. ("Google"). Google is confident that our practices are entirely consistent with all applicable laws and regulations. However, in connection with the closing of the FTC's investigation, Google will is makinge the following commitments described below with respect to its display of content from third-party websites and with respect to its AdWords API Terms and Conditions. Google will honor these commitments for a period of three five years from the date of this letterGoogle's implementation of these commitments.

Google will publish the commitments on our website in a location easily accessible to the relevant audiences. Google understands that these commitments are important to our customers and partners, and that our customers and partners will rely upon them in making decisions important to them about how to conduct their businesses and advertise to their customers. Google understands that a failure to adhere to these commitments may be legally actionable by the FTC under Section 5 of the FTC Act, 15 U.S.C. §45. As more fully described below, Google will cooperate with the FTC to ensure that Google is complying with its commitments under this letter.

I. GOOGLE'S DISPLAY OF THIRD-PARTY CONTENT

Within 90 days, Google will make available a web-based notice form that provides website owners with the option to opt out from display on Google's Product Search and Local Searchvertical search results web pages (including Product Search and Local Search or their successors) of content from their website

that has been crawled by Google.[1] When a website owner exercises this option, Google will cease displaying crawled content on any domain owned and operated by Google~~the google.com domain~~ in the United States, including google.com, from the designated top-level domain on vertical search results pages (including Product Search and Local Search web pages ~~(~~or their successors). Exercise of this option will not prevent content from the website from appearing in conventional search results on the google.com search results page.

Website owners will be able to exercise the opt-out described above by completing a web-based notice form. Google will design the form so that a website owner's completion of it will create a legally binding and enforceable contract to limit Google's display of the website owner's content. Google will implement the opt-out within 30 business days of receiving a properly completed notice form.

Google shall not discriminate against, penalize, or otherwise retaliate against any website owner that limits the display by Google of the website owner's content in such a manner. Specifically, Google shall not delist, or fail to display content from or links to, the website owner's website in conventional search results on the google.com search results page; or display the website owner's website in a commercially less advantageous position in conventional search results on the google.com search results page as the result of such an election.

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Nothing described above will impact Google's ability to (i) display content that it has sourced or derived independently even if it is the same as or overlaps with content from the opting-out web site, ~~or~~ (ii) otherwise crawl, organize, index and display information from the Internet; or (iii) make changes to its search results pages or the underlying search algorithms for legitimate business reasons.~~.~~

II. ADWORDS API TERMS AND CONDITIONS

Within 60 days, Google will remove from its AdWords API Terms and Conditions the AdWords API Input and Copying Restrictions currently contained within Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions for all AdWords API licensees with a primary billing address in the United States.[2] In addition, Google will not add any new provisions to its AdWords API Terms and Conditions, or adopt new technical requirements in connection with use of the AdWords API, that prevent an AdWords API client from (a) showing input fields for the collection or transmission of AdWords API campaign management data in the same tab or screen with (i) the content of third party ad networks or (ii) input fields

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[1] Website owners will be eligible to exercise the opt-out on a top-level domain basis. Google may use reasonable authentication measures to ensure that website owners selecting the opt-out are the legitimate owners of the website that is the subject of the web form notice.

[2] The current version of the AdWords API Terms and Conditions is located at https://developers.google.com/adwords/api/docs/terms.

for the collection or transmission of campaign management data to third party ad networks; or (b) offering functionality that copies campaign management data between AdWords and a third party ad network. Google will not discriminate between advertisers or their agents who engage in such activities, and those who do not. In particular, Google shall not deny API keys or similar access tokens solely or primarily to block such activities, or unreasonably rate-limit API requests.

Nothing in the foregoing will prevent or otherwise restrict Google from maintaining minimum functionality requirements as they currently exist or as they may be modified in the future as part of Google's AdWords API Terms and Conditions or in any other provisions governing the use of the AdWords API.

* * *

Within 60 days, Google will file with the Secretary of the FTC, with copies to the Bureau of Competition's Compliance Division and the Bureau of Consumer Protection's Enforcement Division, a report describing in reasonable detail how Google has complied with its commitments, and Google will file an update to this report annually during the duration of its commitments.

If Google receives written notice from the Commission that the Commission believes Google has acted contrary to its commitments on the display of third-party content or the AdWords API Terms and Conditions, Google will, within 60 days, address the Commission's concerns or explain to the Commission why it believes that it has acted in a manner consistent with its commitments.

In addition, with reasonable prior written notice from FTC staff and subject to claims of any legally recognized privilege, if the FTC has reason to suspect that Google has violated its commitments, Google will make available electronic and paper documents related to compliance with the above commitments. Upon reasonable written notice from FTC staff and in the presence of Google's legal counsel, Google will permit FTC staff to interview its officers, directors, employees and agents on subjects related to Google's compliance with these commitments.

Kelly, Andrea

From: Green, Geoffrey
Sent: Thursday, December 06, 2012 10:25 PM
To: Levitas, Pete
Subject: Fw: draft Google letter

(b)(5)

----- Original Message -----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Thursday, December 06, 2012 10:05 PM
To: Green, Geoffrey
Cc: Blank, Barbara
Subject: RE: draft Google letter

Geoff:

Further to my last email, the draft follows on our meeting Wednesday, the draft we received from you Wednesday night, and Kent's conversation with Pete. We recognize that there is still a significant gap between the parties with respect to the 'verticals' issue, which we expect to be a subject of David Drummond's meeting with Chairman Leibowitz tomorrow afternoon. If there remain other issues that continue to separate the parties, we hope to be able to continue to engage productively with you and Barbara in attempting to narrow or resolve these issues prior to the meeting.

I will give you a call tomorrow morning to discuss next steps.

Best regards,

Susan

From: Green, Geoffrey [GGREEN@ftc.gov]
Sent: Thursday, December 06, 2012 8:59 PM
To: Creighton, Susan
Cc: Blank, Barbara
Subject: Re: draft Google letter

Susan, to confirm:
This is Google's response to (and takes into account) Pete Levitas' conversation with Kent this afternoon, correct.

----- Original Message -----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Thursday, December 06, 2012 08:37 PM
To: Green, Geoffrey; Blank, Barbara
Subject: draft Google letter

Geoff and Barbara: Please find attached a draft letter from Google. The attached is for settlement discussion purposes only and we request that it be accorded confidential treatment. Best regards, Susan

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Kelly, Andrea

From: Green, Geoffrey
Sent: Thursday, December 06, 2012 9:14 PM
To: Levitas, Pete
Subject: Fw: draft Google letter

----- Original Message -----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Thursday, December 06, 2012 09:11 PM
To: Green, Geoffrey
Cc: Blank, Barbara
Subject: RE: draft Google letter

Yes, that's correct.

From: Green, Geoffrey [GGREEN@ftc.gov]
Sent: Thursday, December 06, 2012 8:59 PM
To: Creighton, Susan
Cc: Blank, Barbara
Subject: Re: draft Google letter

Susan, to confirm:
This is Google's response to (and takes into account) Pete Levitas' conversation with Kent this afternoon, correct.

----- Original Message -----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Thursday, December 06, 2012 08:37 PM
To: Green, Geoffrey; Blank, Barbara
Subject: draft Google letter

Geoff and Barbara: Please find attached a draft letter from Google. The attached is for settlement discussion purposes only and we request that it be accorded confidential treatment. Best regards, Susan

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Kelly, Andrea

From: Widnell, Nicholas
Sent: Sunday, December 09, 2012 12:06 AM
To: Feinstein, Richard; Levitas, Pete
Cc: Bayer Femenella, Peggy; Huber, Susan; Ducore, Daniel P.
Subject: Fw: Agenda for Tomorrow Morning Call

And this too.

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Sunday, December 09, 2012 12:02 AM
To: Widnell, Nicholas
Subject: Agenda for Tomorrow Morning Call

DRAFT HIGHLY CONFIDENTIAL – SUBJECT TO RULE 408

Hi Nick:

In advance of tomorrow morning's call, we thought it would be helpful to identify what issues needed to be resolved:

1. Naming MMI in the Caption and Text of Order.

2. Discrimination in the Complaint and Order.

(b)(3):6(f),(b)(4)

4. Judicial Option (simplified process as proposed by Google in email sent tonight), which may avoid the need to address other issues with Judicial Option.

5. Geographic scope of decree (global rate determination, injunctions outside the US).

We believe that we can resolve other issues (including reciprocity on SEPs for which a royalty free commitment has been made) directly with you and the team, but let us know if that's not correct,

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

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****

Kelly, Andrea

From: Widnell, Nicholas
Sent: Sunday, December 09, 2012 12:04 AM
To: Feinstein, Richard; Levitas, Pete
Cc: Bayer Femenella, Peggy; Huber, Susan; Ducore, Daniel P.
Subject: Fw: Judicial Option

This is the latest from John.

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Saturday, December 08, 2012 11:56 PM
To: Widnell, Nicholas
Subject: Judicial Option

DRAFT AND SUBJECT TO CHANGE
FOR DISCUSSION PURPOSES
SUBJECT TO FRE 408

Hi Nick:

Wanted to give you some additional detail on what we're proposing. Please let us know your thoughts. This would be the judicial option that we would discuss tomorrow with Pete.

(b)(3):6(f),(b)(4)

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

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RESPONDENTS' DRAFT - 6/17/2013
CONFIDENTIAL - FOR DISCUSSION ONLY

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT]
[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT]:

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein**.

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company).

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company. To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within [x] days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within sixty (60) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they would be determined according to default rules set forth in the Order.

3. Within a reasonable time after Google's receipt of the Company's acceptance of Binding Arbitration, we will commence an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a Proposed License Agreement that will serve as the basis for the Arbitration.

4. No later than five (5) business days after the commencement of arbitration, Google and the Company will each be required to file with the Administrator (for delivery to the arbitrators upon their selection), on behalf of themselves and their respective Affiliates, a binding and irrevocable undertaking that they will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the Commencement Date. Failure to file such an undertaking shall constitute a material breach of the arbitration agreement.

5. The Company will have sixty (60) days from the commencement of the arbitration to (i) designate all terms of the Proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the Proposed License Agreement to comply with

Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the Proposed Agreement in the License Agreement.

6. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreements between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent.

7. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company that shall be enforceable by either party to the greatest extent permitted by law.

This Offer, and any arbitration agreement formed by its acceptance, shall be construed according to the laws of the State of California.

Sincerely,

[SIGNATORY]

[TITLE]

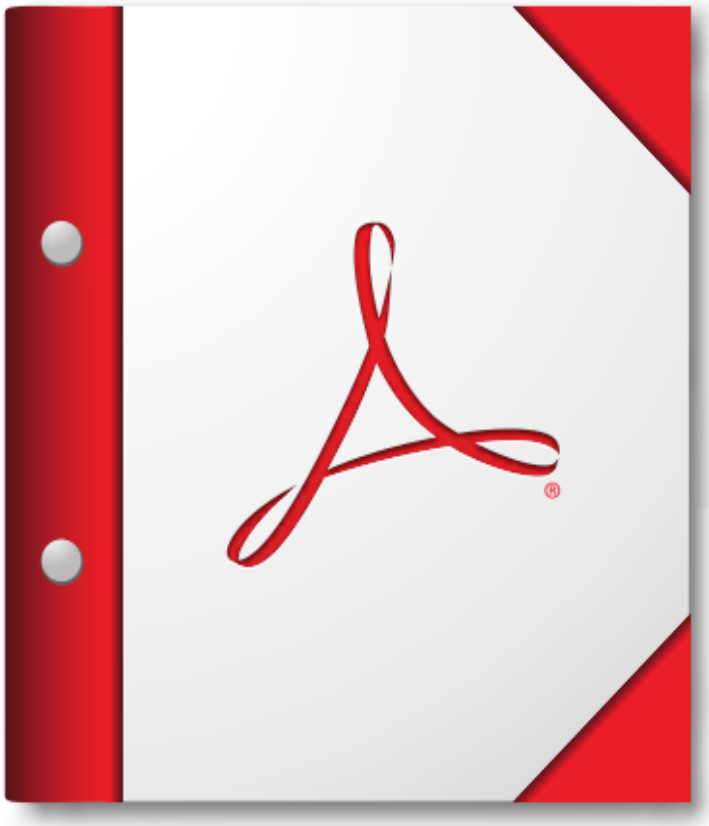
on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above [and other persons or entities that control, are controlled by, or are under common control with the Company], I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____



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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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration Organization within sixty (60) days after the Potential Licensee accepts the offer of

Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Association;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exh. D attached, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent," means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means outside legal counsel if such counsel is known to Respondents and is providing representation regarding licensing or litigation involving Respondents' FRAND Patents; otherwise "Qualified Recipient(s)" shall mean chief executive officer and, if known to Respondent, general counsel or primary contact with Respondent with respect to Patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least i) the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the wholly-owned subsidiaries and majority-owned joint ventures of the first person or entity [FTC considering further expansion].

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been withdrawn or the development project terminated without final approval of such Standard; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment, and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.A. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee

against whom the Covered Injunctive Relief is sought. The foregoing means that, *inter alia,* it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

   c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable

undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to the rules of that SSO.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Recipient Designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any fully executed and enforceable License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. [Respondents' written response shall include an Offer to License?]. In Respondents' response and negotiations with the Potential Licensee, Respondents shall act in good faith and in conformity with their FRAND Commitments, and shall comply with all other provisions of the Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

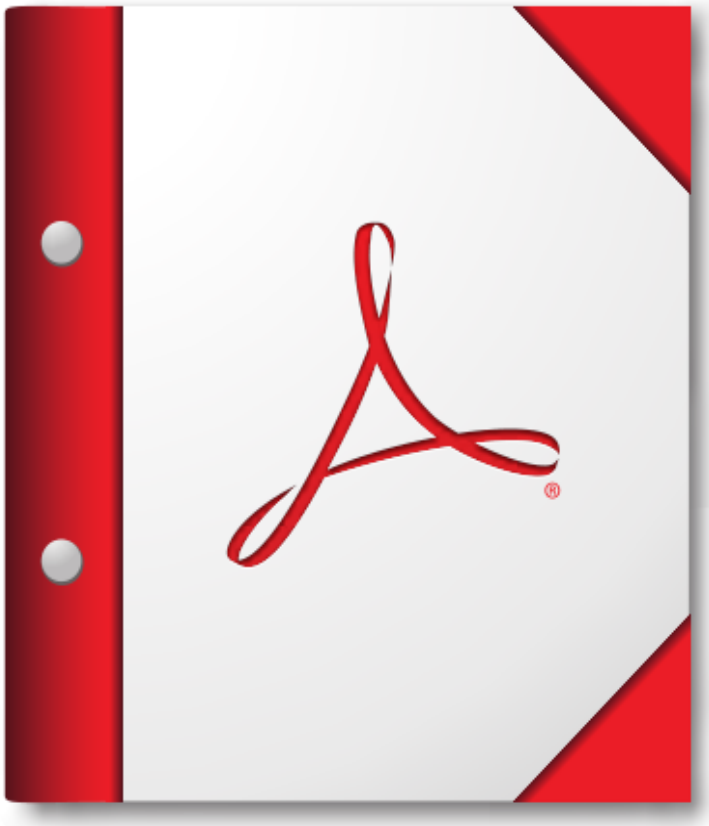
Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate



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FTC STAFF COMMENTS TO RESPONDENTS' DRAFT - 6/18/2013
CONFIDENTIAL - FOR DISCUSSION ONLY

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT]
[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT]:

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration** (you may still be able to accept this offer after that because it is irrevocable for the time period set in the Order).

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents—or at the Company's option a License Agreements cross-licensing our respective Patents-- that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement. [NOTE: Any patents excluded from the license agreement could not form the basis for a future actions seeking

injunction unless and until the requirements of the Order were met as to those patents, including sending Offers covering those patents].

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order.[what does Google believe is the difference?] If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company. [IF GOOGLE AND COMPANY BOTH MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within [x] days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within sixty (60) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined by the Administrator according to its arbitration rules.

3. Within a reasonable time after Google's receipt of the Company's acceptance of Binding Arbitration, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

[NEED TO DISCUSS THE TIMING IN 4-MAY NEED TO MODIFY - THE ORDER DISTINGUISHES BETWEEN FILING FOR ARBITRATION AND COMMENCEMENT OF ARBITRATION AND REQUIRES THIS NOTICE TO BE FILED FROM "COMMENCEMENT"]

4. No later than five (5) business days after the commencement of arbitration Google and the Company will each be required to file with the Administrator (for delivery to the arbitrators upon their selection), on behalf of themselves and their respective Affiliates, a binding and irrevocable undertaking that they will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the Commencement Date. Failure to file such an undertaking shall constitute a material breach of the arbitration agreement and may release Google from its obligations under the Order.

5. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

6. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. Google and the Company may propose that the arbitrator consider validity, Essentiality, infringements or patent value in making its determination. The Order does not limit the ability of the arbitrator to consider these arguments or to follow existing legal standards or burdens of proof in deciding how to conduct the arbitration and make the necessary determinations.

7. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company that shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above [and all entities included in definition of Third Party] I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the

receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER
I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration Organization within ~~sixty~~thirty (~~60~~30) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration ~~Association~~Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization ~~selected by the Potential Licensee~~, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization ~~selected by the Potential Licensee~~;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the

relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of ~~Exh.~~Exhibit D ~~attached~~to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent~~,~~" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel ~~if such counsel is known to Respondents and is providing representation regarding licensing or litigation involving~~actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; ~~otherwise "Qualified Recipient(s)" shall mean~~or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to ~~Patent~~patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least ~~i)~~ the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not

limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned subsidiaries and joint ventures of the first person or entity ~~[FTC considering further expansion]~~.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn ~~or the development project terminated without final approval of such Standard~~; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment~~,~~ and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.~~A~~B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee

against whom the Covered Injunctive Relief is sought. The foregoing means that~~, *inter alia,*~~ it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

   c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the

agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to ~~the~~such mandatory dispute resolution rules ~~of that SSO~~.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the ~~Recipient Designated~~recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any ~~fully executed and enforceable~~ License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. ~~[~~Respondents' written response ~~shall include an Offer to License?]. In Respondents' response and negotiations with the Potential Licensee, Respondents shall act in good faith and in conformity~~pursuant to this paragraph shall be in good faith compliance with ~~their~~its FRAND Commitments~~,~~ and ~~shall comply with~~ all other provisions of ~~the~~this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth

in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the

attached proposed License Agreement that the sending party is willing to include in a final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN**

30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Document comparison by Workshare Compare on Wednesday, June 26, 2013 11:43:04 AM

Input:	
Document 1 ID	file://C:\Users\rms\AppData\Local\Temp\Workshare\wmtemp9716\2013.06.18.FTC.DnO.Modifications.docx
Description	2013.06.18.FTC.DnO.Modifications
Document 2 ID	PowerDocs://NYDOCS/1470761/3
Description	NYDOCS-#1470761-v3-Respondents_Mark-up_DnO_Modifications_-_2013-06-26
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	26
Deletions	29
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	55

RESPONDENTS' DRAFT - 6/26/2013
CONFIDENTIAL - FOR DISCUSSION ONLY

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]
[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within 30 days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within sixty (60) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. No later than five (5) business days after the commencement of arbitration, Google and the Company will each be required to file with the Administrator (for delivery to the arbitrators upon their selection), on behalf of themselves and their respective Affiliates, a

binding and irrevocable undertaking that they will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the Commencement Date. Failure to file such an undertaking shall constitute a material breach of the arbitration agreement and may release Google from its obligations under the Order.

5. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

6. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent.

7. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
<u>Attention:</u> General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company that shall be enforceable by either party to the greatest extent permitted by law.

This Offer, and any arbitration agreement formed by its acceptance, shall be construed according to the laws of the State of California.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration Organization within thirty (30) days after the Potential Licensee accepts the offer of

Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee

against whom the Covered Injunctive Relief is sought. The foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

   c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under

the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory dispute resolution rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth

in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Huber, Susan

From:	Bayer Femenella, Peggy
Sent:	Wednesday, June 26, 2013 12:05 PM
To:	Widnell, Nicholas; Ducore, Daniel P.
Cc:	Huber, Susan
Subject:	FW: Proposed Order Modifications and Exhibit D
Attachments:	2013.06.18.FTC.DnO.Modifications - Respondents Mark-up DnO Modifications - 2013-06-26.pdf; 2013.06.18.FTC.Exh.D - Respondents Mark-up Exh D - 2013-06-26.pdf; NYDOCS-#1470760-v4-Respondents_Mark-up_Exh_D_-_2013-06-26.docx; NYDOCS-#1470761-v3-Respondents_Mark-up_DnO_Modifications_-_2013-06-26.DOCX

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Wednesday, June 26, 2013 12:00 PM
To: Huber, Susan; Bayer Femenella, Peggy
Cc: Steinthal, Russell M.; Nam, Soojin; Barstad, Eric P.
Subject: Proposed Order Modifications and Exhibit D

Hi Susan:

With apologies for the delay, attached please find our markup of the Order and Exhibit D, together with redlines versus Staff's drafts of June 18.

Please note that in Exhibit D, we removed Staff's bracketed notes/questions so that the markup reflects the actual proposed text of the exhibit, but we look forward to discussing those issues with you at our meeting on Thursday.

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

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****
****

~~FTC STAFF COMMENTS TO~~ RESPONDENTS' DRAFT - 6/~~18~~26/2013
CONFIDENTIAL - FOR DISCUSSION ONLY

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]
[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration .** (~~you~~You may still be able to accept this offer after that because it ~~is irrevocable~~will remain open for ~~the time~~a further period of time as set ~~in the Order).~~forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents~~—~~ (or, at the Company's option, a License ~~Agreements~~Agreement cross-licensing our respective Patents~~--~~) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement. ~~[NOTE: Any patents~~

~~excluded from the license agreement could not form the basis for a future actions seeking injunction unless and until the requirements of the Order were met as to those patents, including sending Offers covering those patents].~~

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order.~~[what does Google believe is the difference?]~~ If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ~~BOTH~~ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within ~~[x]~~30 days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within sixty (60) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined ~~by the Administrator~~ according to ~~its arbitration~~default rules set forth in the Order.

3. Within a reasonable time after ~~Google's receipt of the Company's acceptance of Binding Arbitration~~an Administrator is selected, we will initiate an arbitration proceeding before

the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

~~[NEED TO DISCUSS THE TIMING IN 4-MAY NEED TO MODIFY - THE ORDER DISTINGUISHES BETWEEN FILING FOR ARBITRATION AND COMMENCEMENT OF ARBITRATION AND REQUIRES THIS NOTICE TO BE FILED FROM "COMMENCEMENT"]~~

4. No later than five (5) business days after the commencement of arbitration, Google and the Company will each be required to file with the Administrator (for delivery to the arbitrators upon their selection), on behalf of themselves and their respective Affiliates, a binding and irrevocable undertaking that they will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the Commencement Date. Failure to file such an undertaking shall constitute a material breach of the arbitration agreement and may release Google from its obligations under the Order.

5. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

6. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. ~~Google and the Company may propose that the arbitrator consider validity, Essentiality, infringements or patent value in making its determination. The Order does not limit the ability of the arbitrator to consider these arguments or to follow existing legal standards or burdens of proof in deciding how to conduct the arbitration and make the necessary determinations.~~

7. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on

any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company that shall be enforceable by either party to the greatest extent permitted by law.

This Offer, and any arbitration agreement formed by its acceptance, shall be construed according to the laws of the State of California.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above ~~[and all entities included in definition of Third Party]~~(including its direct and indirect wholly-owned subsidiaries and majority-owned subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Document comparison by Workshare Compare on Wednesday, June 26, 2013 11:45:17 AM

Input:	
Document 1 ID	file://C:\Users\rms\AppData\Local\Temp\Workshare\wmtemp9716\2013.06.18.FTC.Exh.D.docx
Description	2013.06.18.FTC.Exh.D
Document 2 ID	PowerDocs://NYDOCS/1470760/4
Description	NYDOCS-#1470760-v4-Respondents_Mark-up_Exh_D_-_2013-06-26
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Split/Merged cell	
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Statistics:	
	Count
Insertions	25
Deletions	19
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	44

FTC DRAFT 6/27/2013
Redline comparing Order Accepted for Comment with proposed changes

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration Organization within sixty (60) days after the Potential Licensee accepts the offer of

Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within thirty days after selection of the Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;.

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties..

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn [IEEE-withdrawn or the development project terminated without final approval of such Standard]; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued,

unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. The foregoing means that, *inter alia*, it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

   c) At or prior to the commencement of the arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable

undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of receiving the proposed License Agreement sent by Respondents' pursuant to Paragraph IV.B(2)(b), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory dispute resolution rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration

Organization within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within thirty days after selection of the Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only

with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute

of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND

Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent

against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents' may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) Respondents shall file for arbitration and deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(c), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the

FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

e) The arbitrator shall set the terms of the final License Agreement; and

f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory dispute resolution rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration

Organization within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within thirty days after selection of the Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only

with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute

of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND

Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent

against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents' may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) Respondents shall file for arbitration and deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(c), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the

FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

e) The arbitrator shall set the terms of the final License Agreement; and

f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory dispute resolution rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration

Organization within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within thirty days after selection of the Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only

with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute

of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND

Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent

against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents' may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) Respondents shall file for arbitration and deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(c), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the

FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

e) The arbitrator shall set the terms of the final License Agreement; and

f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory arbitration rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory arbitration rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Huber, Susan

From: Huber, Susan
Sent: Monday, July 08, 2013 2:37 PM
To: 'JDH@avhlaw.com'; 'Russell M. Steinthal (rms@avhlaw.com)'
Cc: Bayer Femenella, Peggy; Ducore, Daniel P.; Widnell, Nicholas
Subject: Google
Attachments: 2013.07.08.Compare.AcceptedOrder.ReviseddOrder.docx

Tracking:

Recipient	Delivery	Read
'JDH@avhlaw.com		
'Russell M. Steinthal (rms@avhlaw.com		
Bayer Femenella, Peggy	Delivered: 7/8/2013 2:37 PM	Read: 7/8/2013 2:43 PM
Ducore, Daniel P.	Delivered: 7/8/2013 2:37 PM	Read: 7/8/2013 6:25 PM
Widnell, Nicholas	Delivered: 7/8/2013 2:37 PM	

John,

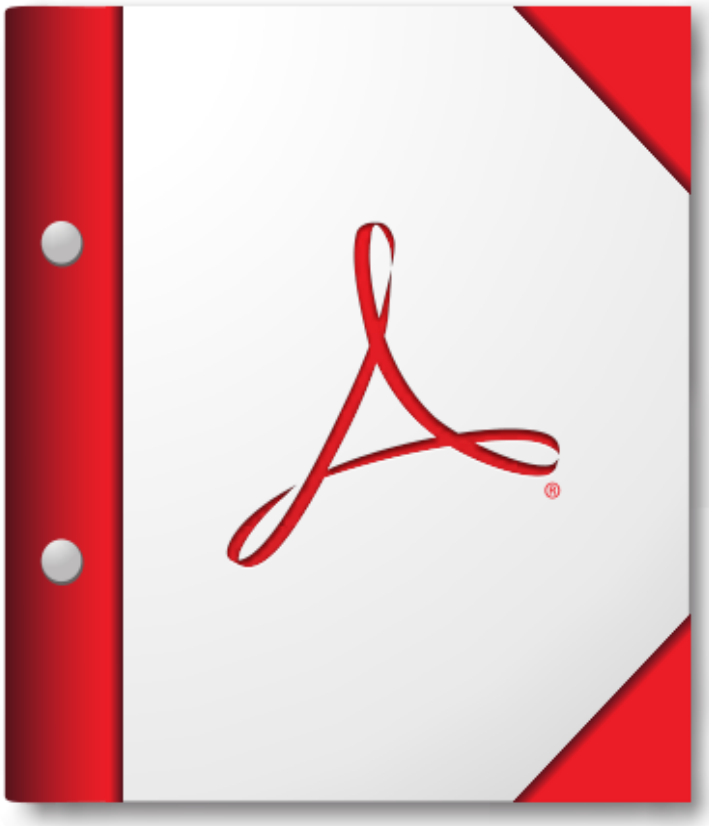
I think we are on the home stretch! The SSO language change is acceptable to us (at staff level). Attached is a redline comparing the Order as accepted for comment with the revised Order that has been agreed to by Google and Commission staff. The only change from the last version that you were sent is the wording of the SSO arbitration proviso at the end of Paragraph IV.B.

Please let me know if you see anything amiss.

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331



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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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration

Organization within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only

with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute

of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND

Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent

against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) Respondents shall file for arbitration and deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(b), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the

FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

e) The arbitrator shall set the terms of the final License Agreement; and

f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory arbitration rules of an SSO to which both Respondent and a Potential Licensee are subject, then either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to the mandatory arbitration rules of such SSO.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with their FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the selection of the QAO, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends

are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the

Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United

States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license

Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

U. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

V. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

W. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper

venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

X. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Y. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

Z. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

AA. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) from the time a Potential Licensee accepts Respondents' Offer to Arbitrate until the conclusion of the resulting Binding Arbitration.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; for clarity, a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation as requested in a FRAND Terms Letter delivered to a Qualified Recipient of the Potential Licensee within thirty (30) days of receiving the FRAND Terms Letter; PROVIDED, HOWEVER, Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

   1. execute the Relevant License Agreement, or

   2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination,

including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Standards not practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts

Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential

Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date

of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA."Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world."Affiliate" means any entity that is directly or indirectly controlled by, under common control with, or that controls the subject entity. [NB: funky numbering – no time to fix]

C. "Binding Arbitration" means arbitration that complies with the following and follows the procedures in Paragraph IV.B.2. of the Order:

1. is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee.

D. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

E. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

F. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

G. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as "needed" or "necessary"), it shall refer to Patent Claims the infringement of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided in such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

H. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

I. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

J. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

K. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

L. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

M. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

N. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

O. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

P. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

Q. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or any other country world-wide.

R. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

S. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

T. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraph IV.B. of this Order.

U. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

V. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee or an Affiliate thereof against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, OR (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

W. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment, or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a

cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

X. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent use of the relevant FRAND Patents are not covered by an existing license.

Y. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE,, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, EV-DO (published by ITU Telecommunications Standardization Sector).

Z. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU"), IETF, the Open Networking Foundation and Schema.org

AA. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify

a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the required Qualified Offers.

C. Respondents shall cease and desist from making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order, and Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief during the pendency of a Qualified Request for a FRAND Determination or after a Potential Licensee accepts Respondents Offer to Arbitrate.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States District Courts only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation to a Respondent, as requested in a FRAND Terms Letter delivered to a Qualified Recipient within thirty (30) days of receiving the FRAND Terms Letter. PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III., or any other mutually agreed to procedure, as the exclusive means for determining the terms of a License Agreement covering Respondents' patents that are Essential to the Covered Standards, and if Respondents seeks Reciprocity, the Potential Licensee's patents that are Essential to the Covered Standards to the extent not already licensed (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtaining or enforcing Covered Injunctive Relief based on the alleged Infringement of Respondents' FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards, to the extent not already licensed. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if Respondent is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, to the extent not already licensed;

   b) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under

the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

c) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

a) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

b) The arbitrator shall set the terms of the final License Agreement; and

c) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim, seek or enforce a Claim for Covered Injunctive Relief during the pendency of the Qualified Request for a FRAND Determination.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until the later of (i) two (2) months after Respondents deliver an Offer to Arbitrate or (ii) a Final Ruling is obtained in any Request for a FRAND Determination that was pending as of

the date this Order was issued, covers the allegedly Infringing FRAND Patent on which the claim for Covered Injunctive Relief is based, and was filed by the Potential Licensee against whom the Covered Injunctive Relief is sought.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to the Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee (or an Affiliate) is seeking or has sought on or after the date of this Order, Covered Injunctive Relief for Infringement of a product (including software), device or service that is made, marketed, distributed or sold by Respondents alleging Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential and the alleged infringer refused to pay the rate determined by the Final Ruling.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees; (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or

assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark

Secretary

SEAL

ISSUED:

In re Google Inc. and Motorola Mobility LLC

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[Counsel representing Potential Licensee in Qualified Request for a FRAND Determination]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Google Inc. and Motorola Mobility LLC,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action (Action) is a Qualified Request for FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty [60] days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Google Inc. and Motorola Mobility LLC

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[Qualified Recipient of Potential Licensee]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Google Inc. and Motorola Mobility LLC,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using patents for which Google has made a FRAND Commitment to comply with a Standard published by a standard-setting organization such a ETSI, IEEE or ITU if you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [Potential Licensee] agree to license each other's patents that are Essential to complying with a Standard or Standards that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECIEPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSISTUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United

States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license

Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

U. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

V. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

W. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper

venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

X. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Y. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

Z. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

AA. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; for clarity, a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation as requested in a FRAND Terms Letter delivered to a Qualified Recipient of the Potential Licensee within thirty (30) days of receiving the FRAND Terms Letter; PROVIDED, HOWEVER, Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

   1. execute the Relevant License Agreement, or

   2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more

appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has elected not to enter into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Standards not practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, to the extent not already licensed;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief for Infringement of a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth

in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of	)	
	)	
GOOGLE INC.,	)	**Docket No. C-**
a corporation.	)	
	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and its wholly owned subsidiary Motorola Mobility Inc., (hereinafter referred to collectively as "Respondent" or "Respondent Google") and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the

receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Motorola Mobility, Inc. is a wholly-owned subsidiary of Respondent Google.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means Google Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc., including but not limited to, Motorola Mobility Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

B. "AAA" is the American Arbitration Association, a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative in the United States or anywhere else in the world.

D. "Court" means a judicial tribunal in or outside the United States of appropriate jurisdiction.

E. "FRAND Commitment" means any commitment to a Standard-Setting Organization to license identified intellectual property essential to implementing a Standard published by such Standard-Setting Organization on royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such Standard-Setting Organization. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE"); and

3. A General Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union.

F. "FRAND Determination Action" means an Action filed in any Court seeking determination of a licensing rate for the FRAND-encumbered SEPs owned by one or both parties to such Action that are essential to comply with one or more identified Standards.

G. "FRAND-encumbered SEPs" means any patent that includes a patent claim that is subject to a FRAND Commitment, provided that FRAND-encumbered SEP shall not refer to use of the technology reading on such patent other its use to complying with the Standard for which the relevant FRAND Commitment was made.

H. "Injunctive Relief" means any claim or request before any legal or administrative tribunal, whether in or outside the United States, to prevent any Third-Party from manufacturing, marketing, importing or selling any item based on an alleged infringement of FRAND-encumbered SEP. Injunctive Relief includes, but is not limited to, a request that the United States International Trade Commission commence an investigation and issue an exclusion order under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, based on alleged infringement of FRAND-encumbered SEP; and a request for injunctive relief for infringement of a FRAND-encumbered SEP included in a Complaint filed in a United States District Court.

I. "JAMS" is a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

J. "Offer to License" means a written offer or counter-offer that is binding on the party making the offer and is an offer to license all FRAND-encumbered SEPs essential for compliance with a Standard on terms that comply with the FRAND Commitment(s) covering such SEPs. An Offer to License must contain all material commercial terms for the offered license, including but not limited to, royalties, other financial terms, and limitations on the scope or field of use of such SEPs. An Offer to License may include a requirement of Reciprocity, but if such requirement is included, the Offer to License shall contain the material commercial terms offered for licensing the offeree's FRAND-encumbered SEPs. An Offer to License may also contain additional terms or offers unrelated to the FRAND-encumbered SEPs so long as the offer contains separate financial terms for such terms or offers (which terms may also include the FRAND-encumbered SEPs).

K. "Qualified Arbitrators" means the following organizations and rules: i) the AAA in accordance with its Commercial Arbitration Rules, or ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, iii) the AAA's ICDR in accordance with its

International Arbitration Rules; or iv) JAMS pursuant to its International Arbitration Rules.

L. "Reciprocity" means conditioning an Offer to License the offeror's FRAND-encumbered SEPs essential to particular Standard on the condition that the offeree agree to license its FRAND-encumbered SEPs for the same Standard on terms that comply with the offeree's FRAND Commitment(s) covering such SEPs.

M. "Standard" means a standard published by a standard setting organization, including, but not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

N. "SEP Infringement Action" means an Action for alleged infringement of a FRAND-encumbered SEP" where the claim for infringement is based on use of the SEP to comply with a Standard for which a FRAND Commitment has been made.

O. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than the Respondent.

II.

IT IS FURTHER ORDERED that:

A. Respondent shall not revoke or renege on any FRAND Commitment unless i) the Standard for which such Commitment was made has been rejected or withdrawn, or ii) Respondent does not own any FRAND-encumbered SEPs covered by such FRAND Commitment; iii) all FRAND-encumbered SEPs covered by such FRAND Commitment have expired or been determined to be unenforceable by a Court.

B. (b)(3):6(f),(b)(4)

III.

IT IS FURTHER ORDERED that Respondent's activities are in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND-encumbered SEPs:

A. Respondent shall not seek Injunctive Relief against a Third Party in an SEP Infringement Action if Respondent and the Third Party are parties to a FRAND Determination Action that would establish the licensing terms for the FRAND-encumbered SEPs included in the SEP Infringement Action.

B. Unless prohibited by Paragraph III.A. above, it shall not be a violation of this Order for Respondent to seek Injunctive Relief against a Third Party in an SEP Infringement Action if:

1. the Third Party has stated in writing it will not license the FRAND-encumbered SEPs included in the SEP Infringement Action; OR

2. Google has taken the following actions before seeking Injunctive Relief:

   a) provided the Third Party with an Offer to License the FRAND-encumbered SEPs included in the SEP Infringement Action ("relevant SEPs"), along with a copy of this Order, and the Third Party has not, within [xx] days of receiving the Offer to License, agreed to license the relevant SEPs on terms contained in such Offer; and,

   b) At least [xx+] days prior to seeking Injunctive Relief, Google has provided a written irrevocable offer to such Third Party to have the licensing terms for the relevant SEPs determined through binding arbitration administered by the Third Party's choice of Qualified Arbitrator, and the Third Party has not accepted such offer. If Third Party accepts the offer of binding arbitration and Respondent and the Third Party cannot mutually agree on the language and location for such arbitration, the selected Qualified Arbitrator shall determine the language and location for the arbitration

      PROVIDED THAT the Respondent or the Third Party may condition such binding arbitration on a requirement that if the Qualified Arbitrator determines there is a reasonable likelihood that the Respondent or Third Party is not financially able or willing to fulfill the payment terms to be determined through Binding Arbitration, the Qualified Arbitrator shall require the relevant party to provide reasonable security (which may include an escrow of funds) to ensure such party will be able to satisfy any payment terms determined through Binding Arbitration; OR

3. [Placeholder re no relevant agreement between the parties]

C. Respondent shall, within [xx] days of receiving a written request by any Third Party for a license to Respondent's FRAND-encumbered SEPs essential to a particular Standard(s), provide such Third Party with an Offer to License Respondent's FRAND-encumbered SEPs essential to the requested Standard(s). Such Offer to License shall comply with Respondent's FRAND Commitment(s).

D. (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4)

E. Respondent shall not sell or assign any FRAND-encumbered SEP to any Third Party unless such Third Party agrees to become a successor to Respondent's FRAND Commitment and all licensing terms established through Binding Arbitration or a FRAND Determination Action with respect to such SEP.

IV.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondent Google shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Google shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of the status of each of SEP Infringement Action that contained a request for Injunctive Relief as of the date Respondent signed the Agreement Containing Consent Order, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order. [may include additional interim reports]

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Google shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Google shall include in its report, among other things that are required from time to time, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

V.

IT IS FURTHER ORDERED that Respondent Google shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of such Respondent;

B. Acquisition, merger or consolidation of Respondent;

C. Sale or assignment of any FRAND-encumbered SEP; or

D. The dissolution of Motorola Mobility Inc., or any other change in the Respondent including, but not limited to the assignment and the creation or dissolution or other subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Google, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondent Google and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and

B. To interview officers, directors, or employees of Respondent Google, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents:

(b)(3):6(f),(b)(4)

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondents), (hereinafter referred to as "Respondents") and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Baseball Style Arbitration" means arbitration where each party submits a proposed term and the arbitrator selects between them.

E. "Binding Arbitration" means arbitration that complies with the following:

1. is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agreed upon;

2. Respondents and the Potential Licensee shall agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may

demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee shall agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside the United States, that does or would prevent any Third Party from making, using or selling any item in violation of Title 35, Section 271 based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as needed or necessary), it shall refer to Patent Claims the infringement of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided in such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration or Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published in the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

L. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

M. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

N. "License Agreement" means an agreement to license which if executed would form a complete, binding, enforceable agreement between the signatories to license the intellectual property included in such agreement.

O. "Offer to Arbitrate," means a binding offer delivered pursuant to Paragraph [xx] of this Order to establish a License Agreement using the process described in Paragraph [xx] of this Order.

P. "Offer to License" means a binding written offer delivered pursuant to Paragraph [xx] of this Order and that contains a License Agreement or a full description of all material commercial terms proposed for such an agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of such FRAND Patents.

Q. "Patent Claim" means one or more claims in issued patents or pending patent applications.

R. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

S. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, (iii) the AAA's ICDR pursuant to its

International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

T. "Qualified Offers" mean an offer to license and an offer of Binding Arbitration, both of which comply with the requirements of Paragraph [xx] of this Order.

U. "Qualified Recipient" means the chief executive officer, general counsel, or outside legal counsel.

V. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

W. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment, or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined in the FRAND Commitment or by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents or, to the extent such patents are not covered by a relevant FRAND Commitment, on terms that are equivalent to those contained in Respondents' FRAND Commitment.

X. "Request for a FRAND Determination" means a request [filed in] any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent not covered by an existing license.

Y. "Standard" means a standard published by a SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

Z. "SSO" means a standard-setting organization, i.e. an organization that produces standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

AA. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. [moved other conditions below]

C. Respondents shall cease and desist from directly or indirectly making any future claims of Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who

1. is outside the jurisdiction of the United States, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent.

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration;

4. fails to provide written confirmation to Respondent that the Potential Licensee is willing to license the FRAND Patent on fair and reasonable terms within thirty (30) days of receiving a written request for such confirmation and a copy of this Order from Respondent, where both the written request for confirmation and the written confirmation shall be delivered to a Qualified Recipient.

III.

IT IS FURTHER ORDERED the Respondent and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III.A, or any other mutually agreed to procedure, as the exclusive means for determining the terms of a License Agreement covering Respondent's 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 (hereinafter the "Relevant License Agreement"):

A. Respondent and Potential Licensee agree to negotiate, for a period of at least six months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondent or within sixty (60) days of the request of Potential Licensee, Respondent shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondent delivers the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondent's FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondent and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing in this [Order? paragraph?] shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondent that the District

Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondent's motion that it cannot issue a ruling on the Contested Terms, then the Respondent and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondent or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents, Respondent shall not file a claim seeking, or other obtain or enforce Covered Injunctive Relief based on the alleged Infringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee;

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents deliver to a Qualified Representative of the Potential Licensee an Offer to Arbitrate a a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards. If the Potential Licensee accepts Respondents'

Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced.

d) Within [xx] days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and agree to inclusion of all other terms in the final License Agreement.

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents', and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments.

f) The arbitrator shall set the terms of the final License Agreement.

g) Within [xx] days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into a License Agreement.

C. So long as the Potential Licensee has files a Qualified Request for a FRAND Determination for Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, which is later, and such action has been dismissed upon a Final Ruling; PROVIDED THAT within [xx] days of filing the Qualified Request for FRAND Determination, the Potential Licensee delivers to a Designated Qualified Recipient of either Respondent a binding and irrevocable commitment to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for FRAND Determination and (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the

relevant patents had been licensed at such royalty rates as of the date the Qualified Request for a FRAND Determination was filed.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until 30 days after Respondents file an action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to actions pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any license agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. (b)(3):6(f),(b)(4)

3. prevent or restrict Respondents from enforcing any license agreement entered into prior to the effective date of this Order; or

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for wilful infringement;

5. shall restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce Covered Injunctive Relief against a Third Party that is seeking Covered Injunctive Relief for infringement of a device or service that is made, marketed, or sold by Respondents based on Infringement of Respondents' FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Third Party does one of the following:

1. makes a Qualified Offer to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer"); OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed patents are Essential.

(b)(3):6(f),(b)(4)

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with its FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) agrees to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph VI.C.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 IV.C. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has

complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondents;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of ~~Google Inc. and its~~Motorola Mobility LLC (formerly Motorola Mobility, Inc.), a wholly owned subsidiary ~~Motorola Mobility~~of Google Inc.~~,~~ (hereinafter referred to collectively as "Respondent"~~ or "Respondent Google"~~) and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that

the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent ~~Google~~Motorola Mobility LLC is a ~~corporation~~limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 600 North U.S. Highway 45, Libertyville, IL 60048, and a wholly-owned subsidiary of Google Inc., a Delaware corporation having its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. ~~Motorola Mobility, Inc. is a wholly-owned subsidiary of Respondent Google.~~

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of ~~Respondents~~Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means ~~Google Inc.~~Motorola Mobility LLC, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates ~~controlled by Google Inc., including but not limited to, Motorola Mobility Inc.~~, its parent Google Inc. and the joint ventures, subsidiaries, divisions, groups and affiliates thereof, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

B. "AAA" is the American Arbitration Association, a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative in the United States or anywhere else in the world.

D. "Binding Arbitration" means binding arbitration administered by the Potential Licensee's choice of Qualified Arbitration Organization, or another arbitration organization or ad hoc group of arbitrators mutually agreed by Respondent and the Potential Licensee. If Respondent and the Potential Licensee cannot mutually agree

within __ months on (i) the language and location for such arbitration, the Qualified Arbitrators shall determine the language and location for the arbitration; (ii) the term for which the SEPs at issue shall be licensed, the Qualified Arbitrators shall fix such term; or (iii) other non-royalty terms on which the SEPs at issue shall be licensed, the terms proposed by Respondent shall govern, unless the Qualified Arbitrators find them to be inconsistent with Respondent's FRAND Commitment, in which case the Qualified Arbitrators shall fix terms that comply with such FRAND Commitment.

The Respondent or the Potential Licensee may condition Binding Arbitration on a requirement that if the Qualified Arbitrators find a reasonable likelihood that the Respondent or Potential Licensee is not financially able or willing to fulfill the payment terms to be determined through Binding Arbitration, the Qualified Arbitrators shall require the relevant party to provide reasonable security, which may include an escrow of funds, to ensure such party will be able to satisfy any payment terms determined through Binding Arbitration.

E. "Covered Injunctive Relief" means Injunctive Relief that is based on the alleged infringement of a FRAND-encumbered SEP.

F. "Court" means a judicial tribunal in or outside the United States of appropriate jurisdiction.

G. (b)(3):6(f),(b)(4)

H. "Essential," as to a patent claim, means, "essential" as defined by the rules of any applicable standard-setting organization or, if there is no such definition, that infringement of the claim cannot be avoided in remaining compliant with such Standard, including optional implementations provided for in such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

~~E.~~ I. "FRAND Commitment" means any commitment to ~~a Standard-Setting Organization to license identified intellectual property essential to implementing a Standard published by such Standard-Setting Organization~~license one or more SEPs on royalty-free or reasonable and non-discriminatory terms ~~pursuant to the policies of such Standard-Setting Organization~~. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable ~~licenses~~licences on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to and as that term is defined in the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE"), to the extent that option 1(a), 1(b) or 1(c) (as they appear on the IEEE's standard form Letter of Assurance as of the date of this order, or amended options substantially equivalent thereto) are selected; and

3. A ~~General~~ Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union~~.F. "FRAND Determination Action" means an Action filed in any Court seeking determination of a licensing rate for the FRAND-encumbered SEPs owned by one or both parties to such Action that are essential to comply with one or more identified Standards.~~, to the extent that options 1 or 2 (as they appear on the ITU's standard form declaration as of the date of this Order, or amended options substantially equivalent thereto) are selected.

~~G~~J. "FRAND-encumbered ~~SEPs" means any patent that includes a patent claim that~~SEP" means an SEP solely to the extent it is subject to a FRAND Commitment, provided, however, that an SEP claim shall be considered a FRAND-encumbered SEP ~~shall not refer to use of the technology reading on such patent other its use to complying with~~solely with respect to the practice of such claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or in any other way outside the scope of the relevant FRAND Commitment.

~~H~~K. "Injunctive Relief" means any claim or request before any legal or administrative tribunal, whether in or outside the United States, to prevent ~~any Third-Party from~~the use, manufacturing, marketing, ~~importing~~importation or ~~selling~~sale of any item ~~based on an alleged infringement of FRAND-encumbered SEP~~. Injunctive Relief includes, but is not limited to, a request that the United States International Trade Commission commence an investigation and issue an exclusion order under Section 337 of the Tariff Act as Amended, 19 U.S.C. ~~sec.~~§ 1337, based on alleged infringement of FRAND-encumbered SEP; and a request for injunctive relief for infringement of a FRAND-encumbered SEP included in a Complaint filed in a United States District Court.

~~I~~L. "JAMS" is a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

M. "Offer to Arbitrate" means a written offer to a Potential Licensee to have the royalty terms for all of Respondents' FRAND-encumbered SEPs that are Essential to one or more Standards and all of the Potential Licensee's SEPs that are Essential to the same Standards determined through Binding Arbitration. (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4) [redacted] An Offer to Arbitrate may also contain additional terms or offers unrelated to the FRAND-encumbered SEPs so long as the offer contains separate financial terms for such terms or offers, which terms may also include the FRAND- encumbered SEPs.

~~J~~N. "Offer to License" means a written offer or counter-offer that ~~is binding on~~, if accepted, would bind the party making the offer and is an offer to license all FRAND-encumbered SEPs essential for compliance with a Standard ~~on terms that comply with the FRAND Commitment(s) covering such SEPs~~. An Offer to License must contain all material commercial terms for the offered license, including but not limited to~~,~~ royalties, other financial terms, and limitations on the scope or field of use of such SEPs. (b)(3):6(f),(b)(4) [redacted] An Offer to License may also contain additional terms or offers unrelated to the FRAND-encumbered SEPs so long as the offer contains separate financial terms for such terms or offers, ~~(~~which terms may also include the FRAND- encumbered SEPs~~)~~.

O. "Potential Licensee" means a Third Party that may be practicing one or more of Respondent's FRAND-encumbered SEPs or against which Respondent may bring an SEP Infringement Action.

P. "Qualified Arbitrators" means a panel of arbitrators selected pursuant to the rules of a Qualified Arbitration Organization (or otherwise selected pursuant to an agreement of the parties), such that each party to the arbitration has the right to select one arbitrator knowledgeable about the relevant industry and issues and the selected arbitrators (or, failing that, the Qualified Arbitration Organization) shall select a third arbitrator, who shall chair the panel.

~~K~~Q. "Qualified ~~Arbitrators~~Arbitration Organizations" means the following organizations and rules: i) the AAA in accordance with its Commercial Arbitration Rules, or ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, iii) the AAA's ICDR in accordance with its International Arbitration Rules; or iv) JAMS pursuant to its International Arbitration Rules.

~~L~~R. "Reciprocity" means conditioning an ~~Offer to License the offeror's FRAND-encumbered SEPs essential to particular Standard on the condition that the offeree agree~~offer on the offeree's (i) becoming a Willing Licensee; and (ii) agreement to license its ~~FRAND-encumbered~~ SEPs for the same Standard ~~on terms that comply with the offeree~~(s) to the offeror on royalty-free or reasonable and non-discriminatory terms consistent with the offeror's FRAND Commitment(s) covering such SEPs.

~~M.~~ S. "SEP" means any patent that includes a patent claim that is Essential to a Standard.

T. "SEP Infringement Action" means an Action for alleged infringement of a FRAND-encumbered SEP where the claim for infringement is based on use of the SEP to comply with a Standard for which a FRAND Commitment has been made.

U. "Standard" means a standard published ~~by a standard setting organization~~for the purpose of promoting interoperability among products or services from different manufacturers, distributors or other sources, including, but not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

~~N. "SEP Infringement Action" means an Action for alleged infringement of a FRAND-encumbered SEP" where the claim for infringement is based on use of the SEP to comply with a Standard for which a FRAND Commitment has been made.~~

~~O.~~ V. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than ~~the~~ Respondent.

W. "Willing Licensee" means a Third Party that has (i) made a binding, unconditional and irrevocable commitment to be bound by the provisions of sections I-III of this Order as if it were Respondent; and (ii) made a binding, unconditional and irrevocable commitment to license according to Section III below all of Respondent's SEPs that are Essential to Standards practiced by such Third Party.

II.

IT IS FURTHER ORDERED that:

A. Respondent shall not revoke or ~~renege on~~rescind any FRAND Commitment unless (i) the Standard for which such FRAND Commitment was made has been rejected or withdrawn, ~~or~~ (ii) Respondent does not own any FRAND-encumbered SEPs covered by such FRAND Commitment; or (iii) all FRAND-encumbered SEPs covered by such FRAND Commitment have expired or been determined to be unenforceable by a Court, provided that nothing in this Order shall (a) restrict Respondent's exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (b) require Respondent to give a FRAND Commitment with respect to any Standard or proposed Standard; or (c) restrict Respondent's right to withdraw a FRAND Commitment as to future patents in response to a change in policy of a related standard-setting organization, unless such organization's rules or other applicable law prohibit such withdrawal.

B. (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4)

III.

IT IS FURTHER ORDERED that, to the extent that Respondent's activities are in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND-encumbered SEPs:

A. Respondent shall ~~not seek~~cease and desist from, directly or indirectly, making any future claim for Covered Injunctive Relief ~~against a Third Party~~ in ~~an~~any SEP Infringement Action ~~if Respondent and the Third Party are parties to a FRAND Determination Action that would establish the licensing terms for the FRAND-encumbered SEPs included in~~except as permitted under this Order.
~~the SEP Infringement Action.~~

B. ~~Unless prohibited by~~Notwithstanding Paragraph III.A. above, it shall not be a violation of this Order for Respondent to seek Covered Injunctive Relief against a ~~Third Party~~Potential Licensee in an SEP Infringement Action if:

1. ~~the Third Party~~The Potential Licensee has ~~stated in writing~~indicated it will not license the FRAND-encumbered SEPs ~~included~~ in the SEP Infringement Action~~; OR~~ on any terms or on royalty terms determined by a Court or neutral arbitration; or

2. ~~Google has taken the following actions before seeking Injunctive Relief:a) provided the Third Party with an Offer to License the FRAND- encumbered SEPs included in the SEP Infringement Action ("relevant SEPs"), along with a copy of this Order, and the Third Party has not, within [xx] days of receiving the Offer to License, agreed to license the relevant SEPs on terms contained in such Offer; and,~~ Respondent has provided the Potential Licensee with an Offer to License and an Offer to Arbitrate, each covering the Standards regarding which Respondent may seek Covered Injunctive Relief, along with a copy of this Order, and the Potential Licensee has not qualified as a Willing Licensee within ___ days of receiving the Offer to License and within ___ days of receiving the Offer to Arbitrate; or

~~b) At least [xx+] days prior to seeking Injunctive Relief, Google has provided a~~

~~written irrevocable offer to such Third Party to have the licensing terms for the relevant SEPs determined through binding arbitration administered by the Third Party's choice of Qualified Arbitrator, and the Third Party has not accepted such offer. If Third Party accepts the offer of binding arbitration and Respondent and the Third Party cannot mutually agree on the language and location for such arbitration, the selected Qualified Arbitrator shall determine the language and location for the arbitration~~

~~*PROVIDED THAT* the Respondent or the Third Party may condition such binding arbitration on a requirement that if the Qualified Arbitrator determines there is a reasonable likelihood that the Respondent or Third Party is not financially able or willing to fulfill the payment terms to be determined through Binding Arbitration, the Qualified Arbitrator shall require the relevant party to provide reasonable security (which may include an escrow of funds) to ensure such party will be able to satisfy any payment terms determined through Binding Arbitration; OR~~

3. [Placeholder re no relevant agreement between the parties]; or

4. (b)(3):6(f),(b)(4)

C. Respondent shall, within ~~[xx]~~___ days of receiving a written request by any ~~Third Party~~Potential Licensee for a license to Respondent's FRAND-encumbered SEPs essential to a particular Standard~~(s)~~, provide such Third Party with an Offer to License Respondent's FRAND-encumbered SEPs essential to the requested Standard~~(s). Such~~. In making such Offer to License, Respondent shall act in good faith and in conformity comply with Respondent's its FRAND Commitment(s).

D. (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4)

Good faith participation in the Binding Arbitration process described in Paragraph III.B. of this Order and a willingness to license its FRAND-encumbered SEPs in accordance with the outcome of such process shall constitute compliance with Respondent's relevant FRAND Commitment(s). The fact that the final terms determined by a Qualified Arbitrator may differ from the terms Respondent proposed in such proceeding or in an Offer to License shall not constitute a violation of this Order or evidence that Respondent breached its FRAND Commitment(s).

E. Respondent shall not sell or assign any patent it knows to be a FRAND-encumbered SEP to any Third Party unless such Third Party agrees to ~~become a successor to Respondent's FRAND Commitment and all licensing terms established through Binding Arbitration or a FRAND Determination Action~~(i) honor the terms of Respondent's FRAND Commitments and (ii) be bound by the terms of this Order, in each case with respect to such transferred SEP.

F. Notwithstanding any other provision of this Order, nothing herein shall restrict Respondent from:

1. Conditioning any license or offer to license any FRAND-encumbered SEP on terms allowed by the relevant FRAND Commitments;

2. Charging or collecting any royalty for any FRAND-encumbered SEP that would otherwise be permitted by the relevant FRAND Commitments;

3. Enforcing any license agreement entered into prior to the effective date of this Order; or

4. Pursuing relief other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement.

IV.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondent ~~Google~~ shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent ~~Google~~ shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of the status of each ~~of~~ SEP Infringement Action that contained a request for Injunctive Relief as of the date Respondent signed the

Agreement Containing Consent Order, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each known sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order. [may include additional interim reports]

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent ~~Google~~ shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent ~~Google~~ shall include in its report, among other things that are required from time to time, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each known sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

C. Any report provided pursuant to section IV of this Order and any information submitted pursuant to sections VI and VII of this Order shall be afforded by the Commission the maximum degree of confidentiality protection permitted by law, including by designating such report or information as non-public material pursuant to the Commission's Rules of Practice.

V.

IT IS FURTHER ORDERED that Respondent ~~Google~~ shall notify the Commission at least thirty (30) days prior to any ~~proposed:~~change in the corporation that would affect its compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation that holds FRAND-encumbered SEPs subject to this Order; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in either corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

~~A. Dissolution of such Respondent;~~

~~B. Acquisition, merger or consolidation of Respondent;~~

~~C. Sale or assignment of any FRAND-encumbered SEP; or~~

~~D. The dissolution of Motorola Mobility Inc., or any other change in the Respondent including, but not limited to the assignment and the creation or dissolution or other subsidiaries, if such change might affect compliance obligations arising out of the Order.~~

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon ~~five~~fourteen (~~5~~14) days notice to Respondent ~~Google~~, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondent ~~Google~~ and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and

B. To interview officers, directors, or employees of Respondent ~~Google~~, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on_____ (10 years after its Issuance).

By the Commission.

~~Donald S. Clark~~
~~Secretary~~

~~SEAL ISSUED:~~

~~(ten~~

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of	)	
	)	
MOTOROLA MOBILITY LLC	)	
	)	**Docket No. C-**
a limited liability company.	)	
	)	
	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Motorola Mobility LLC (formerly Motorola Mobility, Inc.), a wholly owned subsidiary of Google Inc. (hereinafter referred to collectively as "Respondent") and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Motorola Mobility LLC is a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 600 North U.S. Highway 45, Libertyville, IL 60048, and a wholly-owned subsidiary of Google Inc., a Delaware corporation having its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means Motorola Mobility LLC, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates, its parent Google Inc. and the joint ventures, subsidiaries, divisions, groups and affiliates thereof, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

B. "AAA" is the American Arbitration Association, a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative in the United States or anywhere else in the world.

D. "Binding Arbitration" means binding arbitration administered by the Potential Licensee's choice of Qualified Arbitration Organization, or another arbitration organization or ad hoc group of arbitrators mutually agreed by Respondent and the Potential Licensee. If Respondent and the Potential Licensee cannot mutually agree within __ months on (i) the language and location for such arbitration, the Qualified Arbitrators shall determine the language and location for the arbitration; (ii) the term for which the SEPs at issue shall be licensed, the Qualified Arbitrators shall fix such term; or (iii) other non-royalty terms on which the SEPs at issue shall be licensed, the terms proposed by Respondent shall govern, unless the Qualified Arbitrators find them to be inconsistent with Respondent's FRAND Commitment,

in which case the Qualified Arbitrators shall fix terms that comply with such FRAND Commitment.

The Respondent or the Potential Licensee may condition Binding Arbitration on a requirement that if the Qualified Arbitrators find a reasonable likelihood that the Respondent or Potential Licensee is not financially able or willing to fulfill the payment terms to be determined through Binding Arbitration, the Qualified Arbitrators shall require the relevant party to provide reasonable security, which may include an escrow of funds, to ensure such party will be able to satisfy any payment terms determined through Binding Arbitration.

E. "Covered Injunctive Relief" means Injunctive Relief that is based on the alleged infringement of a FRAND-encumbered SEP.

F. "Court" means a judicial tribunal in or outside the United States of appropriate jurisdiction.

G. (b)(3):6(f),(b)(4)

H. "Essential," as to a patent claim, means, "essential" as defined by the rules of any applicable standard-setting organization or, if there is no such definition, that infringement of the claim cannot be avoided in remaining compliant with such Standard, including optional implementations provided for in such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

I. "FRAND Commitment" means any commitment to license one or more SEPs on royalty-free or reasonable and non-discriminatory terms. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licences on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to and as that term is defined in the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE"), to the extent that option 1(a), 1(b) or 1(c) (as they appear on the IEEE's standard form Letter of Assurance as of the date of this order, or amended options substantially equivalent thereto) are selected; and

3. A Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International

Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that options 1 or 2 (as they appear on the ITU's standard form declaration as of the date of this Order, or amended options substantially equivalent thereto) are selected.

J. "FRAND-encumbered SEP" means an SEP solely to the extent it is subject to a FRAND Commitment, provided, however, that an SEP claim shall be considered a FRAND-encumbered SEP solely with respect to the practice of such claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or in any other way outside the scope of the relevant FRAND Commitment.

K. "Injunctive Relief" means any claim or request before any legal or administrative tribunal, whether in or outside the United States, to prevent the use, manufacturing, marketing, importation or sale of any item. Injunctive Relief includes, but is not limited to, a request that the United States International Trade Commission commence an investigation and issue an exclusion order under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, based on alleged infringement of FRAND-encumbered SEP; and a request for injunctive relief for infringement of a FRAND-encumbered SEP included in a Complaint filed in a United States District Court.

L. "JAMS" is a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

M. "Offer to Arbitrate" means a written offer to a Potential Licensee to have the royalty terms for all of Respondents' FRAND-encumbered SEPs that are Essential to one or more Standards and all of the Potential Licensee's SEPs that are Essential to the same Standards determined through Binding Arbitration. (b)(3):6(f),(b)(4) (b)(3):6(f),(b)(4) An Offer to Arbitrate may also contain additional terms or offers unrelated to the FRAND-encumbered SEPs so long as the offer contains separate financial terms for such terms or offers, which terms may also include the FRAND- encumbered SEPs.

N. "Offer to License" means a written offer or counter-offer that, if accepted, would bind the party making the offer and is an offer to license all FRAND-encumbered SEPs essential for compliance with a Standard. An Offer to License must contain all material commercial terms for the offered license, including but not limited to royalties, other financial terms, and limitations on the scope or field of use of such SEPs. (b)(3):6(f),(b)(4) (b)(3):6(f),(b)(4) An Offer to License may also contain additional terms or offers unrelated to the FRAND-encumbered SEPs so long as the offer contains separate financial terms for such terms or offers, which terms may also include the FRAND- encumbered SEPs.

O. "Potential Licensee" means a Third Party that may be practicing one or more of Respondent's FRAND-encumbered SEPs or against which Respondent may bring an SEP Infringement Action.

P. "Qualified Arbitrators" means a panel of arbitrators selected pursuant to the rules of a Qualified Arbitration Organization (or otherwise selected pursuant to an agreement of the parties), such that each party to the arbitration has the right to select one arbitrator knowledgeable about the relevant industry and issues and the selected arbitrators (or, failing that, the Qualified Arbitration Organization) shall select a third arbitrator, who shall chair the panel.

Q. "Qualified Arbitration Organizations" means the following organizations and rules: i) the AAA in accordance with its Commercial Arbitration Rules, or ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, iii) the AAA's ICDR in accordance with its International Arbitration Rules; or iv) JAMS pursuant to its International Arbitration Rules.

R. "Reciprocity" means conditioning an offer on the offeree's (i) becoming a Willing Licensee; and (ii) agreement to license its SEPs for the same Standard(s) to the offeror on royalty-free or reasonable and non-discriminatory terms consistent with the offeror's FRAND Commitment(s) covering such SEPs.

S. "SEP" means any patent that includes a patent claim that is Essential to a Standard.

T. "SEP Infringement Action" means an Action for alleged infringement of a FRAND-encumbered SEP where the claim for infringement is based on use of the SEP to comply with a Standard for which a FRAND Commitment has been made.

U. (b)(3):6(f),(b)(4)

V. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondent.

W. "Willing Licensee" means a Third Party that has (i) made a binding, unconditional and irrevocable commitment to be bound by the provisions of sections I-III of this Order as if it were Respondent; and (ii) made a binding, unconditional and irrevocable commitment to license according to Section III below all of Respondent's SEPs that are Essential to Standards practiced by such Third Party.

II.

IT IS FURTHER ORDERED that:

A. Respondent shall not revoke or rescind any FRAND Commitment unless (i) the Standard for which such FRAND Commitment was made has been rejected or withdrawn, (ii) Respondent does not own any FRAND-encumbered SEPs covered by such FRAND Commitment; or (iii) all FRAND-encumbered SEPs covered by such FRAND Commitment have expired or been determined to be unenforceable by a Court, provided that nothing in this Order shall (a) restrict Respondent's exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (b) require Respondent to give a FRAND Commitment with respect to any Standard or proposed Standard; or (c) restrict Respondent's right to withdraw a FRAND Commitment as to future patents in response to a change in policy of a related standard-setting organization, unless such organization's rules or other applicable law prohibit such withdrawal.

B. (b)(3):6(f),(b)(4)

III.

IT IS FURTHER ORDERED that, to the extent that Respondent's activities are in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND-encumbered SEPs:

A. Respondent shall cease and desist from, directly or indirectly, making any future claim for Covered Injunctive Relief in any SEP Infringement Action except as permitted under this Order.

B. Notwithstanding Paragraph III.A. above, it shall not be a violation of this Order for Respondent to seek Covered Injunctive Relief against a Potential Licensee in an SEP Infringement Action if:

1. The Potential Licensee has indicated it will not license the FRAND-encumbered SEPs in the SEP Infringement Action on any terms or on royalty terms determined by a Court or neutral arbitration; or

2. Respondent has provided the Potential Licensee with an Offer to License and an Offer to Arbitrate, each covering the Standards regarding which Respondent may seek Covered Injunctive Relief, along with a copy of this Order, and the Potential Licensee

has not qualified as a Willing Licensee within ___ days of receiving the Offer to License and within ___ days of receiving the Offer to Arbitrate; or

3. [Placeholder re no relevant agreement between the parties]; or

4. (b)(3):6(f),(b)(4)

C. Respondent shall, within ___ days of receiving a written request by any Potential Licensee for a license to Respondent's FRAND-encumbered SEPs essential to a particular Standard, provide such Third Party with an Offer to License Respondent's FRAND-encumbered SEPs essential to the requested Standard. In making such Offer to License, Respondent shall act in good faith and in conformity comply with Respondent's its FRAND Commitment(s).

D. Good faith participation in the Binding Arbitration process described in Paragraph III.B. of this Order and a willingness to license its FRAND-encumbered SEPs in accordance with the outcome of such process shall constitute compliance with Respondent's relevant FRAND Commitment(s). The fact that the final terms determined by a Qualified Arbitrator may differ from the terms Respondent proposed in such proceeding or in an Offer to License shall not constitute a violation of this Order or evidence that Respondent breached its FRAND Commitment(s).

E. Respondent shall not sell or assign any patent it knows to be a FRAND-encumbered SEP to any Third Party unless such Third Party agrees to (i) honor the terms of Respondent's FRAND Commitments and (ii) be bound by the terms of this Order, in each case with respect to such transferred SEP.

F. Notwithstanding any other provision of this Order, nothing herein shall restrict Respondent from:

1 Conditioning any license or offer to license any FRAND-encumbered SEP on terms allowed by the relevant FRAND Commitments;

2 Charging or collecting any royalty for any FRAND-encumbered SEP that would otherwise be permitted by the relevant FRAND Commitments;

3 Enforcing any license agreement entered into prior to the effective date of this Order; or

4 Pursuing relief other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement.

IV.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of the status of each SEP Infringement Action that contained a request for Injunctive Relief as of the date Respondent signed the Agreement Containing Consent Order, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each known sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order. [may include additional interim reports]

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its report, among other things that are required from time to time, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each known sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

C. Any report provided pursuant to section IV of this Order and any information submitted pursuant to sections VI and VII of this Order shall be afforded by the Commission the maximum degree of confidentiality protection permitted by law, including by designating such report or information as non-public material pursuant to the Commission's Rules of Practice.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that would affect its compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation that holds FRAND-encumbered SEPs subject to this Order; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in either corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less

than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon fourteen (14) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and

B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on_____ (10 years after its Issuance).

By the Commission.

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of	)	
	)	
GOOGLE INC.,	)	**Docket No. C-**
a corporation.	)	
	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. through its wholly owned subsidiary Motorola Mobility LLC, (hereinafter referred to as "Respondent"), and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the

receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Motorola Mobility LLC, a limited liability company with its principal place of business at 600 North U.S. Highway 45, Libertyville, IL 60048, is a wholly-owned subsidiary of Respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means Google Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc., including but not limited to, Motorola Mobility LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Court" means a judicial tribunal of appropriate jurisdiction in or outside the United States.

E. "Covered Injunctive Relief" means a Final Ruling of any legal or administrative tribunal, whether in or outside the United States, that does or would prevent any Third Party from manufacturing, marketing, importing, licensing, selling or using any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, or an injunction order issued by a Court.

F. "Essential" as to a patent claim or when referring to a particular patent claim or patented technology means "essential" as defined by the rules or policies of the SSO to which a FRAND Commitment covering the claim, patent or patented technology has been made; or if Essential is not defined by the SSO, it shall mean that infringement of the claim, patent or technology cannot be avoided in remaining compliant with the Standard for

which the FRAND Commitment was made, including optional implementations provided for such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

G. "FRAND Commitment" means a commitment to an SSO to license one or more patents on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO where the commitment is made because technology covered by the relevant patent is Essential to a Standard published by the SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration or Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published in the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

H. "Request for FRAND Determination" means a request in any United States federal court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondent's Patents Essential to a Standard or Standards.

I. "FRAND Patent" means a patent solely to the extent the patent is subject to a FRAND Commitment, provided, however, that a patent claim shall be considered a FRAND Patent with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

J. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

K. "Infringement of (or Infringing) a FRAND Patent" means a claim of infringement that is based on the alleged infringer using technology reading on the FRAND Patent to comply

with the same Standard for which a FRAND Commitment has been made that covers that technology.

L. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

M. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

N. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA in accordance with its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, (iii) the AAA's ICDR in accordance with its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

O. "Qualified Offers" means an offer to license and an offer of binding arbitration, both of which comply with the requirements of Paragraph III.C.2 of this Order.

P. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard means "reciprocity" as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's patents Essential to the same Standard on terms that are fair and reasonable and otherwise consistent with each parties' FRAND Commitment.

Q. "Standard" means a standard published by a SSO, including, but not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

R. "SSO" means standard-setting organization, including but not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

S. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondent.

II.

IT IS FURTHER ORDERED that:

A. Respondent shall not revoke or rescind any FRAND Commitment unless (i) all Standards for which such FRAND Commitment was made have been rejected or withdrawn, (ii) Respondent no longer has any interest in FRAND Patents covered by such FRAND Commitment; or (iii) all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (a) restrict Respondent's exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (b) require Respondent to give a FRAND Commitment with respect to any Standard or proposed Standard; or (c) restrict Respondent's right to withdraw or modify a FRAND Commitment in response to a change in policy by the SSO to which the FRAND Commitment was given if such withdrawal or modification is expressly permitted by the SSO.

B. Respondent shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until (i) the Potential Licensee has stated in writing or in sworn testimony that it will not license the allegedly Infringing FRAND Patents either (a) on any terms, or (b) on terms that have been set in the Final Ruling of a Court or through binding arbitration; or (ii) Respondent has made Qualified Offers to the Potential Licensee.

C. Respondent shall cease and desist from directly or indirectly making any future claims of Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

III.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents:

A. Respondent shall not obtain or enforce Covered Injunctive Relief against a Potential Licensee during the pendency of a Request for FRAND Determination to which Respondent and the Potential Licensee are Parties, so long as (i) the trial court has not dismissed the Request for FRAND Determination; (ii) the Potential Licensee agrees in writing that it will enter a license to the relevant Standard or Standards that includes the terms determined through a Final Ruling on the Request for FRAND Determination; (iii) the Potential Licensee agrees in writing to negotiate all terms of a license to the relevant Standard or Standards (other than those determined through a ruling on the Request for FRAND Determination), and if a mutually agreeable license is not entered into within sixty (60) days of the Final Ruling on the Request for FRAND Determination, to enter binding arbitration pursuant to the terms of Paragraph III.C.2(b) of this Order, and (iv) the Potential Licensee has not previously filed a Request for FRAND Determination that was dismissed after the close of fact discovery,

PROVIDED THAT if a Request for FRAND Determination is dismissed after the close of fact discovery on all claims including such Request, Respondent must, after an order dismissing the Request is entered, make Qualified Offers to the Potential Licensee before seeking Covered Injunctive Relief;

PROVIDED, FURTHER that if a claim containing a Request for FRAND Determination is dismissed before the close of fact discovery and the Potential Licensee has not re-filed

a claim containing a Request for FRAND Determination within 60 days of dismissal, Respondent shall no longer be subject to Paragraph II.A of this Order.

For the avoidance of doubt, the provisions of Paragraph III.A. of this Order are not intended to depend upon which party, Respondent or the Potential Licensee, files an Action first.

B. If not otherwise prohibited by Paragraph III.A. above, it shall not be a violation of this Order for Respondent to seek Covered Injunctive Relief against a Potential Licensee if the Potential Licensee (i) is not subject to the jurisdiction of the United States, or (ii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patents or (iii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patent on terms that have been set in a Final Ruling by a Court or through binding arbitration.

C. If not otherwise prohibited by Paragraph III.A above, it shall not be a violation of this Order for Respondent to seek Covered Injunctive Relief against a Potential Licensee for alleged Infringement of a FRAND Patent if:

1. Seeking Covered Injunctive Relief does not violate the terms of any written agreement with the Potential Licensee; AND

2. Respondent takes the following actions before seeking Covered Injunctive Relief:

a) At least twelve (12) months prior to pursuing Covered Injunctive Relief, Respondent delivers to the chief executive offer, general counsel or outside counsel of the Potential Licensee a copy of this Order and an irrevocable written offer to license such FRAND Patent and Respondent's other FRAND Patents Essential to the same Standard or Standards. The offer must contain all material commercial terms for the proposed license, including but not limited to, royalties, other financial terms, and any limitations on the scope or field of use of such FRAND Patents. The offer may be conditioned on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee or to any other patents or other intellectual property.

b) At least sixty (60) days prior to seeking Covered Injunctive Relief, Respondent makes a reasonable offer of binding arbitration to the Potential Licensee to determine the terms of a license Respondent's, and if the offer is conditioned on Reciprocity the Potential Licensee's, patents that are Essential to the same Standard or Standards as the FRAND Patent, the offer is not accepted by the Potential Licensee within 30 days after Respondent seeks Covered Injunctive Relief, and, further, the offer complies with the following conditions:

i. the offer is an irrevocable written offer to have the royalty terms, and all non-royalty terms on which Respondent and Potential

Licensee could not agree upon prior to arbitration, determined through binding arbitration,

ii. the offer is delivered to the chief executive officer, general counsel or outside counsel of the Potential Licensee,

iii. the offer is for binding arbitration administered by the Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondent and the Potential Licensee mutually agreed upon;

iv. the offer states that Respondent shall submit the matter to binding arbitration not less than [xx] days after the Potential Licensee accepts the offer, or at any other time mutually agreed to by Respondent and Potential Licensee;

v. the offer states that if the Potential Licensee accepts the offer of binding arbitration, the number and manner of selecting the arbitrators shall be done in a manner mutually agreed to by the parties; however, if no agreement is reached within sixty (60) days after the Potential Licensee accepts the offer of binding arbitration, either party may demand that the number and manner stated in the rules of the Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

vi. the offer states that if the Potential Licensee accepts the offer of binding arbitration, Respondent and the Third Party shall, in good faith, attempt to mutually agree upon the language and location for the arbitration; however, if there is not agreement within sixty (60) days after the Potential Licensee accepts the offer of binding arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization ; and

vii. the offer was is not conditioned on any other terms except, at the Respondent's option, (i) Reciprocity, (ii) a field of use limitation that the FRAND Patents are only licensed to the extent they are used in the manner covered by the relevant FRAND Commitments, and (iii) a requirement that if the arbitrator determines there is a reasonable likelihood that the Respondent or Third Party is not financially able or willing to fulfill the financial terms to be determined through binding arbitration, the arbitrator shall require the relevant party to provide reasonable security, which may include an escrow of funds, to ensure such party will be able to

satisfy any financial terms for the FRAND Patents that may be determined through the binding arbitration,

viii. unless mutually agreed otherwise, (i) if the arbitration includes only Respondent's patents, the basis of arbitration shall be whether Respondent's proposed license agreement terms are fair and reasonable and comply with Respondent's FRAND Commitments, (ii) if the arbitration includes patents of the Respondent and the Potential Licensee (we don't want to force this), the basis of arbitration shall be whether the terms in the license agreements offered by both Respondent and the Potential Licensee are fair, reasonable and consistent with the parties' FRAND Commitments and, where both parties have submitted equivalent terms offered by that are fair, reasonable and consistent with the offering party's FRAND Commitments, to determine the terms to be included in the license agreement.

D. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondent from negotiating, arbitrating or entering into any license agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondent;

2. prevent or restrict Respondent from enforcing any license agreement entered into prior to the effective date of this Order; or

3. prevent or restrict Respondent from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement.

E. Notwithstanding any other provision of the Order, Respondent shall be permitted to obtain and enforce Covered Injunctive Relief against a Third Party that is seeking Covered Injunctive Relief for infringement of a device or service manufactured, marketed, imported, licensed, sold or used by Respondent ***unless*** prior to seeking the Covered Injunctive Relief, the Third Party does one of the following:

1. makes a Qualified Offer to party whose infringement from the basis for the claim of Covered Injunctive Relief ("the alleged infringer"); OR

2. obtains a obtains a Final Ruling on a Request for FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed patents are Essential.

PROVIDED THAT, [Respondent's good faith participation in the binding arbitration and willingness to license FRAND Patents on terms determined through the binding arbitration shall constitute compliance with the this Order-*too broad*]. The fact that the final terms determined through binding arbitration may differ from the terms Respondent proposed in

such proceeding or in an Offer to License shall not, by itself, constitute a violation of this Order.

IV.

A. Respondent shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondent's FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an offer to license such FRAND Patents. In making such offer, Respondent shall act in good faith and in conformity with its FRAND Commitments.

B. (b)(3):6(f),(b)(4)

C. Respondent shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees (i) to become a successor to Respondent's FRAND Commitments to the extent the FRAND Patent is subject to such Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondent would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) agrees to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph VI.C.

V.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including the status of each Action that contained a request for Covered Injunctive Relief as of the date Respondent 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 IV.C. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of such Respondent;

B. Acquisition, merger or consolidation of Respondent;

C. The dissolution of Motorola Mobility Inc., or any other change in the Respondent including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and

B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

Issue 1: Caption and Ordering of Motorola and Google

1. Change the caption to read:

> In the Matter of MOTOROLA MOBILITY LLC, a limited liability company and GOOGLE INC., a corporation.

2. Change the first sentence of the decree to read:

> The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Motorola Mobility LLC, a wholly owned subsidiary of Google Inc. (hereinafter referred to as "Respondents").

3. Change the first jurisdictional allegation to read:

> Respondent Motorola Mobility LLC, a limited liability company with its principal place of business at 600 North U.S. Highway 45, Libertyville, IL 60048, is a wholly-owned subsidiary of Respondent Google. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

4. Change the definition of "Respondent" to a definition of "Respondents" as follows:

> "Respondents" means Motorola Mobility LLC and Google Inc. and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each and joint ventures, subsidiaries, divisions, groups and affiliates controlled by each.

5. Globally change references to "Respondent" to "Respondents" and make conforming grammatical changes to reflect the pluralization.

Issue 2: Clarify definitions related to essentiality

1. Change definition of Essential to:

> "Essential" as to a patent claim ~~or when referring to a particular patent claim or patented technology~~ means "essential" as defined by the rules or policies of the SSO to which a FRAND Commitment covering the claim, ~~patent or patented technology~~ has been made; or if Essential is not defined by the SSO, it shall mean that infringement of the **patent** claim~~, patent or technology~~ cannot be avoided in remaining compliant with the Standard for which the FRAND

Commitment was made, including optional implementations provided for such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

2. Change definition of "FRAND Commitment" to:

"FRAND Commitment", **for purposes of this Order,** means a commitment to an SSO to license one or more ~~patents~~ **patent claims** on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO where the commitment is made because **the patent claim** ~~technology covered by the relevant patent~~ is Essential to a Standard published by the SSO. FRAND Commitments include, but are not limited to: [... - remainder unaffected]

3. Change definition of "FRAND Patent" to:

"FRAND Patent" means a patent **claim** solely to the extent the patent **claim** is subject to a FRAND Commitment**. A** ~~, provided, however, that a~~ patent claim shall be considered a FRAND Patent **only** with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

4. Change definition of "Infringement of (or Infringing) a FRAND Patent" to:

"Infringement of (or Infringing) a FRAND Patent" means a claim ~~of infringement~~ that ~~is~~ **a FRAND Patent is infringed** based on the alleged infringer**'s compliance** ~~using technology reading on the FRAND Patent to comply~~ with the same Standard for which a FRAND Commitment has been made that covers ~~that technology~~ **such FRAND Patent**.

5. Change definition of "Request for FRAND Determination" to reference "FRAND Patents" (both substantively correct and incorporates focus on patent claims):

"Request for FRAND Determination" means a request in any United States federal court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondent's **FRAND** Patents Essential to a Standard or Standards.

<u>Issue 3: Reciprocity as to patents being licensed under royalty-free commitments</u>

Nick: this is not intended as a retrade. It is a last effort to see if this is something with which you are comfortable. But we are not trying to hold up the agreement.

Change the definition of Reciprocity as follows:

> "Reciprocity" as to an offer to license FRAND Patents for a particular Standard means "reciprocity" as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's patents Essential to the same Standard on terms that are fair and reasonable **(or, if the offer is for a royalty-free license, royalty free)** and otherwise consistent with each parties' FRAND Commitment.

issue 4: Definition of "Covered Injunctive Relief"

We would strike "licensing" since that isn't one of the things prohibited by 35 U.S. 271 (definition of patent infringement).

Issue 5: Definition of "Qualified Arbitration Organizations"

Change "in accordance with" to "pursuant to" (or vice versa) for consistency, unless there is an intended difference in meaning

PROPOSED ALTERNATIVE LANGUAGE - DECEMBER 10, 6:45 pm
CONFIDENTIAL - FOR SETTLEMENT PURPOSES ONLY

Qualified RFD means a Request for FRAND Determination against Respondent filed by a Potential Licensee if (i) the Potential Licensee has not, since the date this Order was issued, filed another Request for FRAND Determination against Respondent covering FRAND Patents Essential to the same Standard ("Identical Request") **and the time for the Potential Licensee to accept Respondent's [Qualified Offer to Arbitrate] has not expired**; or (ii) the Potential Licensee filed an Identical Request in the same judicial district (and division, if applicable) that was dismissed without prejudice within the previous sixty (60) days; or (iii) the Potential Licensee filed an Identical Request within the previous sixty (60) days that was dismissed on Respondent's motion for lack of personal jurisdiction or improper venue.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents, Respondent shall not obtain or enforce Covered Injunctive Relief based on the alleged **I**nfringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") during the pendency of a Qualified Request for a FRAND Determination so long as EITHER:

A. The Respondent and the Potential Licensee agree and comply with the procedure outlined in this Paragraph III.A as the exclusive means for determining the terms of a license agreement covering Respondent's FRAND Patents that are Essential to the Covered Standards, and if either party seeks Reciprocity, to the Potential Licensee's ~~FRAND Patents~~ **patents** that are Essential to the Covered Standards ("Relevant License Agreement"):

1. Respondent and Potential Licensee agree to negotiate, for a period of at least six months, to determine the terms of a Relevant License Agreement.

2. At any time after six months, at the option of Respondent or within sixty (60) days of the request of Potential Licensee, Respondent shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement.

3. Within sixty (60) days after Respondent delivers the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

   i. execute the Relevant License; or

   ii. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondent's FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), and for each Contested Term, propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondent and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"); and

   iii. elect to have the Contested Terms resolved through a **Qualified** Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to

determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments.

4. It is intended that the **Qualified** Request for FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. [Except for the foregoing,?] nothing in this ~~paragraph~~ **Order** shall restrict ~~the ability~~ **any party from presenting any argument** in Binding Arbitration or to the District Court, including without limitation that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate, or arguments **regarding the** ~~as to~~ validity, Essentiality, infringement or value of the ~~other parties' FRAND Patents~~ **patents to be licensed in the Relevant License Agreement.**

5. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondent's motion that it cannot issue a ruling on the Contested Terms, then the Respondent and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed either Respondent or Potential Licensee ~~at any time~~ **within 30 days** after the dismissal of the Qualified Request for FRAND Determination.

or

B. The Potential License has not proceeded under subsection (A), and is party to a Qualified Request for FRAND Determination covering the Covered Standards that has not been dismissed, provided, however, that nothing herein in this Order shall restrict any party from presenting any argument to the District Court, including without limitation that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, infringement or value of the patents to be licensed in the Relevant License Agreement.

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondents), (hereinafter referred to as "Respondents") and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration that complies with the provision of Paragraph III.D.2 of this Order.

E. "Court" means a judicial tribunal of appropriate jurisdiction in or outside the United States.

F. "Covered Injunctive Relief" means a Final Ruling of any legal or administrative tribunal, whether in or outside the United States, that does or would prevent any Third Party from making, using or selling any item in violation of Title 35, Section 271 based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under

Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, or an injunction order issued by a Court.

G. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as needed or necessary), it shall refer to Patent Claims the infringement of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided for such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

H. "FRAND Commitment" [for purposes of the Order] means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration or Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published in the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

I. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

J. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

K. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

L. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

M. "Patent Claim" means one or more claims in issued patents or pending patent applications.

N. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

O. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

P. "Qualified Offers" means an offer to license and an offer of Binding Arbitration, both of which comply with the requirements of Paragraph III.C.2 of this Order.

Q. "Qualified Recipient" means the chief executive officer, general counsel, or outside legal representative.

R. "Qualified Request for a FRAND Determination" means a Request for FRAND Determination against Respondent filed by a Potential Licensee if (i) the Potential Licensee has not, since the date this Order was issued, filed another Request for FRAND Determination against Respondent covering FRAND Patents Essential to the same Standard ("Identical Request"); or (ii) the Potential Licensee filed an Identical Request in the same judicial district (and division, if applicable) that was dismissed without prejudice within the previous sixty (60) days; or (iii) the Potential Licensee filed an Identical Request within the previous sixty (60) days that was dismissed on Respondent's motion for lack of personal jurisdiction or improper venue.

S. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined in the FRAND Commitment or by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents or, to the extent such patents are not covered by a relevant FRAND Commitment, on terms that are fair and reasonable.

T. "Request for FRAND Determination" means a request [filed in] any United States District Court of competent jurisdiction that the court determine at least the royalty terms

of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent not covered by an existing license.

U. "Standard" means a standard published by a SSO, including mandatory and optional implementations provided for such standard. Standards include, but are not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector). [Throughout this Order, references to patents Essential to a Standard shall include only those patents Essential to the Standard as it is practiced by the relevant implementer.]

V. "SSO" means standard-setting organization, including but not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU") [add a couple other examples].

W. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless (1) all Standards for which such FRAND Commitment was made have been rejected or withdrawn, (2) Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or (3) all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court, PROVIDED THAT nothing in this Order shall (a) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (b) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (c) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until (1) the Potential Licensee has stated in writing or in sworn testimony that it will not license the allegedly Infringing FRAND Patents either (a) on any terms, or (b) on terms that have been set in the Final Ruling of a Court or through Binding Arbitration, (2) the Potential Licensee has not responded within thirty (30) days to a written request delivered to a Qualified Recipient requesting that the Potential Licensee state that it is willing to license the alleged Infringing FRAND Patent on terms that are consistent with Respondent's FRAND Commitment covering the relevant patent (3) Respondents has made Qualified Offers to the Potential Licensee,

PROVIDED THAT challenging the validity or Essentiality of an alleged infringing FRAND Patent does not constitute a statement under Paragraph II.B.(1) that a Potential Licensee will not license such FRAND Patent.

C. Respondents shall cease and desist from directly or indirectly making any future claims of Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

III.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents, Respondent shall not obtain or enforce Covered Injunctive Relief based on the alleged infringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") so long as **EITHER**:

A. The Respondent and the Potential Licensee agree and comply with the procedure outlined in this Paragraph III.A, or any other mutually agreed to procedure, as the exclusive means for determining the terms of a license agreement covering Respondent's 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 ("Relevant License Agreement"):

1. Respondent and Potential Licensee agree to negotiate, for a period of at least six months, to determine the terms of a Relevant License Agreement.

2. At any time after six months, at the option of Respondent or within sixty (60) days of the request of Potential Licensee, Respondent shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement.

3. Within sixty (60) days after Respondent delivers the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

a) execute the Relevant License; or

b) designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondent's FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), and for each Contested Term, propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondent and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"); and

c) elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments.

4. It is intended that the Request for FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing in this [Order? paragraph?] shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for FRAND Determination, including without limitation, arguments by Respondent that the District Court hearing the Request for FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, infringement or the value of the patents included in the Relevant License Agreement;

5. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondent's motion that it cannot issue a ruling on the Contested Terms, then the Respondent and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondent or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for FRAND Determination.

OR

B. [The Potential Licensee has not proceeded under subsection (A)], and is a party to a pending Qualified Request for FRAND Determination covering the Covered Standards; provided, however, that nothing in this Order shall restrict any party from presenting any argument to the District Court, including without limitation that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, infringement or value of the patents to be licensed in the Relevant License Agreement

(b)(3):6(f),(b)(4)

For the avoidance of doubt, the provisions of Paragraph III.A. of this Order are not intended to depend upon which party, Respondents or the Potential Licensee, files an Action first.

IV.

A. If not otherwise prohibited by Paragraph III.B. above, it shall not be a violation of this Order for Respondents to seek Covered Injunctive Relief against a Potential Licensee if the Potential Licensee (i) is not subject to the jurisdiction of the United States, or (ii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patents or (iii) has stated in writing or in sworn testimony that it will not license

the allegedly infringing FRAND Patent on terms that have been set in a Final Ruling by a Court or through Binding Arbitration.

B. If not otherwise prohibited by Paragraph III.B above, it shall not be a violation of this Order for Respondents to seek Covered Injunctive Relief against a Potential Licensee for alleged Infringement of a FRAND Patent if:

1. Seeking Covered Injunctive Relief does not violate the terms of any written agreement with the Potential Licensee; AND

2. Respondents takes the following actions before seeking Covered Injunctive Relief:

   a) At least twelve (12) months prior to pursuing Covered Injunctive Relief, Respondents delivers to the chief executive offer, general counsel or outside counsel of the Potential Licensee a copy of this Order and an irrevocable written offer to license such FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards. The offer must contain a proposed license agreement or full descriptions of all material commercial terms for the proposed license, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of such FRAND Patents. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee or to any other patents or other intellectual property;

   b) At least sixty (60) days prior to seeking Covered Injunctive Relief, Respondents makes an offer of Binding Arbitration to the Potential Licensee to determine the terms of a license Respondents, and if the offer is conditioned on Reciprocity the Potential Licensee's, patents that are Essential to the same Standard or Standards as the FRAND Patent, the offer is not accepted by the Potential Licensee within 30 days after Respondents seeks Covered Injunctive Relief, and, further, the offer is for Binding Arbitration complies with the following conditions:

      i. the offer is an irrevocable written offer to have the royalty terms, and all non-royalty terms on which Respondents and Potential Licensee could not agree upon prior to arbitration, determined through binding arbitration,

      ii. the offer is delivered to the chief executive officer, general counsel or outside counsel of the Potential Licensee,

      iii. the offer is for binding arbitration administered by the Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agreed upon,

iv. the offer states that Respondents shall submit the matter to binding arbitration not less than sixty (60) days after the Potential Licensee accepts the offer, or at any other time mutually agreed to by Respondents and Potential Licensee,

v. the offer states that if the Potential Licensee accepts the offer of binding arbitration, the number and manner of selecting the arbitrators shall be done in a manner mutually agreed to by the parties; however, if no agreement is reached within sixty (60) days after the Potential Licensee accepts the offer of binding arbitration, either party may demand that the number and manner stated in the rules of the Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third,

vi. the offer states that if the Potential Licensee accepts the offer of binding arbitration, Respondents and the Third Party shall, in good faith, attempt to mutually agree upon the language and location for the arbitration; however, if there is not agreement within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization,

vii. the offer was is not conditioned on any other terms except, at the Respondents' option, (a) Reciprocity, (b) a field of use limitation that the FRAND Patents are only licensed to the extent they are used in the manner covered by the relevant FRAND Commitments, and (c) a requirement that if the arbitrator determines there is a reasonable likelihood that the Respondents or Third Party is not financially able or willing to fulfill the financial terms to be determined through Binding Arbitration, the arbitrator shall require the relevant party to provide reasonable security, which may include an escrow of funds, to ensure such party will be able to satisfy any financial terms for the FRAND Patents that may be determined through the Binding Arbitration, and

viii. unless mutually agreed otherwise, (a) if the Binding Arbitration includes only Respondents' patents, the basis of arbitration shall be whether Respondents' proposed license agreement terms are fair and reasonable and comply with Respondents' FRAND Commitments, (b) if the binding arbitration includes patents of the Respondents and the Potential Licensee, the basis of arbitration shall be whether the terms in the license agreements offered by both Respondents and the Potential Licensee are fair, reasonable and consistent with the parties' FRAND Commitments and, where

both parties have submitted equivalent terms offered by that are fair, reasonable and consistent with the offering party's FRAND Commitments, to determine the terms to be included in the license agreement.

C. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any license agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. [F1-F2]

3. prevent or restrict Respondents from enforcing any license agreement entered into prior to the effective date of this Order; or

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for wilful infringement.

D. Notwithstanding any other provision of the Order, Respondents shall be permitted to obtain and enforce Covered Injunctive Relief against a Third Party that is seeking Covered Injunctive Relief for infringement of a device or service manufactured, marketed, imported, licensed, sold or used by Respondents ***unless*** prior to seeking the Covered Injunctive Relief, the Third Party does one of the following:

1. makes a Qualified Offer to party whose infringement from the basis for the claim of Covered Injunctive Relief ("the alleged infringer"); OR

2. obtains a obtains a Final Ruling on a Request for FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed patents are Essential.

(b)(3):6(f),(b)(4)

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an offer to license such FRAND Patents.

In making such offer, Respondents shall act in good faith and in conformity with its FRAND Commitments.

B. (b)(3):6(f),(b)(4)

C. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) agrees to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph VI.C.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 IV.C. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered

Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of such Respondents;

B. Acquisition, merger or consolidation of Respondents;

C. The dissolution of Motorola Mobility Inc., or any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

DRAFT – FOR SETTLEMENT PURPOSES ONLY

Respondents' Draft - December 11, 2012 - 6:00 pm

This is not an exhaustive set of changes and is still being reviewed, including but not limited to as to changes discussed at last night's meeting but not yet implemented.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondents), (hereinafter referred to as "Respondents") and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. Respondent Motorola Mobility LLC, 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration commenced pursuant to an acceptance of Respondent's Qualified Offer to Arbitrate and conducted in accordance with section IV of this Order.

E. "Court" means a judicial tribunal of appropriate jurisdiction in or outside the United States.

F. "Covered Injunctive Relief" means a Final Ruling of any legal or administrative tribunal, whether in or outside the United States, that does or would prevent any Third Party from manufacturing, marketing, importing, licensing, selling or using any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, or an injunction order issued by a Court.

G. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as needed or necessary), it shall refer to Patent Claims the use of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided for such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

H. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licences on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration or Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published in the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

I. "Request for FRAND Determination" means a request in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' Patents Essential to a Standard or Standards.

J. "Qualified Request for a FRAND Determination" means a Request for FRAND Determination against Respondent filed by a Potential Licensee if (i) the Potential Licensee has not, since the date this Order was issued, filed another Request for FRAND Determination against Respondent covering FRAND Patents Essential to the same Standard ("Identical Request"); or (ii) the Potential Licensee filed an Identical Request in the same judicial district (and division, if applicable) that was dismissed without prejudice within the previous sixty (60) days; or (iii) the Potential Licensee filed an Identical Request within the previous sixty (60) days that was dismissed on Respondent's motion for lack of personal jurisdiction or improper venue.

K. "FRAND Patent" means a Patent Claim to the extent such Patent Claim is subject to a FRAND Commitment. A patent claim shall be considered a FRAND Patent only with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

L. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made .

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

O. "Patent Claim" means one or more claims in issued patents or pending patent applications.

P. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

Q. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

R. A "Qualified Offer to Arbitrate" shall mean:

i. an irrevocable written offer to have the terms of a license agreement covering Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards"), and if either party seeks Reciprocity, to the Potential Licensee's FRAND Patents that are Essential to the Covered Standards ("Relevant License Agreement"), other than those terms that the Respondents and Potential Licensee agree to prior to Binding Arbitration, determined through Binding Arbitration;

ii. the offer is delivered by a Respondent to the chief executive officer, general counsel or outside counsel of the Potential Licensee, together with a proposed Relevant License Agreement;

iii. the offer is for Binding Arbitration administered by the Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agreed upon,

iv. the offer states that the Potential Licensee may submit the matter to Binding Arbitration not less than sixty (60) days after the Potential Licensee accepts the offer, or at any other time mutually agreed to by Respondents and Potential Licensee, and that if the Potential Licensee fails to do so, a Respondent may initiate arbitration at any time thereafter.

v. the offer states that if the Potential Licensee accepts the offer of Binding Arbitration, the number and manner of selecting the arbitrators shall be done in a manner mutually agreed to by the parties; however, if no agreement is reached within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner stated in the rules of the Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third,

vi. the offer states that if the Potential Licensee accepts the offer of Binding Arbitration, Respondents and the Third Party shall, in good faith, attempt to mutually agree upon the language and location for the arbitration; however, if there is not agreement within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization, and

vii. the offer was is not conditioned on any other terms except, at the Respondents' option, (a) Reciprocity, (b) a field of use limitation that the FRAND Patents are only licensed to the extent they are used in the manner covered by the relevant FRAND Commitments, or (c) a requirement that if the arbitrator determines there is a reasonable likelihood that the Respondents or Third Party is not financially able or willing to fulfill the financial terms to be determined through Binding Arbitration, the arbitrator shall require the relevant party to provide reasonable security, which may include an escrow of funds, to ensure such party will be able to satisfy any financial terms for the FRAND Patents that may be determined through the Binding Arbitration.

S. "Qualified Offers" means an offer to license complying with the requirements of Paragraph III.B.2 of this Order and a Qualified Offer to Arbitrate.

T. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard means "reciprocity" as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's patents Essential to the same Standard on terms that are fair and reasonable (**or, if the offer is for a royalty-free license, royalty free**) and otherwise consistent with each parties' FRAND Commitment. [**FURTHER CHANGED LAST NIGHT BUT WE DON'T HAVE THAT LANGUAGE, SO THIS IS OUR MOST RECENT DRAFT.**]

U. "Standard" means a standard published by a SSO, including mandatory and optional implementations provided for such standard. Standards include, but are not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector). Throughout this Order, references to patents Essential to a Standard shall include only those patents Essential to the Standard as it is practiced by the relevant implementer.

V. "SSO" means standard-setting organization, including but not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

W. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

X. "Willing Licensee" means a Potential Licensee who has made a binding, unconditional and irrevocable written commitment to pay Respondents royalties for all of the Potential Licensee's products or services implementing the Relevant Standards, as determined by the ultimate resolution of a Qualified Request for FRAND Determination, any other Court action, or any arbitration, as if any license resulting from any of these actions or arbitration was effective as of the date of the commitment, including without limitation royalties for sales on or after the date of the commitment that would have been licensed had the license agreement been effective on that date.

II.

IT IS FURTHER ORDERED THAT:

A. Respondents shall not revoke or rescind any FRAND Commitment unless (i) all Standards for which such FRAND Commitment was made have been rejected or withdrawn, (ii) Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or (iii) all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court, PROVIDED THAT nothing in this Order shall (a) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (b) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (c) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

(b)(3):6(f),(b)(4)

C. Respondents shall cease and desist from directly or indirectly making any future claims of Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

III.

IT IS FURTHER ORDERED THAT:

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee, provide the Potential Licensee with an offer to license Respondents' FRAND Patents Essential to one or more Standards. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Unless otherwise prohibited by Section IV or V of this Order, it shall not be a violation of this Order for Respondents to seek Covered Injunctive Relief against a Potential Licensee for alleged Infringement of a FRAND Patent if all of the following are true:

1. Seeking Covered Injunctive Relief does not violate the terms of any written agreement with the Potential Licensee

2. At least ninety (90) days before seeking Covered Injunctive Relief, or as agreed between Respondent and the Potential Licensee, a Respondent delivered to the chief executive officer, general counsel or outside counsel of the Potential Licensee a copy of this Order and an irrevocable written offer to license Respondents' FRAND Patents Essential to a Standard or Standards. The offer must contain a proposed license agreement or full descriptions of all

material commercial terms for the proposed license, including but not limited to royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of the licensed FRAND Patents. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee or to any other patents or other intellectual property; AND

3. At least sixty (60) days prior to seeking Covered Injunctive Relief, Respondents made a Qualified Offer to Arbitrate to the Potential Licensee, which shall be open for acceptance for at least sixty (60) days.

PROVIDED THAT, the parties may negotiate a voluntary license agreement in the manner they deem appropriate during which time they may identify potential issues of disagreement for resolution by a court or arbitrator,

PROVIDED FURTHER THAT, nothing in this section is intended to prohibit the Potential License from seeking any judicial remedies otherwise available to it at any time.

C. If Respondents seek Covered Injunctive Relief against a Potential Licensee based on the alleged Infringement of a FRAND Patent, Respondents shall provide such Potential Licensee with a Qualified Offer to Arbitrate, which shall be open for acceptance for thirty (30) days after the commencement of the request for Covered Injunctive Relief, and shall dismiss the request for Covered Injunctive Relief if the Qualified Offer to Arbitrate is accepted within that time.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, Respondents shall not obtain or enforce Covered Injunctive Relief based on the alleged infringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") by a Potential Licensee that is a party to a Binding Arbitration as defined below:

A. Unless otherwise agreed to by the Potential Licensee and a Respondent, such Binding Arbitration shall be conducted so as to form a complete license agreement, which if executed would be bind both Respondents and the Potential Licensee, covering Respondent's FRAND Patents that are essential to the Covered Standards and, if Respondent seeks Reciprocity, to the Potential Licensee's patents that are Essential to the Covered Standards (a "Relevant License Agreement").

B. Unless otherwise agreed to by the Potential Licensee and a Respondent, such Binding Arbitration shall be conducted as follows:

1. If they have not already done so, within ten (10) days of the commencement of arbitration, Respondents shall provide the Potential Licensee with a proposed Relevant License Agreement, which may differ from any prior Qualified Offer to License. This proposed Relevant License Agreement may include a grant-back license for the Potential Licensee's patents Essential to the Covered Standards.

2. Within ten (10) days of the commencement of arbitration, the Potential Licensee shall (a) designate all terms of the Relevant License Agreement that it contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms") and, for each Contested Term, propose an alternative that the Potential Licensee contends is consistent with Respondents' FRAND Commitments and the Potential Licensee's FRAND Commitments, if any, and (b) provide Respondents and file with the Qualified Arbitrators a binding, unconditional and irrevocable undertaking that it is a Willing Licensee.

3. Unless mutually agreed otherwise, the Qualified Arbitrator shall determine whether the Contested Terms are consistent with Respondents' FRAND Commitments, as well as the Potential Licensee's FRAND Commitments, if any. The resulting ruling shall include a binding Relevant License Agreement, which if executed would form a binding license agreement covering Respondent's FRAND Patents that are Essential to one or more Standards, as well as the grant-back patents, if any.

V.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents:

A. Respondents shall not obtain or enforce Covered Injunctive Relief based on the alleged infringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "the Covered Standards") by a Potential Licensee that:

1. Is a party to a Qualified Request for FRAND Determination covering the Covered Standards that has not been dismissed and was filed before, or no more than 30 days after, the filing of such request for Covered Injunctive Relief; and

2. Has provided Respondents, and concurrently with the filing of the Complaint filed with the Court hearing such Qualified Request for FRAND Determination, a binding, unconditional and irrevocable undertaking that it is a Willing Licensee.

provided, however, that nothing in this Order shall restrict any party from presenting any argument to the District Court, including without limitation that the District Court cannot or should not hear any action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or any arguments regarding validity, Essentiality, infringement or value of the patents to be licensed in the Relevant License Agreement; except that the Potential Licensee may not argue against the applicability or enforceability of the irrevocable promise in V.A.2. above.

B. Upon being served with a Qualified Request for FRAND Determination by a Potential Licensee within 30 days following the commencement of a request for Covered Injunctive Relief, Respondent shall make a Qualified Offer to Arbitrate to such Potential Licensee covering the Standards covered by such Qualified Request for FRAND Determination, which shall be open for acceptance until at least twelve (12) months following the

commencement of the Qualified Request for FRAND Determination, provided that such offer may be conditioned upon the dismissal of the Qualified Request for FRAND Determination.

VI.

IT IS FURTHER ORDERED THAT:

A. Notwithstanding any other provision of this Order, it shall not be a violation of this Order for Respondents to seek Covered Injunctive Relief against a Potential Licensee if the Potential Licensee (i) is not subject to the personal jurisdiction of the District Courts of the United States; (ii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patents; (iii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patent on terms that have been set in a Final Ruling by a Court or through Binding Arbitration; or (iv) has failed to respond in writing within thirty (30) days to a written request from Respondents that such Potential Licensee affirm its willingness to license Respondents' FRAND Patents on terms that are consistent with Respondents' FRAND Commitments.

B. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any license agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any license agreement entered into prior to the effective date of this Order;

3. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

4. require Respondents to relitigate or otherwise determine, through a Qualified Request for a FRAND Determination, Binding Arbitration, or any other mechanism, any terms or rights under licenses previously executed by any Respondent.

(b)(3):6(f),(b)(4)

D. Notwithstanding any other provision of this Order, the fact that the final terms of a determined or negotiated license agreement determined differ from the terms Respondents proposed in a prior Qualified Offer shall not constitute a violation of this Order.

VII.

IT IS FURTHER ORDERED THAT:

A. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) agrees to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph VI.C.

(b)(3):6(f),(b)(4)

VIII.

IT IS FURTHER ORDERED THAT:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 IV.C. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order,

and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

IX.

IT IS FURTHER ORDERED THAT Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of such Respondents;

B. Acquisition, merger or consolidation of Respondents;

C. Or any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

IT IS FURTHER ORDERED THAT, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondents) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration that complies with the following and follows the procedures in Paragraph IV.B.2. of the Order:

1. is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the

applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as needed or necessary), it shall refer to Patent Claims the infringement of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided in such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-

discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license which if executed would form a complete, binding, enforceable agreement between the signatories to license the intellectual property included in such agreement.

P. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or any other country world-wide.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

U. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraph IV.B. of this Order.

V. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

W. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, OR (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

X. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment, or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such

term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Y. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent use of the relevant FRAND Patents are not covered by an existing license.

Z. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

AA. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the required Qualified Offers.

C. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order, and Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief during the pendency of a Qualified Request for a FRAND Determination or after a Potential Licensee accepts Respondents Offer to Arbitrate.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation to a Respondent, as requested in a FRAND Terms Letter delivered to a Qualified Recipient within thirty (30) days of receiving the FRAND Terms Letter. PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III., or any other mutually agreed to procedure, 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtaining or enforcing Covered Injunctive Relief based on the alleged Infringement of Respondents' FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents deliver to a Qualified Representative of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards;

   c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under

the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into a License Agreement.

C. So long as the Potential Licensee files a Qualified Request for a FRAND Determination for Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after filing the Qualified Request for FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of the Potential Licensee within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim, seek or enforce a Claim for Covered Injunctive Relief during the pendency of the Qualified Request for a FRAND Determination.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until the later of (i) two (2) months after Respondents deliver an Offer to Arbitrate or (ii) a Final Ruling is obtained in any Request for a FRAND Determination that was pending as of

the date this Order was issued, covers the allegedly Infringing FRAND Patent on which the claim for Covered Injunctive Relief is based, and was filed by the Potential Licensee against whom the Covered Injunctive Relief is sought.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

4. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

5. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking Covered Injunctive Relief for Infringement of a device or service that is made, marketed, or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes a Qualified Offer to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer"); OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees; (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Google Inc. and Motorola Mobility LLC

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[Counsel representing Potential Licensee in Qualified Request for a FRAND Determination]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Google Inc. and Motorola Mobility LLC,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action (Action) is a Qualified Request for FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS]. [If Google is seeking reciprocity add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty [60] days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECIEPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSISTUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Google Inc. and Motorola Mobility LLC

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[Qualified Recipient of Potential Licensee]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Google Inc. and Motorola Mobility LLC,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using patents for which Google has made a FRAND Commitment to comply with a Standard published by a standard-setting organization such a ETSI, IEEE or ITU if you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [Potential Licensee] agree to license each other's patents that are Essential to complying with a Standard or Standards that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECIEPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSISTUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA."Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world."Affiliate" means any entity that is directly or indirectly controlled by, under common control with, or that controls the subject entity. [NB: funky numbering – no time to fix]

C. "Binding Arbitration" means arbitration that complies with the following and follows the procedures in Paragraph IV.B.2. of the Order:

1. is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee.

D. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

E. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

F. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

G. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as "needed" or "necessary"), it shall refer to Patent Claims the infringement of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided in such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

H. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

I. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

J. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

K. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

L. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

M. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

N. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

O. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

P. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

Q. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or any other country world-wide.

R. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

S. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

T. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraph IV.B. of this Order.

U. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

V. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee or an Affiliate thereof against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, OR (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

W. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment, or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a

cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

X. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent use of the relevant FRAND Patents are not covered by an existing license.

Y. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE,, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, EV-DO (published by ITU Telecommunications Standardization Sector).

Z. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU"), IETF, the Open Networking Foundation and Schema.org

AA. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify

a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the required Qualified Offers.

C. Respondents shall cease and desist from making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order, and Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief during the pendency of a Qualified Request for a FRAND Determination or after a Potential Licensee accepts Respondents Offer to Arbitrate.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States District Courts only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation to a Respondent, as requested in a FRAND Terms Letter delivered to a Qualified Recipient within thirty (30) days of receiving the FRAND Terms Letter. PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III., or any other mutually agreed to procedure, as the exclusive means for determining the terms of a License Agreement covering Respondents' patents that are Essential to the Covered Standards, and if Respondents seeks Reciprocity, the Potential Licensee's patents that are Essential to the Covered Standards to the extent not already licensed (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtaining or enforcing Covered Injunctive Relief based on the alleged Infringement of Respondents' FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards, to the extent not already licensed. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if Respondent is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, to the extent not already licensed;

   b) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under

the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

c) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

a) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

b) The arbitrator shall set the terms of the final License Agreement; and

c) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim, seek or enforce a Claim for Covered Injunctive Relief during the pendency of the Qualified Request for a FRAND Determination.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until the later of (i) two (2) months after Respondents deliver an Offer to Arbitrate or (ii) a Final Ruling is obtained in any Request for a FRAND Determination that was pending as of

the date this Order was issued, covers the allegedly Infringing FRAND Patent on which the claim for Covered Injunctive Relief is based, and was filed by the Potential Licensee against whom the Covered Injunctive Relief is sought.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to the Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee (or an Affiliate) is seeking or has sought on or after the date of this Order, Covered Injunctive Relief for Infringement of a product (including software), device or service that is made, marketed, distributed or sold by Respondents alleging Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential and the alleged infringer refused to pay the rate determined by the Final Ruling.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees; (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or

assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark

Secretary

SEAL

ISSUED:

In re Google Inc. and Motorola Mobility LLC

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[Counsel representing Potential Licensee in Qualified Request for a FRAND Determination]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Google Inc. and Motorola Mobility LLC,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action (Action) is a Qualified Request for FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty [60] days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Google Inc. and Motorola Mobility LLC

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[Qualified Recipient of Potential Licensee]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Google Inc. and Motorola Mobility LLC,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using patents for which Google has made a FRAND Commitment to comply with a Standard published by a standard-setting organization such a ETSI, IEEE or ITU if you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [Potential Licensee] agree to license each other's patents that are Essential to complying with a Standard or Standards that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECIEPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSISTUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA."Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

C. "Binding Arbitration" means arbitration that complies with the following and follows the procedures in Paragraph IV.B.2. of the Order:

1. is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee.

D. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

E. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

F. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

G. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard, (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rule of Procedure, 30 November 2011 (attached as Exhibit C).

H. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

I. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

J. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

K. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

L. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

M. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

N. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

O. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

P. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

Q. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world..

R. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

S. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

T. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraph IV.B. of this Order.

U. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

V. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, OR (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

W. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment, or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a

cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

X. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent use of the relevant FRAND Patents are not covered by an existing license.

Y. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE,, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, EV-DO (published by ITU Telecommunications Standardization Sector).

Z. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

AA. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify

a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the required Qualified Offers.

C. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order, and Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief during the pendency of a Qualified Request for a FRAND Determination or after a Potential Licensee accepts Respondents Offer to Arbitrate.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States District Courts only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation to a Respondent, as requested in a FRAND Terms Letter delivered to a Qualified Recipient within thirty (30) days of receiving the FRAND Terms Letter. PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III., or any other mutually agreed to procedure, 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtaining or enforcing Covered Injunctive Relief based on the alleged Infringement of Respondents' FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards, to the extent not already licensed. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, to the extent not already licensed;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim, seek or enforce a Claim for Covered Injunctive Relief during the pendency of the Qualified Request for a FRAND Determination.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect

to Actions containing requests for Covered Injunctive Relief that are pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until the later of (i) two (2) months after Respondents deliver an Offer to Arbitrate or (ii) a Final Ruling is obtained in any Request for a FRAND Determination that was pending as of the date this Order was issued, covers the allegedly Infringing FRAND Patent on which the claim for Covered Injunctive Relief is based, and was filed by the Potential Licensee against whom the Covered Injunctive Relief is sought.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to the Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief for Infringement of a product (including software), device or service that is made, marketed, distributed or sold by Respondents alleging Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees; (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[Counsel representing Potential Licensee in Qualified Request for a FRAND Determination]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action (Action) is a Qualified Request for FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty [60] days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[Qualified Recipient of Potential Licensee]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using patents for which Google has made a FRAND Commitment to comply with a Standard published by a standard-setting organization such a ETSI, IEEE or ITU if you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [Potential Licensee] agree to license each other's patents that are Essential to complying with a Standard or Standards that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECIEPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSISTUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of	)	
	)	
GOOGLE INC.,	)	**Docket No. C-**
a corporation.	)	
	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. through its wholly owned subsidiary Motorola Mobility LLC, (hereinafter referred to as "Respondent"), and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the

receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Motorola Mobility LLC, a limited liability company with its principal place of business at 600 North U.S. Highway 45, Libertyville, IL 60048, is a wholly-owned subsidiary of Respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means Google Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc., including but not limited to, Motorola Mobility LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Court" means a judicial tribunal of appropriate jurisdiction in or outside the United States.

E. "Covered Injunctive Relief" means a Final Ruling of any legal or administrative tribunal, whether in or outside the United States, that does or would prevent any Third Party from manufacturing, marketing, importing, licensing, selling or using any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, or an injunction order issued by a Court.

F. "Essential" as to a patent claim or when referring to a particular patent claim or patented technology means "essential" as defined by the rules or policies of the SSO to which a FRAND Commitment covering the claim, patent or patented technology has been made; or if Essential is not defined by the SSO, it shall mean that infringement of the claim, patent or technology cannot be avoided in remaining compliant with the Standard for

which the FRAND Commitment was made, including optional implementations provided for such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

G. "FRAND Commitment" means a commitment to an SSO to license one or more patents on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO where the commitment is made because technology covered by the relevant patent is Essential to a Standard published by the SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration or Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published in the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

H. "Request for FRAND Determination" means a request in any United States federal court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondent's Patents Essential to a Standard or Standards.

I. "FRAND Patent" means a patent solely to the extent the patent is subject to a FRAND Commitment, provided, however, that a patent claim shall be considered a FRAND Patent with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

J. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

K. "Infringement of (or Infringing) a FRAND Patent" means a claim of infringement that is based on the alleged infringer using technology reading on the FRAND Patent to comply

with the same Standard for which a FRAND Commitment has been made that covers that technology.

L. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

M. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

N. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA in accordance with its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, (iii) the AAA's ICDR in accordance with its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

O. "Qualified Offers" means an offer to license and an offer of binding arbitration, both of which comply with the requirements of Paragraph III.C.2 of this Order.

P. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard means "reciprocity" as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's patents Essential to the same Standard on terms that are fair and reasonable and otherwise consistent with each parties' FRAND Commitment.

Q. "Standard" means a standard published by a SSO, including, but not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

R. "SSO" means standard-setting organization, including but not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

S. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondent.

II.

IT IS FURTHER ORDERED that:

A. Respondent shall not revoke or rescind any FRAND Commitment unless (i) all Standards for which such FRAND Commitment was made have been rejected or withdrawn, (ii) Respondent no longer has any interest in FRAND Patents covered by such FRAND Commitment; or (iii) all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (a) restrict Respondent's exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (b) require Respondent to give a FRAND Commitment with respect to any Standard or proposed Standard; or (c) restrict Respondent's right to withdraw or modify a FRAND Commitment in response to a change in policy by the SSO to which the FRAND Commitment was given if such withdrawal or modification is expressly permitted by the SSO.

B. (b)(3):6(f),(b)(4)

C. Respondent shall cease and desist from directly or indirectly making any future claims of Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

III.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents:

A. Respondent shall not obtain or enforce Covered Injunctive Relief against a Potential Licensee during the pendency of a Request for FRAND Determination to which Respondent and the Potential Licensee are Parties, so long as (i) the trial court has not dismissed the Request for FRAND Determination; (ii) the Potential Licensee agrees in writing that it will enter a license to the relevant Standard or Standards that includes the terms determined through a Final Ruling on the Request for FRAND Determination; (iii) the Potential Licensee agrees in writing to negotiate all terms of a license to the relevant Standard or Standards (other than those determined through a ruling on the Request for FRAND Determination), and if a mutually agreeable license is not entered into within sixty (60) days of the Final Ruling on the Request for FRAND Determination, to enter binding arbitration pursuant to the terms of Paragraph III.C.2(b) of this Order, and (iv) the Potential Licensee has not previously filed a Request for FRAND Determination that was dismissed after the close of fact discovery,

PROVIDED THAT if a Request for FRAND Determination is dismissed after the close of fact discovery on all claims including such Request, Respondent must, after an order dismissing the Request is entered, make Qualified Offers to the Potential Licensee before seeking Covered Injunctive Relief;

PROVIDED, FURTHER that if a claim containing a Request for FRAND Determination is dismissed before the close of fact discovery and the Potential Licensee has not re-filed

a claim containing a Request for FRAND Determination within 60 days of dismissal, Respondent shall no longer be subject to Paragraph II.A of this Order.

For the avoidance of doubt, the provisions of Paragraph III.A. of this Order are not intended to depend upon which party, Respondent or the Potential Licensee, files an Action first.

B. If not otherwise prohibited by Paragraph III.A. above, it shall not be a violation of this Order for Respondent to seek Covered Injunctive Relief against a Potential Licensee if the Potential Licensee (i) is not subject to the jurisdiction of the United States, or (ii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patents or (iii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patent on terms that have been set in a Final Ruling by a Court or through binding arbitration.

C. If not otherwise prohibited by Paragraph III.A above, it shall not be a violation of this Order for Respondent to seek Covered Injunctive Relief against a Potential Licensee for alleged Infringement of a FRAND Patent if:

1. Seeking Covered Injunctive Relief does not violate the terms of any written agreement with the Potential Licensee; AND

2. Respondent takes the following actions before seeking Covered Injunctive Relief:

   a) At least twelve (12) months prior to pursuing Covered Injunctive Relief, Respondent delivers to the chief executive offer, general counsel or outside counsel of the Potential Licensee a copy of this Order and an irrevocable written offer to license such FRAND Patent and Respondent's other FRAND Patents Essential to the same Standard or Standards. The offer must contain all material commercial terms for the proposed license, including but not limited to, royalties, other financial terms, and any limitations on the scope or field of use of such FRAND Patents. The offer may be conditioned on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee or to any other patents or other intellectual property.

   b) At least sixty (60) days prior to seeking Covered Injunctive Relief, Respondent makes a reasonable offer of binding arbitration to the Potential Licensee to determine the terms of a license Respondent's, and if the offer is conditioned on Reciprocity the Potential Licensee's, patents that are Essential to the same Standard or Standards as the FRAND Patent, the offer is not accepted by the Potential Licensee within 30 days after Respondent seeks Covered Injunctive Relief, and, further, the offer complies with the following conditions:

      i. the offer is an irrevocable written offer to have the royalty terms, and all non-royalty terms on which Respondent and Potential

Licensee could not agree upon prior to arbitration, determined through binding arbitration,

ii. the offer is delivered to the chief executive officer, general counsel or outside counsel of the Potential Licensee,

iii. the offer is for binding arbitration administered by the Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondent and the Potential Licensee mutually agreed upon;

iv. the offer states that Respondent shall submit the matter to binding arbitration not less than [xx] days after the Potential Licensee accepts the offer, or at any other time mutually agreed to by Respondent and Potential Licensee;

v. the offer states that if the Potential Licensee accepts the offer of binding arbitration, the number and manner of selecting the arbitrators shall be done in a manner mutually agreed to by the parties; however, if no agreement is reached within sixty (60) days after the Potential Licensee accepts the offer of binding arbitration, either party may demand that the number and manner stated in the rules of the Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

vi. the offer states that if the Potential Licensee accepts the offer of binding arbitration, Respondent and the Third Party shall, in good faith, attempt to mutually agree upon the language and location for the arbitration; however, if there is not agreement within sixty (60) days after the Potential Licensee accepts the offer of binding arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization ; and

vii. the offer was is not conditioned on any other terms except, at the Respondent's option, (i) Reciprocity, (ii) a field of use limitation that the FRAND Patents are only licensed to the extent they are used in the manner covered by the relevant FRAND Commitments, and (iii) a requirement that if the arbitrator determines there is a reasonable likelihood that the Respondent or Third Party is not financially able or willing to fulfill the financial terms to be determined through binding arbitration, the arbitrator shall require the relevant party to provide reasonable security, which may include an escrow of funds, to ensure such party will be able to

satisfy any financial terms for the FRAND Patents that may be determined through the binding arbitration,

viii. unless mutually agreed otherwise, (i) if the arbitration includes only Respondent's patents, the basis of arbitration shall be whether Respondent's proposed license agreement terms are fair and reasonable and comply with Respondent's FRAND Commitments, (ii) if the arbitration includes patents of the Respondent and the Potential Licensee (we don't want to force this), the basis of arbitration shall be whether the terms in the license agreements offered by both Respondent and the Potential Licensee are fair, reasonable and consistent with the parties' FRAND Commitments and, where both parties have submitted equivalent terms offered by that are fair, reasonable and consistent with the offering party's FRAND Commitments, to determine the terms to be included in the license agreement.

D. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondent from negotiating, arbitrating or entering into any license agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondent;

2. prevent or restrict Respondent from enforcing any license agreement entered into prior to the effective date of this Order; or

3. prevent or restrict Respondent from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement.

E. Notwithstanding any other provision of the Order, Respondent shall be permitted to obtain and enforce Covered Injunctive Relief against a Third Party that is seeking Covered Injunctive Relief for infringement of a device or service manufactured, marketed, imported, licensed, sold or used by Respondent ***unless*** prior to seeking the Covered Injunctive Relief, the Third Party does one of the following:

1. makes a Qualified Offer to party whose infringement from the basis for the claim of Covered Injunctive Relief ("the alleged infringer"); OR

2. obtains a obtains a Final Ruling on a Request for FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed patents are Essential.

PROVIDED THAT, [Respondent's good faith participation in the binding arbitration and willingness to license FRAND Patents on terms determined through the binding arbitration shall constitute compliance with the this Order-*too broad*]. The fact that the final terms determined through binding arbitration may differ from the terms Respondent proposed in

such proceeding or in an Offer to License shall not, by itself, constitute a violation of this Order.

IV.

A. Respondent shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondent's FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an offer to license such FRAND Patents. In making such offer, Respondent shall act in good faith and in conformity with its FRAND Commitments.

B. (b)(3):6(f),(b)(4)

C. Respondent shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees (i) to become a successor to Respondent's FRAND Commitments to the extent the FRAND Patent is subject to such Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondent would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) agrees to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph VI.C.

V.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including the status of each Action that contained a request for Covered Injunctive Relief as of the date Respondent 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 IV.C. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of such Respondent;

B. Acquisition, merger or consolidation of Respondent;

C. The dissolution of Motorola Mobility Inc., or any other change in the Respondent including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and

B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA."Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

C. "Binding Arbitration" means arbitration that complies with the following and follows the procedures in Paragraph IV.B.2. of the Order:

1. is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee.

D. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

E. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

F. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

G. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard, (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rule of Procedure, 30 November 2011 (attached as Exhibit C).

H. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

I. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

J. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

K. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

L. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

M. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

N. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

O. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

P. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

Q. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world..

R. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

S. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

T. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraph IV.B. of this Order.

U. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

V. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, OR (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

W. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment, or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a

cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

X. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent use of the relevant FRAND Patents are not covered by an existing license.

Y. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE,, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, EV-DO (published by ITU Telecommunications Standardization Sector).

Z. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

AA. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify

a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the required Qualified Offers.

C. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order, and Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief during the pendency of a Qualified Request for a FRAND Determination or after a Potential Licensee accepts Respondents Offer to Arbitrate.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States District Courts only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation to a Respondent, as requested in a FRAND Terms Letter delivered to a Qualified Recipient within thirty (30) days of receiving the FRAND Terms Letter. PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III., or any other mutually agreed to procedure, 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

   1. execute the Relevant License Agreement, or

   2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtaining or enforcing Covered Injunctive Relief based on the alleged Infringement of Respondents' FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards, to the extent not already licensed. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, to the extent not already licensed;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim, seek or enforce a Claim for Covered Injunctive Relief during the pendency of the Qualified Request for a FRAND Determination.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect

to Actions containing requests for Covered Injunctive Relief that are pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until the later of (i) two (2) months after Respondents deliver an Offer to Arbitrate or (ii) a Final Ruling is obtained in any Request for a FRAND Determination that was pending as of the date this Order was issued, covers the allegedly Infringing FRAND Patent on which the claim for Covered Injunctive Relief is based, and was filed by the Potential Licensee against whom the Covered Injunctive Relief is sought.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to the Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief for Infringement of a product (including software), device or service that is made, marketed, distributed or sold by Respondents alleging Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees; (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[Counsel representing Potential Licensee in Qualified Request for a FRAND Determination]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action (Action) is a Qualified Request for FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty [60] days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[Qualified Recipient of Potential Licensee]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using patents for which Google has made a FRAND Commitment to comply with a Standard published by a standard-setting organization such a ETSI, IEEE or ITU if you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [Potential Licensee] agree to license each other's patents that are Essential to complying with a Standard or Standards that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, Infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECIEPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSE]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE[THIS LETTER SHALL CONSISTUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Jon Leibowitz, Chairman** **J. Thomas Rosch** **Edith Ramirez** **Julie Brill** **Maureen K. Ohlhausen**

In the Matter of	)	
MOTOROLA MOBILITY LLC, **a limited liability company,**	)	
and GOOGLE INC, **a corporation,**	)	**DOCKET NO.**

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 and unfair acts or practices 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 that were reasonably available prior to the adoption of a Relevant Technology Standard.

21. The inclusion of MMI's technology and the subsequent adoption of the Relevant Technology Standard by the industry eliminated viable technology alternatives from the marketplace, 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.

Violations 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.

32. Google's conduct is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or competition, and constitutes unfair acts or practices in violation of Section 5 of the FTC Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of December 2012, issues its Complaint against Respondent Motorola Mobility LLC and Respondent Google Inc.

By the Commission,

SEAL

Donald S. Clark

Secretary

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United

States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license

Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

U. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

V. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

W. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper

venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

X. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Y. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

Z. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

AA. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. The foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation as requested in a FRAND Terms Letter delivered to a Qualified Recipient of the Potential Licensee within thirty (30) days of receiving the FRAND Terms Letter; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more

appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the

following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to

the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or

service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Jon Leibowitz, Chairman** **J. Thomas Rosch** **Edith Ramirez** **Julie Brill** **Maureen K. Ohlhausen**

In the Matter of	)	
MOTOROLA MOBILITY LLC, **a limited liability company,**	)	
and GOOGLE INC., **a corporation.**	)	**DOCKET NO.**

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 and unfair acts or practices 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.

Violations 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.

32. Google's conduct is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or competition, and constitutes unfair acts or practices in violation of Section 5 of the FTC Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of December 2012, issues its Complaint against Respondent Motorola Mobility LLC and Respondent Google Inc.

By the Commission,

SEAL

Donald S. Clark

Secretary

Kelly, Andrea

From: Huber, Susan
Sent: Tuesday, July 09, 2013 9:09 AM
To: 'Harkrider, John D.'
Subject: RE: Google
Attachments: 2013.07.09.Google.Revised.Order.docx

A new version with your corrections. I will update you on where things are as I get word.

Susan

Susan Huber
Federal Trade Commission
202.326.3331

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, July 08, 2013 8:00 PM
To: Huber, Susan
Subject: Re: Google

No problem.

We have client sign off.

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Thanks for the careful read. Susan

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, July 08, 2013 05:18 PM
To: Huber, Susan; Steinthal, Russell M. <RMS@avhlaw.com>
Cc: Bayer Femenella, Peggy; Ducore, Daniel P.; Widnell, Nicholas
Subject: RE: Google

Hi Susan –

Haven't heard back from client (and will let you know when I do) but some nits….

1. In paragraph I.D.2 (p.3), add "(30)" after "thirty" for consistency with the parallel paragraphs.
2. In paragraph IV.B.2 (p. 10), remove the extraneous apostrophe after "Respondents'".
3. In paragraph IV.B.2(c), the cross-reference should read "Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B.2**(b)**" (not (c)).
4. In the final sentence of paragraph V.A, the text should probably read "their FRAND Commitments," rather than "its FRAND Commitments," since the antecedent is the plural Respondents.
5. In Exhibit D, paragraph 2 needs to be conformed to the new timing language in the Order. It should read "Within thirty (30) days of the **selection of a QAO**, Google and the Company would mutually agree…"

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036

(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Monday, July 08, 2013 2:37 PM
To: Harkrider, John D.; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy; Ducore, Daniel P.; Widnell, Nicholas
Subject: Google

John,

I think we are on the home stretch! The SSO language change is acceptable to us (at staff level). Attached is a redline comparing the Order as accepted for comment with the revised Order that has been agreed to by Google and Commission staff. The only change from the last version that you were sent is the wording of the SSO arbitration proviso at the end of Paragraph IV.B.

Please let me know if you see anything amiss.

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331

****

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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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration

Organization within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only

with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute

of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND

Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent

against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) Respondents shall file for arbitration and deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(b), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the

FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

e) The arbitrator shall set the terms of the final License Agreement; and

f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory arbitration rules of an SSO to which both Respondent and a Potential Licensee are subject, then either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to the mandatory arbitration rules of such SSO.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with their FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B..

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the selection of the QAO, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends

are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the

Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, December 26, 2012 2:35 PM
To: Huber, Susan; Ducore, Daniel P.
Cc: Steinthal, Russell M.
Subject: Authority for Don Harrison and Dennis Woodside
Attachments: 2012 04 11 Extract from Minutes of a Regular Meeting of the Board of Directors EXECUTED_Redacted.pdf

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Hi guys:

Hope everybody had at least a day off yesterday.

I am attaching Minutes ratifying and approving the appointment of Donald Harrison as Assistant Secretary, with specific authority to execute agreements on behalf of Google. His full title is Donald Harrison, Vice President, Deputy General Counsel & Assistant Secretary

I am also confirming that Dennis Woodside will be the MMI signatory. His title is Chief Executive Officer, President & Secretary of MMI, and under applicable Delaware law, he has the authority to bind Motorola Mobility LLC.

Let me know if this is satisfactory for your purposes.

John

****

Notice: The information contained in this electronic mail and any attached documents from Axinn, Veltrop & Harkrider LLP is confidential. This email may be an attorney-client communication, and as such is privileged and confidential. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this electronic mail in error, please notify us immediately by telephone (212) 728-2200/(860) 275-8100 or by reply electronic mail to the sender.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

****

Kelly, Andrea

From: Bayer Femenella, Peggy
Sent: Friday, November 30, 2012 8:00 PM
To: John D. Harkrider (JDH@avhlaw.com)
Cc: Huber, Susan; Widnell, Nicholas; Carlson, Julie A.; Ducore, Daniel P.; Dafny, Leemore; Accornero, Matthew; Gorman, Frank; Munck, Suzanne
Subject: Draft Order for Discussion Purposes Only
Attachments: 2012 11 30 FTC DRAFT Order Sent to Google.pdf

Good Evening John, attached please find a draft order from Staff for discussion purposes only. This draft has not been approved by Bureau Management or the Commission and is only to aid our discussions on Monday. As you will see there are one or two place holders. We are happy to discuss those with you over the weekend or on Monday if you have questions about them or if you have any additional questions.

Have a nice weekend.

Sincerely,
Peggy

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of	)	
	)	
GOOGLE INC.,	)	**Docket No. C-**
a corporation.	)	
	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and its wholly owned subsidiary Motorola Mobility Inc., (hereinafter referred to collectively as "Respondent" or "Respondent Google") and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the

receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043. Motorola Mobility, Inc. is a wholly-owned subsidiary of Respondent Google.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" means Google Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc., including but not limited to, Motorola Mobility Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

B. "AAA" is the American Arbitration Association, a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative in the United States or anywhere else in the world.

D. "Court" means a judicial tribunal in or outside the United States of appropriate jurisdiction.

E. "FRAND Commitment" means any commitment to a Standard-Setting Organization to license identified intellectual property essential to implementing a Standard published by such Standard-Setting Organization on royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such Standard-Setting Organization. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE"); and

3. A General Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union.

F. "FRAND Determination Action" means an Action filed in any Court seeking determination of a licensing rate for the FRAND-encumbered SEPs owned by one or both parties to such Action that are essential to comply with one or more identified Standards.

G. "FRAND-encumbered SEPs" means any patent that includes a patent claim that is subject to a FRAND Commitment, provided that FRAND-encumbered SEP shall not refer to use of the technology reading on such patent other its use to complying with the Standard for which the relevant FRAND Commitment was made.

H. "Injunctive Relief" means any claim or request before any legal or administrative tribunal, whether in or outside the United States, to prevent any Third-Party from manufacturing, marketing, importing or selling any item based on an alleged infringement of FRAND-encumbered SEP. Injunctive Relief includes, but is not limited to, a request that the United States International Trade Commission commence an investigation and issue an exclusion order under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, based on alleged infringement of FRAND-encumbered SEP; and a request for injunctive relief for infringement of a FRAND-encumbered SEP included in a Complaint filed in a United States District Court.

I. "JAMS" is a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

J. "Offer to License" means a written offer or counter-offer that is binding on the party making the offer and is an offer to license all FRAND-encumbered SEPs essential for compliance with a Standard on terms that comply with the FRAND Commitment(s) covering such SEPs. An Offer to License must contain all material commercial terms for the offered license, including but not limited to, royalties, other financial terms, and limitations on the scope or field of use of such SEPs. An Offer to License may include a requirement of Reciprocity, but if such requirement is included, the Offer to License shall contain the material commercial terms offered for licensing the offeree's FRAND-encumbered SEPs. An Offer to License may also contain additional terms or offers unrelated to the FRAND-encumbered SEPs so long as the offer contains separate financial terms for such terms or offers (which terms may also include the FRAND-encumbered SEPs).

K. "Qualified Arbitrators" means the following organizations and rules: i) the AAA in accordance with its Commercial Arbitration Rules, or ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, iii) the AAA's ICDR in accordance with its

International Arbitration Rules; or iv) JAMS pursuant to its International Arbitration Rules.

L. "Reciprocity" means conditioning an Offer to License the offeror's FRAND-encumbered SEPs essential to particular Standard on the condition that the offeree agree to license its FRAND-encumbered SEPs for the same Standard on terms that comply with the offeree's FRAND Commitment(s) covering such SEPs.

M. "Standard" means a standard published by a standard setting organization, including, but not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

N. "SEP Infringement Action" means an Action for alleged infringement of a FRAND-encumbered SEP" where the claim for infringement is based on use of the SEP to comply with a Standard for which a FRAND Commitment has been made.

O. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than the Respondent.

II.

IT IS FURTHER ORDERED that:

A. Respondent shall not revoke or renege on any FRAND Commitment unless i) the Standard for which such Commitment was made has been rejected or withdrawn, or ii) Respondent does not own any FRAND-encumbered SEPs covered by such FRAND Commitment; iii) all FRAND-encumbered SEPs covered by such FRAND Commitment have expired or been determined to be unenforceable by a Court.

B. (b)(3):6(f),(b)(4)

III.

IT IS FURTHER ORDERED that Respondent's activities are in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND-encumbered SEPs:

A. Respondent shall not seek Injunctive Relief against a Third Party in an SEP Infringement Action if Respondent and the Third Party are parties to a FRAND Determination Action that would establish the licensing terms for the FRAND-encumbered SEPs included in the SEP Infringement Action.

B. Unless prohibited by Paragraph III.A. above, it shall not be a violation of this Order for Respondent to seek Injunctive Relief against a Third Party in an SEP Infringement Action if:

1. the Third Party has stated in writing it will not license the FRAND-encumbered SEPs included in the SEP Infringement Action; OR

2. Google has taken the following actions before seeking Injunctive Relief:

   a) provided the Third Party with an Offer to License the FRAND-encumbered SEPs included in the SEP Infringement Action ("relevant SEPs"), along with a copy of this Order, and the Third Party has not, within [xx] days of receiving the Offer to License, agreed to license the relevant SEPs on terms contained in such Offer; and,

   b) At least [xx+] days prior to seeking Injunctive Relief, Google has provided a written irrevocable offer to such Third Party to have the licensing terms for the relevant SEPs determined through binding arbitration administered by the Third Party's choice of Qualified Arbitrator, and the Third Party has not accepted such offer. If Third Party accepts the offer of binding arbitration and Respondent and the Third Party cannot mutually agree on the language and location for such arbitration, the selected Qualified Arbitrator shall determine the language and location for the arbitration

      PROVIDED THAT the Respondent or the Third Party may condition such binding arbitration on a requirement that if the Qualified Arbitrator determines there is a reasonable likelihood that the Respondent or Third Party is not financially able or willing to fulfill the payment terms to be determined through Binding Arbitration, the Qualified Arbitrator shall require the relevant party to provide reasonable security (which may include an escrow of funds) to ensure such party will be able to satisfy any payment terms determined through Binding Arbitration; OR

3. [Placeholder re no relevant agreement between the parties]

C. Respondent shall, within [xx] days of receiving a written request by any Third Party for a license to Respondent's FRAND-encumbered SEPs essential to a particular Standard(s), provide such Third Party with an Offer to License Respondent's FRAND-encumbered SEPs essential to the requested Standard(s). Such Offer to License shall comply with Respondent's FRAND Commitment(s).

D. (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4)

E. Respondent shall not sell or assign any FRAND-encumbered SEP to any Third Party unless such Third Party agrees to become a successor to Respondent's FRAND Commitment and all licensing terms established through Binding Arbitration or a FRAND Determination Action with respect to such SEP.

IV.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondent Google shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Google shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of the status of each of SEP Infringement Action that contained a request for Injunctive Relief as of the date Respondent signed the Agreement Containing Consent Order, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order. [may include additional interim reports]

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Google shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Google shall include in its report, among other things that are required from time to time, a description of all pending requests for Injunctive Relief contained in any SEP Infringement Action and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND-encumbered SEPs and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

V.

IT IS FURTHER ORDERED that Respondent Google shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of such Respondent;

B. Acquisition, merger or consolidation of Respondent;

C. Sale or assignment of any FRAND-encumbered SEP; or

D. The dissolution of Motorola Mobility Inc., or any other change in the Respondent including, but not limited to the assignment and the creation or dissolution or other subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Google, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondent Google and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and

B. To interview officers, directors, or employees of Respondent Google, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

Kelly, Andrea

From: Widnell, Nicholas
Sent: Monday, December 10, 2012 7:16 PM
To: 'JDH@avhlaw.com'; Huber, Susan; Bayer Femenella, Peggy; 'RMS@avhlaw.com'; Accornero, Matthew
Subject: Fw: 2012.12.10.FTC.Draft.Order.docx
Attachments: 2012.12.10.FTC.Draft.Order.docx

John,

This is the draft order that incorporates some of your earlier language and the new B you just sent (none of which we necessarily agree with). Could you print out copies for us? We have not looked at any of it yet. If you made changes to what we sent you -- your A, we can incorporate them once we get to your office.

Nick

From: Huber, Susan
Sent: Monday, December 10, 2012 07:10 PM
To: Widnell, Nicholas
Subject: 2012.12.10.FTC.Draft.Order.docx

FTC DRAFT Monday, December 10, 2012

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondents), (hereinafter referred to as "Respondents") and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. Respondent Motorola Mobility LLC, 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration that complies with the provision of Paragraph III.D.2 of this Order.

E. "Court" means a judicial tribunal of appropriate jurisdiction in or outside the United States.

F. "Covered Injunctive Relief" means a Final Ruling of any legal or administrative tribunal, whether in or outside the United States, that does or would prevent any Third Party from manufacturing, marketing, importing, licensing, selling or using any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade

Comment [A1]: If a OS is found to infringe an SEP, could the patent holder seek an injunction barring the licensing of OS?

Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, or an injunction order issued by a Court.

G. "Essential" as to an particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as needed or necessary), it shall refer to Patent Claims the use of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided for such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

H. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration or Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published in the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

I. "Request for FRAND Determination" means a request in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' Patents Essential to a Standard or Standards.

J. "Qualified Request for a FRAND Determination" means a Request for FRAND Determination against Respondent filed by a Potential Licensee if (i) the Potential Licensee has not, since the date this Order was issued, filed another Request for FRAND Determination against Respondent covering FRAND Patents Essential to the same Standard ("Identical Request"); or (ii) the Potential Licensee filed an Identical Request in the same judicial district (and division, if applicable) that was dismissed without

prejudice within the previous sixty (60) days; or (iii) the Potential Licensee filed an Identical Request within the previous sixty (60) days that was dismissed on Respondent's motion for lack of personal jurisdiction or improper venue.

K. "FRAND Patent" means a Patent Claim to the extent such Patent Claim is subject to a FRAND Commitment. A patent claim shall be considered a FRAND Patent only with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

L. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made .

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

O. "Patent Claim" means one or more claims in issued patents or pending patent applications.

P. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

Q. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

R. "Qualified Offers" means an offer to license and an offer of Binding Arbitration, both of which comply with the requirements of Paragraph III.C.2 of this Order.

S. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard means "reciprocity" as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents or, to the extent such patents are not covered by a relevant FRAND Commitment, on terms that are fair and reasonable.

T. "Standard" means a standard published by a SSO, including mandatory and optional implementations provided for such standard. Standards include, but are not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector). Throughout this Order, references to patents Essential to a Standard shall include only those patents Essential to the Standard as it is practiced by the relevant implementer.

U. "SSO" means standard-setting organization, including but not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

V. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless (i) all Standards for which such FRAND Commitment was made have been rejected or withdrawn, (ii) Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or (iii) all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court, PROVIDED THAT nothing in this Order shall (a) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (b) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (c) restrict Respondents' right to withdraw or modify a FRAND Commitment in response to a change in policy by the SSO to which the FRAND Commitment was given if such withdrawal or modification is expressly permitted by the SSO.

B. (b)(3):6(f),(b)(4)

C. Respondents shall cease and desist from directly or indirectly making any future claims of Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

III.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents, Respondent shall not obtain or enforce Covered Injunctive Relief based on the alleged infringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") during the pendency of a Qualified Request for a FRAND Determination so long as **EITHER**:

A. The Respondent and the Potential Licensee agree and comply with the procedure outlined in this Paragraph III.A as the exclusive means for determining the terms of a license agreement covering Respondent's FRAND Patents that are Essential to the Covered Standards, and if either party seeks Reciprocity, to the Potential Licensee's FRAND Patents that are Essential to the Covered Standards ("Relevant License Agreement"):

1. Respondent and Potential Licensee agree to negotiate, for a period of at least six months, to determine the terms of a Relevant License Agreement.

2. At any time after six months, at the option of Respondent or within sixty (60) days of the request of Potential Licensee, Respondent shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement.

3. Within sixty (60) days after Respondent delivers the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

   a) execute the Relevant License; or

   b) designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondent's FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), and for each Contested Term, propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondent and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"); and

   c) elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments.

4. It is intended that the Request for FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if

executed will form a binding license agreement. [Except for the foregoing,?] nothing in this paragraph shall restrict the ability of either party to present evidence or make arguments in Binding Arbitration or in the Request for FRAND Determination, including without limitation, arguments by Respondent that the District Court hearing the Request for FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments by either party as to the validity, Essentiality, infringement or value of the other parties' FRAND Patents.

5. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondent's motion that it cannot issue a ruling on the Contested Terms, then the Respondent and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed either Respondent or Potential Licensee at any time after the dismissal of the Qualified Request for FRAND Determination.

B. The Potential License has not proceeded under subsection (A), and is party to a Qualified Request for FRAND Determination covering the Covered Standards that has not been dismissed, provided, however, that nothing herein in this Order shall restrict any party from presenting any argument to the District Court, including without limitation that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, infringement or value of the patents to be licensed in the Relevant License Agreement.

For the avoidance of doubt, the provisions of Paragraph III.A. of this Order are not intended to depend upon which party, Respondents or the Potential Licensee, files an Action first.

C. If not otherwise prohibited by Paragraph III.[A-B]. above, it shall not be a violation of this Order for Respondents to seek Covered Injunctive Relief against a Potential Licensee if the Potential Licensee (i) is not subject to the jurisdiction of the United States, or (ii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patents or (iii) has stated in writing or in sworn testimony that it will not license the allegedly infringing FRAND Patent on terms that have been set in a Final Ruling by a Court or through Binding Arbitration.

D. If not otherwise prohibited by Paragraph III.[A-B] above, it shall not be a violation of this Order for Respondents to seek Covered Injunctive Relief against a Potential Licensee for alleged Infringement of a FRAND Patent if:

6. Seeking Covered Injunctive Relief does not violate the terms of any written agreement with the Potential Licensee; AND

7. Respondents takes the following actions before seeking Covered Injunctive Relief:

    a) At least twelve (12) months prior to pursuing Covered Injunctive Relief, Respondents delivers to the chief executive offer, general counsel or outside counsel of the Potential Licensee a copy of this Order and an irrevocable written offer to license such FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards. The offer must contain a proposed license agreement or full descriptions of all material commercial terms for the proposed license, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of such FRAND Patents. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee or to any other patents or other intellectual property.

    b) At least sixty (60) days prior to seeking Covered Injunctive Relief, Respondents makes an offer of Binding Arbitration to the Potential Licensee to determine the terms of a license Respondents, and if the offer is conditioned on Reciprocity the Potential Licensee's, patents that are Essential to the same Standard or Standards as the FRAND Patent, the offer is not accepted by the Potential Licensee within 30 days after Respondents seeks Covered Injunctive Relief, and, further, the offer is for Binding Arbitration complies with the following conditions:

        i. the offer is an irrevocable written offer to have the royalty terms, and all non-royalty terms on which Respondents and Potential Licensee could not agree upon prior to arbitration, determined through binding arbitration,

        ii. the offer is delivered to the chief executive officer, general counsel or outside counsel of the Potential Licensee,

        iii. the offer is for binding arbitration administered by the Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agreed upon,

        iv. the offer states that Respondents shall submit the matter to binding arbitration not less than sixty (60) days after the Potential Licensee accepts the offer, or at any other time mutually agreed to by Respondents and Potential Licensee,

        v. the offer states that if the Potential Licensee accepts the offer of binding arbitration, the number and manner of selecting the arbitrators shall be done in a manner mutually agreed to by the

parties; however, if no agreement is reached within sixty (60) days after the Potential Licensee accepts the offer of binding arbitration, either party may demand that the number and manner stated in the rules of the Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third,

vi. the offer states that if the Potential Licensee accepts the offer of binding arbitration, Respondents and the Third Party shall, in good faith, attempt to mutually agree upon the language and location for the arbitration; however, if there is not agreement within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization,

vii. the offer was is not conditioned on any other terms except, at the Respondents' option, (a) Reciprocity, (b) a field of use limitation that the FRAND Patents are only licensed to the extent they are used in the manner covered by the relevant FRAND Commitments, and (c) a requirement that if the arbitrator determines there is a reasonable likelihood that the Respondents or Third Party is not financially able or willing to fulfill the financial terms to be determined through Binding Arbitration, the arbitrator shall require the relevant party to provide reasonable security, which may include an escrow of funds, to ensure such party will be able to satisfy any financial terms for the FRAND Patents that may be determined through the Binding Arbitration, and

viii. unless mutually agreed otherwise, (a) if the Binding Arbitration includes only Respondents' patents, the basis of arbitration shall be whether Respondents' proposed license agreement terms are fair and reasonable and comply with Respondents' FRAND Commitments, (b) if the binding arbitration includes patents of the Respondents and the Potential Licensee (we don't want to force this), the basis of arbitration shall be whether the terms in the license agreements offered by both Respondents and the Potential Licensee are fair, reasonable and consistent with the parties' FRAND Commitments and, where both parties have submitted equivalent terms offered by that are fair, reasonable and consistent with the offering party's FRAND Commitments, to determine the terms to be included in the license agreement.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any license agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any license agreement entered into prior to the effective date of this Order; or

3. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to obtain and enforce Covered Injunctive Relief against a Third Party that is seeking Covered Injunctive Relief for infringement of a device or service manufactured, marketed, imported, licensed, sold or used by Respondents ***unless*** prior to seeking the Covered Injunctive Relief, the Third Party does one of the following:

1. makes a Qualified Offer to party whose infringement from the basis for the claim of Covered Injunctive Relief ("the alleged infringer"); OR

2. obtains a obtains a Final Ruling on a Request for FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed patents are Essential.

(b)(3):6(f),(b)(4)

IV.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an offer to license such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with its FRAND Commitments.

B. (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4)

C. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) agrees to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph VI.C.

V.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 IV.C. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of such Respondents;

B. Acquisition, merger or consolidation of Respondents;

C. The dissolution of Motorola Mobility Inc., or any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

Kelly, Andrea

From: Bayer Femenella, Peggy
Sent: Wednesday, December 12, 2012 11:25 PM
To: John D. Harkrider (JDH@avhlaw.com); Steinthal, Russell M. (RMS@avhlaw.com)
Cc: Widnell, Nicholas; Huber, Susan
Subject: FW: FTC DRAFT ORDER
Attachments: 2012 12 13 FTC DraftPBF.docx

John, attached is our draft language. This is for settlement and discussion purposes only. We tried to flag changes for you by highlighting them. Could you please print out several copies for us to look at tomorrow?
Thanks,
Peggy

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondents), (hereinafter referred to as "Respondents") and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Baseball Style Arbitration" means arbitration where each party submits a proposed term and the arbitrator selects between them.

E. "Binding Arbitration" means arbitration that complies with the following:

1. is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agreed upon;

2. Respondents and the Potential Licensee shall agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may

demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee shall agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside the United States, that does or would prevent any Third Party from making, using or selling any item in violation of Title 35, Section 271 based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. sec. 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard; or if Essential is not defined by the SSO (or defined solely as needed or necessary), it shall refer to Patent Claims the infringement of which cannot be avoided in remaining compliant with a particular Standard, including optional implementations provided in such Standard, on technical but not commercial grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization.

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or reasonable and non-discriminatory terms pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration or Patent Statement and Licensing Declaration submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published in the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim in the field of implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other fields or any other way outside the scope of the relevant FRAND Commitment.

L. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

M. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irving, California, www.jamsadr.com.

N. "License Agreement" means an agreement to license which if executed would form a complete, binding, enforceable agreement between the signatories to license the intellectual property included in such agreement.

O. "Offer to Arbitrate," means a binding offer delivered pursuant to Paragraph [xx] of this Order to establish a License Agreement using the process described in Paragraph [xx] of this Order.

P. "Offer to License" means a binding written offer delivered pursuant to Paragraph [xx] of this Order and that contains a License Agreement or a full description of all material commercial terms proposed for such an agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of such FRAND Patents.

Q. "Patent Claim" means one or more claims in issued patents or pending patent applications.

R. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

S. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party headquartered outside the United States, (iii) the AAA's ICDR pursuant to its

International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

T. "Qualified Offers" mean an offer to license and an offer of Binding Arbitration, both of which comply with the requirements of Paragraph [xx] of this Order.

U. "Qualified Recipient" means the chief executive officer, general counsel, or outside legal counsel.

V. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

W. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment, or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if Reciprocity is not defined in the FRAND Commitment or by the SSO it shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents or, to the extent such patents are not covered by a relevant FRAND Commitment, on terms that are equivalent to those contained in Respondents' FRAND Commitment.

X. "Request for a FRAND Determination" means a request [filed in] any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent not covered by an existing license.

Y. "Standard" means a standard published by a SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, 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/or the H.264 video compression standards (published by ITU Telecommunications Standardization Sector).

Z. "SSO" means a standard-setting organization, i.e. an organization that produces standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

AA. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. [moved other conditions below]

C. Respondents shall cease and desist from directly or indirectly making any future claims of Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who

1. is outside the jurisdiction of the United States, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent.

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration;

4. fails to provide written confirmation to Respondent that the Potential Licensee is willing to license the FRAND Patent on fair and reasonable terms within thirty (30) days of receiving a written request for such confirmation and a copy of this Order from Respondent, where both the written request for confirmation and the written confirmation shall be delivered to a Qualified Recipient.

III.

IT IS FURTHER ORDERED the Respondent and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III.A, or any other mutually agreed to procedure, as the exclusive means for determining the terms of a License Agreement covering Respondent's 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 (hereinafter the "Relevant License Agreement"):

A. Respondent and Potential Licensee agree to negotiate, for a period of at least six months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondent or within sixty (60) days of the request of Potential Licensee, Respondent shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondent delivers the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

   1. execute the Relevant License Agreement, or

   2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondent's FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondent and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing in this [Order? paragraph?] shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondent that the District

Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondent's motion that it cannot issue a ruling on the Contested Terms, then the Respondent and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondent or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents, Respondent shall not file a claim seeking, or other obtain or enforce Covered Injunctive Relief based on the alleged Infringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee;

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents deliver to a Qualified Representative of the Potential Licensee an Offer to Arbitrate a a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards. If the Potential Licensee accepts Respondents'

Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced.

d) Within [xx] days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and agree to inclusion of all other terms in the final License Agreement.

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents', and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments.

f) The arbitrator shall set the terms of the final License Agreement.

g) Within [xx] days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into a License Agreement.

C. So long as the Potential Licensee has files a Qualified Request for a FRAND Determination for Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, which is later, and such action has been dismissed upon a Final Ruling; PROVIDED THAT within [xx] days of filing the Qualified Request for FRAND Determination, the Potential Licensee delivers to a Designated Qualified Recipient of either Respondent a binding and irrevocable commitment to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for FRAND Determination and (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the

relevant patents had been licensed at such royalty rates as of the date the Qualified Request for a FRAND Determination was filed.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until 30 days after Respondents file an action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to actions pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any license agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. [F1-F2 from Google?]

3. prevent or restrict Respondents from enforcing any license agreement entered into prior to the effective date of this Order; or

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for wilful infringement;

5. shall restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce Covered Injunctive Relief against a Third Party that is seeking Covered Injunctive Relief for infringement of a device or service that is made, marketed, or sold by Respondents based on Infringement of Respondents' FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Third Party does one of the following:

1. makes a Qualified Offer to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer"); OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed patents are Essential.

(b)(3):6(f),(b)(4)

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with its FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) agrees to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph VI.C.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 IV.C. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has

complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph III.E. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondents;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

Kelly, Andrea

From: Widnell, Nicholas
Sent: Monday, December 10, 2012 7:02 PM
To: Huber, Susan; Bayer Femenella, Peggy
Subject: FW: Markup of Staff Judicial Option - Monday PM.docx
Attachments: Markup of Staff Judicial Option - Monday PM.docx

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From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, December 10, 2012 7:02 PM
To: Widnell, Nicholas
Subject: Markup of Staff Judicial Option - Monday PM.docx

DRAFT – FOR SETTLEMENT PURPOSES
SUBJECT TO FRE 408
SUBJECT TO CHANGE

Hi Nick:

Here it is. See you soon.

****

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PROPOSED ALTERNATIVE LANGUAGE - DECEMBER 10, 6:45 pm
CONFIDENTIAL - FOR SETTLEMENT PURPOSES ONLY

Qualified RFD means a Request for FRAND Determination against Respondent filed by a Potential Licensee if (i) the Potential Licensee has not, since the date this Order was issued, filed another Request for FRAND Determination against Respondent covering FRAND Patents Essential to the same Standard ("Identical Request") **and the time for the Potential Licensee to accept Respondent's [Qualified Offer to Arbitrate] has not expired**; or (ii) the Potential Licensee filed an Identical Request in the same judicial district (and division, if applicable) that was dismissed without prejudice within the previous sixty (60) days; or (iii) the Potential Licensee filed an Identical Request within the previous sixty (60) days that was dismissed on Respondent's motion for lack of personal jurisdiction or improper venue.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents, Respondent shall not obtain or enforce Covered Injunctive Relief based on the alleged **I**nfringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") during the pendency of a Qualified Request for a FRAND Determination so long as EITHER:

A. The Respondent and the Potential Licensee agree and comply with the procedure outlined in this Paragraph III.A as the exclusive means for determining the terms of a license agreement covering Respondent's FRAND Patents that are Essential to the Covered Standards, and if either party seeks Reciprocity, to the Potential Licensee's ~~FRAND Patents~~ **patents** that are Essential to the Covered Standards ("Relevant License Agreement"):

1. Respondent and Potential Licensee agree to negotiate, for a period of at least six months, to determine the terms of a Relevant License Agreement.

2. At any time after six months, at the option of Respondent or within sixty (60) days of the request of Potential Licensee, Respondent shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement.

3. Within sixty (60) days after Respondent delivers the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

   i. execute the Relevant License; or

   ii. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondent's FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), and for each Contested Term, propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondent and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"); and

   iii. elect to have the Contested Terms resolved through a **Qualified** Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to

determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments.

4. It is intended that the **Qualified** Request for FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. [Except for the foregoing,?] nothing in this ~~paragraph~~ **Order** shall restrict ~~the ability~~ **any party from presenting any argument** in Binding Arbitration or to the District Court, including without limitation that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate, or arguments **regarding the** ~~as to~~ validity, Essentiality, infringement or value of the ~~other parties' FRAND Patents~~ **patents to be licensed in the Relevant License Agreement.**

5. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondent's motion that it cannot issue a ruling on the Contested Terms, then the Respondent and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed either Respondent or Potential Licensee ~~at any time~~ **within 30 days** after the dismissal of the Qualified Request for FRAND Determination.

or

B. The Potential License has not proceeded under subsection (A), and is party to a Qualified Request for FRAND Determination covering the Covered Standards that has not been dismissed, provided, however, that nothing herein in this Order shall restrict any party from presenting any argument to the District Court, including without limitation that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, infringement or value of the patents to be licensed in the Relevant License Agreement.

Kelly, Andrea

From: Widnell, Nicholas
Sent: Monday, December 10, 2012 12:23 PM
To: Bayer Femenella, Peggy; Huber, Susan; Ducore, Daniel P.
Subject: FW: NYDOCS-#1467542-v1-Proposed_Alternative_Judicial_Option.docx
Attachments: NYDOCS-#1467542-v1-Proposed_Alternative_Judicial_Option.docx

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From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, December 10, 2012 12:23 PM
To: Widnell, Nicholas
Cc: Steinthal, Russell M.
Subject: NYDOCS-#1467542-v1-Proposed_Alternative_Judicial_Option.docx

DRAFT – SUBJECT TO CHANGE
FOR SETTLEMENT PURPOSES ONLY
SUBJECT TO FRE 408

Hi Nick:

Sorry about the delay. Here it is.

Feel free to email to set up a call to discuss when you're ready.

John

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PROPOSED ALTERNATIVE LANGUAGE - DECEMBER 10, 11:00 am
CONFIDENTIAL - FOR SETTLEMENT PURPOSES ONLY

Qualified RFD = (i) A Request for FRAND Determination; (ii) that is a First Action (iii) that is filed no later than the last date to accept arbitration [as defined elsewhere] as to the Covered Standards.

First Action = A Request for FRAND Determination or a request for Binding Arbitration filed by a Proposed Licensee that has not previously filed an Action or request for Binding Arbitration seeking a determination of the licensing terms for Respondent's FRAND Patents Essential to such Standard, and

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents, Respondent shall not obtain or enforce Covered Injunctive Relief based on the alleged infringement of Respondent's FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against a Potential Licensee that either:

A. Agrees to the following procedure as the exclusive means for determining the terms of a Relevant License Agreement covering Respondent's FRAND Patents that are Essential to the Covered Standards:

1. Respondent and Potential Licensee agree to negotiate, for a period of at least six months, the terms of a Relevant License Agreement covering Respondent's FRAND Patents that are Essential to the Covered Standards.

2. Respondent shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement covering Respondent's FRAND Patents that are Essential to the Covered Standards. The proposed Relevant License Agreement may include a grant-back license for the Potential Licensee's patents Essential to the Covered Standards.

3. Within 30 days after Respondent delivers the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

i. execute the Relevant License Agreement if the Potential Licensee agrees to its terms, or

ii. accept the offer while designating any terms of the Relevant License Agreement that the Potential Licensee contends are prohibited by Respondent's FRAND Commitments, and for each such term proposing an alternative that it contends is consistent with Respondent's FRAND Commitments, as well as the Potential Licensee's FRAND Commitments, if any; and file a First Action to resolve all these disputed terms in Binding Arbitration or before a United States District Court.

4. The Qualified Arbitrator or the District Court will determine whether the contested terms are consistent with Respondents' FRAND Commitments, as well as the Potential Licensee's FRAND Commitments, if any. The resulting ruling will include a binding Relevant License Agreement, which if executed will form a binding license agreement covering Respondent's FRAND Patents that are Essential to one or more Standards, as well as the grant-back patents, if any. Except for the foregoing, nothing in this paragraph will restrict Respondent or the Potential Licensee from presenting arguments in binding arbitration or to the District Court, including without limitation Respondent's ability to argue that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate.

5. If the Potential Licensee elects to resolve the disputed terms in United States District Court, and the Court determines on its own motion or on Respondent's motion that it cannot issue a ruling including a binding Relevant License Agreement, which if executed will form a binding license agreement covering Respondent's FRAND Patents that are Essential to one or more Standards, as well as the grant-back patents, if any, then the Respondent and the Potential Licensee shall resolve the disputed terms in Binding Arbitration.

or

B. Has not proceeded under subsection (A), and is party to a Qualified Request for FRAND Determination covering the Covered Standards that has not been dismissed, provided, however, that nothing herein shall restrict Respondent from presenting any argument to the District Court, including without limitation that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate.

Kelly, Andrea

From: Bayer Femenella, Peggy
Sent: Sunday, December 09, 2012 7:48 PM
To: John D. Harkrider (JDH@avhlaw.com); Steinthal, Russell M. (RMS@avhlaw.com)
Cc: Widnell, Nicholas; Huber, Susan; Ducore, Daniel P.
Subject: Google SEP
Attachments: 2012 12 09 FTC Draft2 Judicial OptionPBF.docx

John, attached is our latest draft language on the judicial option. As always, this is for discussion and settlement purposes only.

Thanks,
Peggy

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondent's FRAND Patents:

(b)(3):6(f),(b)(4)

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, January 09, 2013 9:44 AM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Google
Attachments: 337-752 Unopposed Motion to Terminate re H 264 Patents 1-8-2013 (3).pdf

Will call to discuss

****

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UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable David P. Shaw
Administrative Law Judge

In the Matter of CERTAIN GAMING AND ENTERTAINMENT CONSOLES, RELATED SOFTWARE, AND COMPONENTS THEREOF	)	Investigation No. 337-TA-752 (Remand Proceeding)

MOTOROLA MOBILITY'S MOTION TO TERMINATE THIS INVESTIGATION IN PART WITH RESPECT TO U.S. PATENT NOS. 6,980,596 AND 7,162,094

Pursuant to Commission Rule 210.21(a)(1), Complainants Motorola Mobility LLC and General Instrument Corporation (collectively "Motorola Mobility") respectfully request termination of the subject Investigation in part with respect to U.S. Patent Nos. 6,980,596 and 7,162,094 (collectively "the H.264 Patents"). This termination is sought on the basis of Motorola Mobility's withdrawal of its allegations against Respondent Microsoft Corporation ("Microsoft") pertaining to the H.264 Patents in this Investigation.

I. FACTUAL BACKGROUND

On November 22, 2010, Motorola Mobility filed a Complaint against Microsoft based on violations of five patents. The Investigation was instituted December 23, 2010, and the target date was set for May 23, 2012; *see* Order No. 5 (January 13, 2011).

An Initial Determination was issued on April 24, 2012, finding a violation of section 337 based on four of the patents, including both of the H.264 Patents. Petitions for review were filed by both Microsoft and Motorola Mobility, and rather than proceeding to issue a Final Determination, the Commission remanded the case back to the Administrative Law Judge

("ALJ") on June 29, 2012, "to (1) apply the Commission's opinion in *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software,* Inv. No. 337-TA-724; (2) rule on Microsoft's motion for partial termination of the investigation filed June 22, 2012; and (3) issue a final initial remand determination ('RID') on violation and a recommended determination ('RD') on remedy and bonding." *See* Comm'n Remand Order (June 29, 2012) at 2. On July 24, 2012, the ALJ issued Order No. 42, which scheduled the remand Hearing for December 5-6, 2012, set the Remand ID to be issued by March 22, 2013, and set a new target date for completion of this Investigation by July 23, 2013. The target date and the Remand ID date were the subject of a Commission Determination Not to Review, issued August 22, 2012.

On October 24, 2012, Motorola Mobility filed an unopposed motion to terminate the two previously asserted 802.11 Patents (U.S. Patent Nos. 5,319,712 and No. 5,357,571) in this Investigation on the basis of withdrawing its allegations against Microsoft pertaining to those patents. Dkt. No. 752-056. On November 6, 2012, an ID was issued granting the motion, finding that terminating the 802.11 Patents "reduce[d] the number of issues to be decided," that it was "in the public interest, which favors the private resolution of disputes to avoid needless litigation and to conserve private and public resources," and that there were "no extraordinary circumstances that warrant[ed] denying the motion." Order No. 48 at 2. On December 6, 2012, the Commission determined not to review the ID. Comm'n Notice Not to Review at 1.

In addition to the H.264 Patents, this Investigation also involves U.S. Patent No. 6,069,896. Upon grant of this motion, the '896 patent will be the only patent remaining in this Investigation.

II. LEGAL STANDARD

Commission Rule 210.21(a)(1) provides that:

> Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, ...

"In the absence of extraordinary circumstances, termination of an Investigation is readily granted to a complainant during the prehearing stage of an Investigation." *Certain Electronic Devices, Including Power Adapters, Power Converters, External Batteries and Detachable Tips, Used to Power and/or Charge Mobile Electronic Products and Components Thereof*, Inv. No. 337-TA-513, Order No. 8 (Nov. 1, 2004); *see also Certain Video Cassette Devices and Television/Video Cassette Combination Devices and Methods of Using Same*, Inv. No. 337-TA-464, Order No. 5 (April 10, 2002); *Certain Ultrafiltration Membrane Systems, & Components Thereof, Including Ultrafiltration Membranes*, Inv. No. 337-TA-107, Commission Action and Order at 1-2 (March 11, 1982). The Commission has also granted motions to terminate in later stages of an investigation, including a case that was on remand following appeal to the U.S. Court of Appeals for the Federal Circuit. *See Certain High-Brightness Light-Emitting Diodes and Products Containing Same*, Inv. No. 337-TA-556 (Remand), Order No. 5 (August 18, 2009), Comm'n Notice Not To Review (Sept. 2, 2009).

"Extraordinary circumstances" that support continuing an investigation despite a complainant's motion to terminate are very limited. *See Certain Starter Kill Vehicle Security Systems*, Inv. No. 337-TA-379, Order No. 13 (March 5, 1996) (respondent's objection to termination does not constitute an exceptional circumstance to deny a motion to terminate);

Certain Transport Vehicle Tires, Inv. No. 337-TA-390, Order No. 17 (January 30, 1997) (a pending motion for summary determination is also not an exceptional circumstance sufficient to deny a complainant's motion for termination). An investigation will continue despite a complainant's motion to terminate only if the circumstances raise "substantial public interest concerns." *Certain Starter Kill Vehicle Security Systems*, Inv. No. 337-TA-379, Order No. 13.

Public policy also supports termination, as public and private resources will be conserved. *See Certain Power Supplies,* Inv. No. 337-TA-646, Order No. 18 (Jan. 5, 2009); *Certain Hard Disk Drives, Components Thereof, and Products Containing the Same*, Inv. No. 337-TA-616, Order No. 17 (May 13, 2008).

Terminations cannot be "with prejudice" or "without prejudice." *See*, *e.g.*, *Certain Bar Clamps, Bar Clamp Pads, & Related Packaging, Display, & Other Materials*, Inv. No. 337-TA-429, Comm'n Op. (Pub. Version), at 7 (Feb. 13, 2001).

III. ARGUMENT

Motorola Mobility hereby withdraws from this Investigation its allegations against Microsoft pertaining to the H.264 Patents and thus moves to terminate the Investigation in part as to these Patents. This will leave in the Investigation only Motorola Mobility's allegations as to U.S. Patent No. 6,069,896, which Motorola Mobility does not seek to withdraw from the Investigation.

This motion to terminate is timely brought, as the Remand ID is not due until March 22, 2013. Rule 210.21(a)(1) requires bringing a motion to terminate "any time prior to the issuance of an initial determination on violation of section 337 . . . ." As Motorola Mobility previously explained with respect to its motion to terminate the 802.11 Patents, and as accepted in Order No. 48, in the context of a remand proceeding, this language from Rule 210.21(a)(1) logically

contemplates the *remand* initial determination, as was similarly done in *Certain High-Brightness Light-Emitting Diodes*, Inv. No. 337-TA-556 (Remand), Order No. 5 (August 18, 2009), Comm'n Notice Not To Review (Sept. 2, 2009). To mechanically treat the language of 210.21(a)(1) as referring to the original initial determination would preclude a complainant from ever terminating its case during the remand stage despite a willingness to withdraw certain allegations that had been made against a respondent. No Commission precedent has been found supporting such a notion, nor does public policy encourage this strict construction.

Additionally, as with the withdrawal of the 802.11 Patents, Motorola Mobility is serving the public interest by terminating as to the H.264 Patents because this will save the Commission's, the ALJ's, and the private parties' resources and time by eliminating two more patents from this case.

In filing the present motion, Motorola Mobility does not waive any rights, including for past damages, in its currently-pending lawsuits against Microsoft in the U.S. District Courts for the Western District of Washington and the Western District of Wisconsin. Motorola intends to enforce its rights for past damages in the District Court lawsuits.[1] There are no agreements, written or oral, express or implied, between the parties concerning the subject matter of the Investigation.

IV. CERTIFICATION

As required by Ground Rule 5(e), counsel for Motorola Mobility has made reasonable and good faith efforts to discuss this matter with counsel for Microsoft. On Friday, January 7,

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[1] A condition of this same nature was included in Motorola Mobility's motion to terminate as to the 802.11 Patents (Dkt. No. 752-056), as well as in the motion for termination, and also acknowledged by the ALJ, in *Certain High-Brightness Light-Emitting Diodes. Id.*

2013, counsel for Motorola Mobility discussed this by telephone with counsel for Microsoft, who has since advised that Microsoft would not oppose this motion.

V. CONCLUSION

For the foregoing reasons, Motorola Mobility respectfully requests that the Commission terminate this Investigation in part as to U.S. Patent Nos. 6,980,596 and 7,162,094.

Respectfully submitted,

January 8, 2013

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Counsel for Complainants
Motorola Mobility LLC and
General Instrument Corporation

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2013, copies of the foregoing MOTOROLA MOBILITY'S MOTION TO TERMINATE THIS INVESTIGATION IN PART WITH RESPECT TO U.S. PATENT NOS. 6,980,596 AND 7,162,094 were caused to be served upon the following, via delivery methods indicated:

BY ELECTRONIC DELIVERY (EDIS + copies, as required)
The Honorable Lisa R. Barton
Acting Secretary
U.S. International Trade Commission
500 E Street SW
Suite 112
Washington, DC 20436

BY HAND (1 copy)
The Honorable David P. Shaw
Administrative Law Judge
U.S. International Trade Commission
500 E Street SW
Suite 317
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BY E-MAIL
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Counsel for Respondent Microsoft Corp.

Marissa Golub

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Monday, December 17, 2012 11:20 PM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Cc: Steinthal, Russell M.
Subject: NYDOCS-#1467691-v1-Monday_Redline_for_FTC DOCX (3) (2).docx
Attachments: NYDOCS-#1467691-v1-Monday_Redline_for_FTC DOCX (3) (2).docx

DRAFT – CONFIDENTIAL
SUBJECT TO CHANGE
FRE 408

Hi guys:

Virtually all are typos, grammatical, and entirely nonsubstantive.

Four are substantive only to the extent to avoid other sections of the decree becoming surplusage without the proposed change. But I think we are working to a common goal on making the decree work at this point, so we welcome your thoughts on those changes.

I've clearly marked each change with a rationale (e.g., typo, spacing, to avoid contradiction). Please let us know if you have any questions.

John

****

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1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution (ICDR) is a division of the AAA

~~B.~~C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

~~C.~~D. "Binding Arbitration" means arbitration that complies with the following and follows the procedures in Paragraph IV.B.2. of the Order:

1. It is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

Comment [A1]: Typo.

Comment [A2]: To fix spacing typo.

Comment [A3]: Typo.

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third; and

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee.

Comment [A4]: Tyop.

~~D.~~E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

~~E.~~F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

~~F.~~G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

Comment [A5]: To ensure IV.F. has meaning (because Third Party is defined to exclude Google, a suit against Google could never qualify as CIR).

~~G.~~H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard~~,~~ (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rule of Procedure, 30 November 2011 (attached as Exhibit C).

~~H.~~I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

~~I.~~J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

~~J.~~K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such a claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

~~K.~~L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

~~L.~~M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

~~M.~~N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

~~N.~~O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

~~O.~~P. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

~~P.~~Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

~~Q.~~R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.~~;~~

Comment [A6]: Typo.

~~R.~~S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

~~S.~~T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

~~T.~~U. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraph IV.B. of this Order.

~~U.~~V. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

~~V.~~W. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, OR (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

~~W.~~X. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment~~,~~ or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a

cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

~~X.~~Y. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent use of the relevant FRAND Patents are not covered by an existing license.

~~Y.~~Z. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE,~~,~~ UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

Comment [A7]: Typo.

Comment [A8]: Grammatical.

~~Z.~~AA. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

~~AA.~~BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court,

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its term; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify

a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO.

B. Respondents shall not obtain or enforce Covered Injunctive Relief based on claims of alleged Infringement of a FRAND Patent that are pending as of the date this Order is issued unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the required Qualified Offers.

C. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order, and Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief during the pendency of a Qualified Request for a FRAND Determination that complies with Paragraph IV.C. of this Order or after a Potential Licensee accepts Respondents' Offer to Arbitrate.

Comment [A9]: To ensure that IV.C. has meaning (including its time limitations).

Comment [A10]: Typo.

D. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts, provided that a Potential Licensee shall be considered outside the jurisdiction of the United States District Courts only if no parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a license agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation to a Respondent, as requested in a FRAND Terms Letter delivered to a Qualified Recipient within thirty (30) days of receiving the FRAND Terms Letter. PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III., or any other mutually agreed to procedure, 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"); for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation, arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

Comment [A11]: Typo.

Comment [A12]: Typo.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtaining or enforcing Covered Injunctive Relief based on the alleged Infringement of Respondents' FRAND Patents that are Essential to one or more Standards (the "Covered Standards") against any Potential Licensee who has not elected to enter into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions before filing a claim for Covered Injunctive Relief with respect to a FRAND Patent:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License Respondents' FRAND Patents Essential to the Covered Standards, to the extent not already licensed. Respondents may condition their offer on Reciprocity, but may not require the Potential Licensee to take a license to any Standards not practiced by the Potential Licensee, or to any patents or other intellectual property other than FRAND Patents Essential to the Covered Standards (any terms and conditions included in the offer that are for such additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

   b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, to the extent not already licensed;

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim, seek or enforce a Claim for Covered Injunctive Relief ~~during the pendency of the Qualified Request for a FRAND Determination.~~

Comment [A13]: We thought this was your intention. It avoids the forever bar on CIRs when a Potential Licensee files a QRFD (thus triggering the paragraph because it "has filed") and then drops it (this eliminating the PROVIDED THAT as it is no longer pendent).

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect

to Actions containing requests for Covered Injunctive Relief that are pending as of the date this Order is issued, the Offer to Arbitrate shall be irrevocable until the later of (i) two (2) months after Respondents deliver an Offer to Arbitrate or (ii) a Final Ruling is obtained in any Request for a FRAND Determination that was pending as of the date this Order was issued, covers the allegedly Infringing FRAND Patent on which the claim for Covered Injunctive Relief is based, and was filed by the Potential Licensee against whom the Covered Injunctive Relief is sought.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to the Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief ~~for Infringement of~~ against a product (including software), device or service that is made, marketed, distributed or sold by Respondents alleging Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

Comment [A14]: Purely grammatical.

Comment [A15]: Grammatical.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees:; (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

Comment [A16]: Typo.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[Counsel representing Potential Licensee in Qualified Request for a FRAND Determination]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action (Action) is a Qualified Request for FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Comment [A17]: Typo.

Comment [A18]: Typo.

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty [60] days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, ~~Infringement~~ infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Comment [A19]: Typo.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

Comment [A20]: Typo..

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

Comment [A21]: Typo.

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[Qualified Recipient of Potential Licensee]

[Potential Licensee]

Dear [Counsel],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using patents for which Google has made a FRAND Commitment to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [Potential Licensee] agree to license each other's patents that are Essential to complying with a Standard or Standards that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, ~~Infringement~~ infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Comment [A22]: Typo.

Comment [A23]: Typo.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIHEPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.**

Comment [A24]: Typo.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

Comment [A25]: Typo.

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE]/ THIS LETTER SHALL CONSTISTUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

Comment [A26]: Typo.

Comment [A27]: Typo.

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, December 26, 2012 7:35 PM
To: Widnell, Nicholas; Huber, Susan; Bayer Femenella, Peggy
Cc: Steinthal, Russell M.
Subject: NYDOCS-#1467788-v2-FTC_Draft_Decree_2012-12-24.docx
Attachments: NYDOCS-#1467788-v2-FTC_Draft_Decree_2012-12-24.docx

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Hi guys:

Attached please find our (very) light markup of the Draft Decree. I believe there are five in total. We have included comments so that you know the purpose of the proposed change.

Please let me know if you have any questions or would like to set up a call.

John

****

Notice: The information contained in this electronic mail and any attached documents from Axinn, Veltrop & Harkrider LLP is confidential. This email may be an attorney-client communication, and as such is privileged and confidential. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this electronic mail in error, please notify us immediately by telephone (212) 728-2200/(860) 275-8100 or by reply electronic mail to the sender.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

****

1210120

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that the number and manner be determined by the process stated in the rules of the Qualified Arbitration Organization selected by the Potential Licensee, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, either party may demand that these matters be determined pursuant to the rules of the Qualified Arbitration Organization selected by the Potential Licensee;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that a) are being challenged through the Qualified Request for a FRAND Determination and b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United

States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license

Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means an agreement to license patents that if executed would form a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a proposed License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; or (iv) JAMS pursuant to its International Arbitration Rules.

U. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

V. "Qualified Recipient" means a chief executive officer, general counsel, or outside legal counsel.

W. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper

venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

X. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Y. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

Z. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

AA. "SSO" means a standard-setting organization, i.e. an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunications Union ("ITU").

BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity other than Respondents.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

Comment [A1]: Typo that could change meaning ("terms" refers to the language of the relevant license or covenant, whereas "term" could be understood to mean "duration")..

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. For clarity, the foregoing means that it shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) ~~after~~ from the time a Potential Licensee accepts Respondents' Offer to Arbitrate until the conclusion of the resulting Binding Arbitration.

Comment [A2]: Intended to parallel the pendency language in (i) and (ii) while also protecting against CIR during the period between acceptance and Respondents' commencing Binding Arbitration.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; for clarity, a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. fails to provide the written confirmation as requested in a FRAND Terms Letter delivered to a Qualified Recipient of the Potential Licensee within thirty (30) days of receiving the FRAND Terms Letter; PROVIDED, HOWEVER, Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination,

including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not ~~elected not to~~ entered into an agreement pursuant to Paragraph III above:

Comment [A3]: The last language cleanup in this paragraph could have led to the result that a Potential Licensee could block any Covered Injunctive Relief simply by refusing to make any election either to enter an agreement under Paragraph III or not to enter such an agreement. This returns to what we understood to be the original intent, namely that Paragraph IV applies to those cases in which there is no Paragraph III agreement.

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Standards not practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to a Qualified Recipient of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. If the Potential Licensee accepts

Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) When Respondents file for arbitration they shall deliver to a Qualified Recipient of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

Comment [A4]: Making clear that "to the extent not already licensed" applies to both Respondents' and the Potential Licensee's patents.

c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;

d) Within sixty (60) days of the commencement of arbitration, the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

e) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

f) The arbitrator shall set the terms of the final License Agreement; and

g) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to a Qualified Recipient of the Potential Licensee. If the Potential

Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the Qualified Recipient of Respondents within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief; PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date

of this Order, Covered Injunctive Relief ~~for Infringement of~~ against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act in good faith and in conformity with their FRAND Commitments.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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

Comment [A5]: One cannot seek CIR "for infringement of a product", because patents, not products are infringed. This change reflects what appears to have been the intent, namely that it applies when the Potential License is seeking CIR against a Google product based on Infringement of the Potential Licensee's FRAND Patent.

of each sale or assignment of a FRAND Patent and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Monday, July 08, 2013 5:19 PM
To: Huber, Susan; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy; Ducore, Daniel P.; Widnell, Nicholas
Subject: RE: Google

Hi Susan –

Haven't heard back from client (and will let you know when I do) but some nits….

1. In paragraph I.D.2 (p.3), add "(30)" after "thirty" for consistency with the parallel paragraphs.
2. In paragraph IV.B.2 (p. 10), remove the extraneous apostrophe after "Respondents'".
3. In paragraph IV.B.2(c), the cross-reference should read "Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B.2**(b)**" (not (c)).
4. In the final sentence of paragraph V.A, the text should probably read "their FRAND Commitments," rather than "its FRAND Commitments," since the antecedent is the plural Respondents.
5. In Exhibit D, paragraph 2 needs to be conformed to the new timing language in the Order. It should read "Within thirty (30) days of the **selection of a QAO**, Google and the Company would mutually agree…"

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Monday, July 08, 2013 2:37 PM
To: Harkrider, John D.; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy; Ducore, Daniel P.; Widnell, Nicholas
Subject: Google

John,

I think we are on the home stretch! The SSO language change is acceptable to us (at staff level). Attached is a redline comparing the Order as accepted for comment with the revised Order that has been agreed to by Google and Commission staff. The only change from the last version that you were sent is the wording of the SSO arbitration proviso at the end of Paragraph IV.B.

Please let me know if you see anything amiss.

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850

202.326.3331

****

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****

~~1210120~~

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: ~~**Jon Leibowitz, Chairman**~~
~~**J. Thomas Rosch**~~

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not

constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration Organization within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within ~~sixty (60)~~thirty days after selection of the ~~Potential Licensee accepts the offer of Binding~~Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization ~~selected by the Potential Licensee~~, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within ~~sixty (60~~thirty (30) days after selection of the ~~Potential Licensee accepts the offer of Binding~~Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the ~~Qualified Arbitration Organization~~ selected ~~by the Potential Licensee~~Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request

for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to

the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means ~~an agreement to license patents that if executed would form~~ a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a ~~proposed~~ License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International

Arbitration Rules; ~~or~~ (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

~~U.~~V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

~~V.~~W. "Qualified Recipient~~"~~(s)" means ~~a~~(i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, ~~or~~ outside legal counsel or primary contact with Respondent with respect to patent licensing.

~~W.~~X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

~~X.~~Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

~~Y.~~Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

~~Z.~~AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE

(published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

~~AA.~~BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the International ~~Telecommunications~~Telecommunication Union ("ITU").

~~BB.~~CC. "Third Party" means ~~any~~an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity~~ other than Respondents~~, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. ~~The foregoing means that it~~It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. ~~fails to~~does not provide the written confirmation ~~as~~ requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to ~~a~~the Qualified Recipient(s) of the Potential Licensee ~~within thirty (30) days of receiving the FRAND Terms Letter~~; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to ~~a~~the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to ~~a~~the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. ~~If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on~~The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents' may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

   a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) ~~When~~ Respondents shall file for arbitration ~~they shall~~and deliver to ~~a~~the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

~~c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;~~

~~d)~~c) Within sixty (60) days of ~~the commencement of arbitration,~~receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(c), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

~~e)~~d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

~~f)~~e) The arbitrator shall set the terms of the final License Agreement; and

~~g)~~f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement~~.~~;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory arbitration rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory arbitration rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter

(attached as Exhibit A) to ~~a~~the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the ~~Qualified Recipient of~~recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief~~;~~ based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by ~~any~~a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards~~,~~ ("Requested License"), provide ~~the~~ a written response and begin negotiation with such Potential Licensee ~~with an Offer~~for the Requested License. Respondents' written response pursuant to ~~License such FRAND Patents. In making such offer, Respondents~~this paragraph shall ~~act~~be in good faith ~~and in conformity~~compliance with ~~their~~its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which

it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Monday, December 17, 2012 7:30 PM
To: Widnell, Nicholas; Feinstein, Richard; Bayer Femenella, Peggy
Cc: Donald Harrison; Matthew Bye
Subject: SCW NYDOCS-#1467696-v1-Google_Complaint_(Monday).DOCX
Attachments: SCW NYDOCS-#1467696-v1-Google_Complaint_(Monday).DOCX.docx

DRAFT – SUBJECT TO CHANGE
HIGHLY CONFIDENTIAL
FRE 408

Rich, Nick and Peggy:

I want to thank you for the time and effort that was put into drafting the Complaint and, as previewed on our call today, the attached reflects several changes:

First, we added MMI where Google was listed by itself to harmonize both (i) the agreement between the parties; and (ii) the logic of the Complaint as set forth in your Paragraph 25 that MMI had done these things and Google continued them.

(b)(3):6(f),(b)(4)

Third, while we appreciate your view that MMI has sought injunctions against willing licensees, there is a suggestion that ALL potential licensees were in fact willing at ALL times, which seems relatively strong – since I think all you need is that MMI sought injunction against some licensees were willing at some time.

Fourth, there were a few instances where there were statements that seemed to read in Section 2 – in particular Paragraph 21, which suggests that there were other technologies that competed with MMI's technology prior to standardization and that the FRAND commitment caused the SSO to choose MMI's technology (while this may or may not be true, it was not a subject of the investigation); and Paragraph 25 – which talks of an "exclusionary campaign." We believe the Section 2 language is not necessary for Section 5 purposes and is not consistent with the understanding between the parties.

Again, we appreciate Staff and Bureau Management's extraordinary efforts over the past few weeks to bring this matter to conclusion.

Respectfully submitted,

John

****

Notice: The information contained in this electronic mail and any attached documents from Axinn, Veltrop &

Harkrider LLP is confidential. This email may be an attorney-client communication, and as such is privileged and confidential. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this electronic mail in error, please notify us immediately by telephone (212) 728-2200/(860) 275-8100 or by reply electronic mail to the sender.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

****

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Jon Leibowitz, Chairman** **J. Thomas Rosch** **Edith Ramirez** **Julie Brill** **Maureen K. Ohlhausen**

In the Matter of	)	
MOTOROLA MOBILITY LLC, **a limited liability company,**	)	
and GOOGLE INC, **a corporation,**	)	**DOCKET NO.**

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 Respondents Motorola Mobility LLC and Google, Inc. (~~("Google" or~~ "Respondents") have~~s~~ 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~~Respondents, and ~~its~~ their predecessor in interest, Motorola Mobility, Inc. ("Motorola"), engaged in unfair methods of competition and unfair acts or practices by breaching ~~its~~ Motorola's commitments to standard-setting organizations ("SSOs") to license its standard essential patents ("SEPs") on fair, reasonable, and non-discriminatory ("FRAND") terms. ~~Google~~ Motorola 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

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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~~ may likely be harmed.

3. If left unchecked, ~~Google's~~ Respondents' conduct ~~will~~ may 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~~ Respondents' SEPs ~~would~~ might be forced, by the threat of an injunction, to pay higher royalty rates which would be passed on to consumers. This conduct ~~will~~ could 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 Inc. 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~~ Respondents actively participate~~s~~ 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~~ Respondents have~~s~~ been, and ~~is~~ are now, ~~a~~ corporations as "corporation" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and at all times relevant herein, ~~Google has~~ Respondents have been, and ~~is~~ are 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

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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.

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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~~ can be 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~~ could be 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 could raise~~s~~ the maximum royalty rate the potential licensee is willing to pay, ~~tending to push~~ potentially pushing that rate upwards and out of the FRAND range.

Relevant Markets

20. The relevant product market consists of the technology covered by any ~~Google~~Respondent-owned SEP and all substitutes for that technology that were reasonably available prior to the adoption of a Relevant Technology Standard.

21. (b)(3):6(f),(b)(4)

(b)(3):6(f),(b)(4)

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~~certain 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 part 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.

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~~Google~~ Respondents Violated ~~its~~ Their 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~~ pursuit of injunctions and exclusion orders after acquiring Motorola. ~~Google~~ Respondents used these threats of exclusion orders and injunctions to enhance ~~its~~ their bargaining leverage against firms that may have been willing licensees and demand licensing terms that ~~tended to~~may have exceeded the FRAND range. At ~~all~~ times relevant to this Complaint, some or all of these implementers may have been ~~were~~ willing licensees of ~~Google's~~ Respondents' FRAND-encumbered SEPs.

26. Motorola filed, and Google prosecuted, patent infringement claims before the United States International Trade Commission ("ITC"). The ~~only~~ primary 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~~ Respondents' Conduct Outweigh any Potential Benefits

28. The ~~likely~~ potential anticompetitive effects of ~~Google's~~ Respondents' breach of ~~its~~ Motorola's 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

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d. Raising the costs of ~~Google's~~ Respondents' competitors and thereby dampening competition between ~~Google~~ Respondents 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~~ Respondents' conduct.

Substantial Consumer Injury

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

Violations Alleged

31. ~~Google's~~ Respondents' 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.

32. ~~Google's~~ Respondents' conduct is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or competition, and constitutes unfair acts or practices in violation of Section 5 of the FTC Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of December 2012, issues its Complaint against Respondent Motorola Mobility LLC and Respondent Google Inc.

By the Commission,

SEAL

Donald S. Clark

Secretary

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Kelly, Andrea

From: Huber, Susan
Sent: Monday, July 01, 2013 10:55 AM
To: 'John D. Harkrider (jdh@avhlaw.com)'
Cc: 'Russell M. Steinthal (rms@avhlaw.com)'
Subject: Google Modifications
Attachments: 2013.07.01.Redline.FTC.Modifications.Google.Order.docx; 2013.07.01.FTC.Modifications.Clean.docx; 2013.07.01.Redline.FTC.Modifications.Google.Exh.D.docx

Contacts: John D. Harkrider

Russell and John,

Attached are the proposed modifications for the Google order. This version contains mark-ups from the last version that Google sent to us (the Order file has Exh. D attached but it is treated as a new insertion – to see the changes from the last version you must view the Exh. D. redline). I am also sending a clean version with all the FTC modifications accepted. They are all read-only versions so you'll have to save new versions to make edits.

Let me know if you have any questions. And I would really appreciate anything you can do to speed review of the proposed changes.

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331

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.,	)	**Docket No. C-**
a corporation	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration

Organization within sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within thirty days after selection of the Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within thirty (30) days after selection of the Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only

with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute

of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND

Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent

against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents' may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) Respondents shall file for arbitration and deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

c) Within sixty (60) days of receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(c), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the

FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

e) The arbitrator shall set the terms of the final License Agreement; and

f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory dispute resolution rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly ~~I am sending this letter on behalf of Google Inc. and its wholly~~ owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within ~~30~~sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within ~~sixty (60~~thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

~~4. No later than five (5) business days after the commencement of arbitration, Google and the Company will each be required to file with the Administrator (for delivery to the arbitrators upon their selection), on behalf of themselves and their respective Affiliates, a binding and irrevocable undertaking that they will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the Commencement Date. Failure to file such an undertaking shall constitute a material breach of the arbitration agreement and may release Google from its obligations under the Order.~~

~~5.~~4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

~~6.~~5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

~~7.~~6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company

based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company ~~that~~, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

~~This Offer, and any arbitration agreement formed by its acceptance, shall be construed according to the laws of the State of California.~~

_____

~~Sincerely,~~

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

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-**

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Google Inc. and/or Motorola Mobility, Inc. (now Motorola Mobility LLC, a wholly-owned subsidiary of Respondent Google Inc.) (hereinafter referred to as "Respondents"), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing admissions by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order").

1. Respondent Google Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

2. 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.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondents" means Google Inc. and Motorola Mobility LLC, and the directors, officers, employees, agents, representatives, successors, and assigns of each; and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by Google Inc. or Motorola Mobility LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For purposes of this Order, an action by or on behalf of either Respondent Google Inc. or Respondent Motorola Mobility LLC shall satisfy an obligation imposed on "Respondents."

B. "AAA" means the American Arbitration Association; a not-for-profit dispute resolution organization headquartered at 1633 Broadway, New York, NY 10019, www.adr.org. The International Centre for Dispute Resolution ("ICDR") is a division of the AAA.

C. "Action" means any proceeding whether legal, equitable, or administrative, in the United States or anywhere else in the world.

D. "Binding Arbitration" means arbitration to establish a License Agreement that follows the procedures in Paragraph IV.B.2. of the Order and complies with the following:

1. The arbitration is administered by a Potential Licensee's choice of Qualified Arbitration Organization, or such other arbitration organization or ad hoc group of arbitrators that Respondents and the Potential Licensee mutually agree upon; however, if the Potential Licensee does not select a Qualified Arbitration

Organization within ~~thirty (30~~sixty (60) days after the Potential Licensee accepts the offer of Binding Arbitration, Respondent may demand arbitration through its choice of Qualified Arbitration Organization;

2. Respondents and the Potential Licensee agree on the number and manner of selecting the arbitrators; however, if the parties cannot agree within ~~sixty (60)~~thirty days after selection of the ~~Potential Licensee accepts the offer of Binding~~Qualified Arbitration Organization, either party may demand that the number and manner be determined by the process stated in the rules of the selected Qualified Arbitration Organization, or if the applicable rules do not specify a selection method, that there be three arbitrators, with each party selecting one arbitrator and those arbitrators selecting the third;

3. Respondents and the Potential Licensee agree upon the language and location for the arbitration; however, if the parties cannot agree within ~~sixty (60~~thirty (30) days after selection of the ~~Potential Licensee accepts the offer of Binding~~Qualified Arbitration Organization, either party may demand that these matters be determined pursuant to the rules of the selected Qualified Arbitration Organization;

4. A party to the arbitration may condition its participation on the following:

    a. The field of use for patents licensed through arbitration is limited to uses covered by the applicable FRAND Commitment(s), and

    b. The arbitrator may require reasonable security, including an ongoing escrow of funds to be held by a Qualified Escrow Agent, if the arbitrator determines such security is necessary to ensure a party will fulfill the financial terms of an arbitrated License Agreement and the arbitrator sets forth in writing the terms and conditions for the disbursement of such funds and the duties of the escrow agent; and

5. The arbitration is not conditioned on any terms or conditions not explicitly authorized by the Order; PROVIDED THAT, the arbitration may include any terms or conditions that are mutually agreed to by the parties.

E. "Confirmation Letter" means the letter attached as Exhibit A to this Order, in which Respondents make a binding and irrevocable commitment, conditioned only on the Potential Licensee providing the same binding and irrevocable commitment, to (i) abide by all licensing terms set by a Final Ruling on the Potential Licensee's Qualified Request for a FRAND Determination, (ii) to pay any royalties established through a Final Ruling on the Qualified Request for a FRAND Determination as if the relevant patents had been licensed at such royalty rates as of the date Potential Licensee filed the Qualified Request for a FRAND Determination, and (iii) identify those terms in the proposed License Agreement attached to the Confirmation Letter that (a) are being challenged through the Qualified Request for a FRAND Determination and (b) each party agrees to include in any final License Agreement between the parties that also includes the terms or royalty payments set by a Final Ruling in the Qualified Request for a FRAND Determination.

F. "Court" means a judicial tribunal of appropriate jurisdiction in or outside of the United States.

G. "Covered Injunctive Relief" means a ruling of any legal or administrative tribunal, whether in or outside of the United States, that does or would prevent any Third Party (or for the purposes of IV.F., any party) from making, using, selling, offering for sale, or importing any item based on alleged Infringement of a FRAND Patent. Covered Injunctive Relief includes, but is not limited to, an exclusion order issued by the United States International Trade Commission under Section 337 of the Tariff Act as Amended, 19 U.S.C. § 1337, or an injunction order issued by a Court.

H. "Essential" as to a particular Standard means "essential" as defined by the rules or policies of the SSO that published such Standard. If essential is not defined by the SSO that published a Standard (or is defined solely as "needed" or "necessary"), "Essential" shall have the meaning given in Section 15 (Definitions) of the ETSI Rules of Procedure, 30 November 2011 (attached as Exhibit C).

I. "Final Ruling" means a decision by a Court from which no further appeals or reconsideration may be made.

J. "FRAND Commitment" means a commitment to an SSO to license one or more Patent Claims Essential to a Standard on either royalty-free or fair, reasonable and non-discriminatory terms (or reasonable and non-discriminatory terms) pursuant to the policies of such SSO. FRAND Commitments include, but are not limited to:

1. An undertaking to grant irrevocable licenses on fair, reasonable, and non-discriminatory terms and conditions to Essential IPR pursuant to the Intellectual Property Rights Policy of the European Telecommunications Standards Institute ("ETSI");

2. An Accepted Letter of Assurance as defined in the IEEE-SA Standards Board Bylaws of the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") to the extent the signatory of such assurance has selected option 1(a), 1(b) or 1(c) as they appear on the IEEE form Letter of Assurance posted on the IEEE website as of the date this Order is issued (or amended options substantially equivalent thereto); and

3. A General Patent Statement and Licensing Declaration, or Patent Statement and Licensing Declaration, submitted to the Telecommunication Standardization Sector of the International Telecommunication Union ("ITU") pursuant to the Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC issued jointly by the International Electrotechnical Commission, the International Organization for Standardization and the International Telecommunication Union, to the extent that the declarant has selected option 1 or 2 as they appear on the form Declarations published on the ITU website as of the date this Order is issued (or amended options substantially equivalent thereto).

K. "FRAND Patent" means a Patent Claim solely to the extent such Patent Claim is subject to a FRAND Commitment. A Patent Claim shall be considered a FRAND Patent only

with respect to the practice of such claim implementing the Standard for which the relevant FRAND Commitment was made, and not with respect to the practice of such claim in any other way outside the scope of the relevant FRAND Commitment.

L. "FRAND Terms Letter" means the letter attached as Exhibit B to this Order, in which Respondents make a binding irrevocable commitment to license the Potential Licensee's relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory on the condition that the Potential Licensee also make a binding commitment to license Respondents' relevant FRAND Patents on terms that are fair, reasonable and non-discriminatory.

M. "Infringement of (or Infringing) a FRAND Patent" means a claim that a FRAND Patent is infringed based on the alleged infringer's compliance with a Standard for which a FRAND Commitment including the FRAND Patent has been made.

N. "JAMS" means JAMS, a private alternative dispute resolution provider with headquarters at 1920 Main Street, Suite 300, Irvine, CA 92614, www.jamsadr.com.

O. "License Agreement" means ~~an agreement to license patents that if executed would form~~ a complete, binding, enforceable agreement between the signatories to license the patents included in such agreement.

P. "Offer to Arbitrate" means a binding written offer, substantially in the form of Exhibit D to this Order, delivered pursuant to the terms of Paragraph IV.B.2. of this Order to use Binding Arbitration to establish a License Agreement.

Q. "Offer to License" means a binding written offer delivered pursuant to Paragraph IV.B.1. of this Order that contains either a proposed License Agreement or a full description of all material commercial terms Respondents propose be included in a License Agreement, including but not limited to, royalties, other financial terms, defensive suspension or termination provisions, and any limitations on the scope or field of use of any intellectual property to be included in a ~~proposed~~ License Agreement.

R. "Patent Claim" means one or more claims in issued patents or pending patent applications issued or pending in the United States or anywhere else in the world.

S. "Potential Licensee" means a Third Party allegedly Infringing a FRAND Patent.

T. "Qualified Arbitration Organization" means the following organizations and rules: (i) the AAA pursuant to its Commercial Arbitration Rules, or (ii) JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; or, if the dispute involves a party domiciled outside the United States, (iii) the AAA's ICDR pursuant to its International Arbitration Rules; (iv) JAMS pursuant to its International Arbitration Rules; or (v) WIPO pursuant to its WIPO Arbitration Rules.

U. "Qualified Escrow Agent" means a neutral Third Party selected by the party required to place funds in escrow who has prior experience as a neutral escrow agent and is not rejected by the arbitrator.

V. "Qualified Offers" mean an Offer to License and an Offer to Arbitrate, both of which comply with the terms of Paragraphs IV.B. and IV.D. of this Order.

W. "Qualified Recipient(s)" means (i) outside legal counsel actively representing the Potential Licensee in connection with the licensing of or litigation concerning Respondents' FRAND Patents; or (ii) chief executive officer and, if known to Respondent, general counsel, outside legal counsel or primary contact with Respondent with respect to patent licensing.

X. "Qualified Request for a FRAND Determination" means a Request for a FRAND Determination that (i) is the first such Request filed after the date this Order was issued by a Potential Licensee against either Respondent that includes FRAND Patents Essential to a particular Standard, (ii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was on Respondent's motion for lack of personal jurisdiction or improper venue, or (iii) is a Request for a FRAND Determination filed within sixty (60) days of the dismissal of a prior Request that included the same Standard, if the dismissal was without prejudice and both Requests were filed in the same judicial district (and division, if applicable).

Y. "Reciprocity" as to an offer to license FRAND Patents for a particular Standard or Standards means "reciprocity" as defined in the FRAND Commitment or as defined by the SSO to which a FRAND Commitment covering the Standard has been made; or if not defined in the FRAND Commitment or by the relevant SSO, Reciprocity shall mean conditioning an offer to license FRAND Patents Essential to a Standard on receiving a cross-license to the licensee's FRAND Patents Essential to the same Standard under terms and conditions consistent with the licensee's FRAND Commitments covering such patents; provided that, if the relevant FRAND Commitment of either Respondents or a Potential Licensee commits to providing a royalty-free license based on reciprocity, such term shall be interpreted as conditioning the offer of a royalty-free license on receiving a royalty-free cross-license to FRAND Patents Essential to the same Standard.

Z. "Request for a FRAND Determination" means a request filed in any United States District Court of competent jurisdiction that the court determine at least the royalty terms of a global license for use of Respondents' FRAND Patents Essential to a Standard, to the extent the use of the relevant FRAND Patents is not covered by an existing license.

AA. "Standard" means a standard published by an SSO, including mandatory and optional implementations provided in such standard. Standards include, but are not limited to, cellular wireless communication standards such as GSM, EDGE, UMTS and LTE (published by ETSI); the 802.11 WLAN standards (published by IEEE); and/or the H.264 video compression standards, CDMA2000, or EV-DO standards (published by ITU Telecommunications Standardization Sector).

BB. "SSO" means a standard-setting organization, *i.e.*, an organization that produces and/or maintains standards or specifications under a defined process. SSOs include but are not limited to, the European Telecommunications Standards Institute ("ETSI"), the Institute

of Electrical and Electronics Engineers ("IEEE"), and the International Telecommunication Union ("ITU").

CC. "Third Party" means an individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, other than Respondents, and includes in each case the direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures of the first person or entity.

DD. "WIPO" means the World Intellectual Property Organization Arbitration and Mediation Center, an international not-for-profit alternative dispute resolution provider based at 34 chemin des Colombettes, 1211 Geneva 20, Switzerland www.wipo.int/amc.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall not revoke or rescind any FRAND Commitment unless:

1. all Standards for which such FRAND Commitment was made have been finally rejected or withdrawn; or

2. Respondents no longer have any interest in FRAND Patents covered by such FRAND Commitment and revoking or rescinding the FRAND Commitment will not interfere with Respondents' obligations under Paragraph V.B. below by *inter alia* altering the FRAND Commitment for any FRAND Patent sold or transferred by Respondent to a Third Party; or

3. all FRAND Patents covered by such FRAND Commitment have expired or been determined to be unenforceable by a Final Ruling of a Court;

PROVIDED THAT nothing in this Order shall (i) restrict Respondents' exercise of an otherwise lawful right to suspend or terminate a license or covenant pursuant to its terms; (ii) require Respondents to give a FRAND Commitment with respect to any Standard or proposed Standard; or (iii) restrict Respondents' right to withdraw or modify a FRAND Commitment if such withdrawal or modification is expressly permitted by the SSO to which the FRAND Commitment was made.

B. Respondents shall cease and desist from directly or indirectly making any future claims for Covered Injunctive Relief based on alleged Infringement of a FRAND Patent except as permitted under this Order.

C. Respondents shall not obtain or enforce Covered Injunctive Relief based on a claim of alleged Infringement of a FRAND Patent that is pending on the date this Order is issued, unless and until Respondents have made Qualified Offers to the Potential Licensee against whom the Covered Injunctive Relief is sought. ~~The foregoing means that it~~It shall be a violation of this Order if Covered Injunctive Relief based on a claim of alleged

Infringement of a FRAND Patent is enforced before Respondents make the Qualified Offers and the time periods specified in Paragraph IV.B. of this Order have lapsed.

D. Respondents are prohibited from obtaining or enforcing Covered Injunctive Relief (i) during the pendency of a Request for a FRAND Determination that was filed before the date this 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 this Order, or (iii) after a Potential Licensee accepts Respondents' Offer to Arbitrate.

E. Nothing in this Order shall prohibit Respondents from seeking Covered Injunctive Relief for alleged Infringement of a FRAND Patent against a Potential Licensee who:

1. is outside the jurisdiction of the United States District Courts; a Potential Licensee shall be considered within the jurisdiction of the United States District Courts if the Potential Licensee itself or any parent or other entity with control over such Potential Licensee is within the jurisdiction of the United States District Courts;

2. has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms; PROVIDED THAT for the purposes of this paragraph, challenging the validity, value, Infringement or Essentiality of an alleged infringing FRAND Patent does not constitute a statement that a Potential Licensee will not license such FRAND Patent;

3. refuses to enter a License Agreement covering the FRAND Patent on terms that have been set in the Final Ruling of a Court or through Binding Arbitration; or

4. does not provide the written confirmation requested in a FRAND Terms Letter within thirty (30) days of when the FRAND Terms Letter was delivered to the Qualified Recipient(s) of the Potential Licensee; PROVIDED, HOWEVER, that Respondents shall not assert in any Court that such written confirmation constitutes a specific agreement to license on any particular terms.

III.

IT IS FURTHER ORDERED that Respondents and the Potential Licensee may agree to enter into the procedure outlined in this Paragraph III, or any other mutually agreed to procedure that specifically references this 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 (hereinafter the "Relevant License Agreement"):

A. Respondents and Potential Licensee agree to negotiate, for a period of at least six (6) months, to determine the terms of a Relevant License Agreement;

B. At any time after six months, at the option of Respondents or within sixty (60) days of the request of Potential Licensee, Respondents shall send the Potential Licensee a proposed Relevant License Agreement, which if executed will form a binding license agreement;

C. Within sixty (60) days after Respondents deliver the Relevant License Agreement to the Potential Licensee, the Potential Licensee shall either:

1. execute the Relevant License Agreement, or

2. designate all terms of the proposed Relevant License Agreement that the Potential Licensee contends are inconsistent with Respondents' FRAND Commitments ("Contested Terms"), accept all other terms ("Accepted Terms"), for each Contested Term propose an alternative that the Potential Licensee contends is consistent with the FRAND Commitments of Respondents and, if applicable, of the Potential Licensee ("Relevant FRAND Commitments"), and elect to have the Contested Terms resolved through a Request for a FRAND Determination or Binding Arbitration, the purpose of which shall be to determine whether the Contested Terms are consistent with the Relevant FRAND Commitments and, to set the appropriate requirements for terms found inconsistent with the Relevant FRAND Commitments;

D. It is intended that the Request for a FRAND Determination or Binding Arbitration shall establish the Contested Terms, and that these terms, together with the Accepted Terms, shall constitute a binding Relevant License Agreement, which if executed will form a binding license agreement. Except to the extent inconsistent with the preceding sentence, nothing herein shall restrict the ability of any party from presenting evidence or making arguments in Binding Arbitration or in the Request for a FRAND Determination, including without limitation arguments by Respondents that the District Court hearing the Request for a FRAND Determination cannot or should not hear the action on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate, or arguments regarding validity, Essentiality, Infringement or the value of the patents included in the Relevant License Agreement;

E. If the Potential Licensee elects to resolve the Contested Terms through a Qualified Request for a FRAND Determination, and the United States District Court in which such Request was filed determines on its own motion or on Respondents' motion that it cannot issue a ruling on the Contested Terms, then the Respondents and the Potential Licensee shall resolve the Contested Terms through Binding Arbitration, which may be filed by either Respondents or Potential Licensee within sixty (60) days after the dismissal of the Qualified Request for a FRAND Determination.

F. It shall be a violation of this Order for Respondents to file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief in a manner that violates the terms of any agreement entered into with a Potential Licensee pursuant to this Paragraph III.

IV.

IT IS FURTHER ORDERED that in Respondents' activities in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing of Respondents' FRAND Patents, Respondents shall not file a claim seeking, or otherwise obtain or enforce, Covered Injunctive Relief based on the alleged Infringement of a FRAND Patent

against any Potential Licensee who has not entered into an agreement pursuant to Paragraph III above:

A. If filing a claim for, or otherwise obtaining or enforcing, the Covered Injunctive Relief violates the terms of any written agreement with the Potential Licensee.

B. Until after Respondents have taken the following actions:

1. At least six (6) months prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee a copy of this Order and an Offer to License (to the extent not already licensed) the FRAND Patent and Respondents' other FRAND Patents Essential to the same Standard or Standards (the "Covered Standards"). Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any Patent Claim not Essential to a Standard practiced by the Potential Licensee, or to license any other patents or intellectual property (any offered terms and conditions that are for additional patents or intellectual property shall not be considered part of the Offer to License);

2. At least sixty (60) days prior to pursuing Covered Injunctive Relief, Respondents shall deliver to the Qualified Recipient(s) of the Potential Licensee an Offer to Arbitrate the terms of a License Agreement to the Respondents' FRAND Patents Essential to the Covered Standards, and, if seeking Reciprocity, to the Potential Licensee's FRAND Patents Essential to the Covered Standards. ~~If the Potential Licensee accepts Respondents' Offer to Arbitrate, Respondents shall file for Binding Arbitration on~~The Offer to Arbitrate shall include a binding and irrevocable undertaking that Respondents shall enter a License Agreement on terms and conditions established by the arbitrator and pay all applicable royalties established under the agreement as if they had been in effect as of the date Respondents file for arbitration. Respondents' may condition the Offer to Arbitrate on the Potential Licensee making the same binding and irrevocable undertaking. Respondents shall offer Binding Arbitration under the following terms and conditions, or on such other terms and conditions as may be mutually agreed to by the parties:

a) When the Potential Licensee accepts Respondents' Offer to Arbitrate, the Potential Licensee shall state whether it demands Reciprocity;

b) ~~When~~ Respondents shall file for arbitration ~~they shall~~and deliver to the Qualified Recipient(s) of the Potential Licensee a proposed License Agreement for the Respondents' FRAND Patents Essential to the Covered Standards, and, if either party is seeking Reciprocity, to the Potential Licensee's FRAND Patents essential to the Covered Standards, in each case to the extent not already licensed;

~~c) At or prior to the commencement of arbitration, the Respondents and the Potential Licensee shall file with the Arbitrator a binding and irrevocable undertaking that each shall enter a License Agreement on terms and~~

~~conditions established by the arbitrator and pay all royalties established under the agreement as if the License Agreement had been effected as of the date arbitration was commenced;~~

~~d)~~c) Within sixty (60) days of ~~the commencement of arbitration,~~receiving the proposed License Agreement pursuant to Paragraph IV.B(2)(c), the Potential Licensee shall designate all terms of the License Agreement that it contends are inconsistent with Respondents' FRAND Commitments, propose additional or alternative terms the Potential Licensee believes are necessary for the License Agreement to comply with the FRAND Commitments of Respondents, and if applicable the Potential Licensee's FRAND Commitments, and agree to inclusion of all other terms in the final License Agreement;

~~e)~~d) The arbitrator shall determine whether the terms contested by the Potential Licensee are consistent with the FRAND Commitments of Respondents, and if applicable, the Potential Licensee. The arbitrator shall revise any terms that it finds are not consistent with the relevant FRAND Commitments;

~~f)~~e) The arbitrator shall set the terms of the final License Agreement; and

~~g)~~f) Within thirty (30) days after the arbitrator sets the terms of a final License Agreement, the parties shall enter into and execute a License Agreement;

PROVIDED THAT, if the procedures for Binding Arbitration as set forth in this Order conflict with the mandatory dispute resolution rules of an SSO to which both Respondent and a Potential Licensee are subject, either Respondent or the Potential Licensee may require that the relevant provisions of the License Agreement be determined pursuant to such mandatory dispute resolution rules.

C. If the Potential Licensee has filed a Qualified Request for a FRAND Determination covering Respondents' FRAND Patents Essential to the Covered Standards no more than seven (7) months after Respondents delivered the Offer to License or three (3) months after Respondents delivered the Offer to Arbitrate, whichever is later, and such Action has not been dismissed upon a Final Ruling; PROVIDED THAT not less than thirty (30) days after the Potential Licensee files the Qualified Request for a FRAND Determination, Respondents may send a proposed License Agreement and a Confirmation Letter (attached as Exhibit A) to the Qualified Recipient(s) of the Potential Licensee. If the Potential Licensee does not deliver written acceptance of the terms in the Confirmation Letter to the recipient designated by Respondents in the Confirmation Letter within sixty (60) days of receipt of the Confirmation Letter, Respondents shall be relieved of their obligations not to file a claim for, or seek or enforce, Covered Injunctive Relief.

D. The Offer to License and an Offer to Arbitrate shall be irrevocable for the following periods:

1. An Offer to License shall be irrevocable until the date of delivery of an Offer to Arbitrate.

2. An Offer to Arbitrate shall be irrevocable until thirty (30) days after Respondents file an Action for Covered Injunctive Relief based on alleged infringement of one or more FRAND Patents included in the Offer to Arbitrate, PROVIDED HOWEVER, that with respect to Actions containing requests for Covered Injunctive Relief that are pending on the date this Order is issued, the Offer to Arbitrate shall be irrevocable until two (2) months after Respondents deliver an Offer to Arbitrate or, if there is a pending Request for a FRAND Determination covering the same FRAND Patent that is the basis of the request for Covered Injunctive Relief, until there is a Final Ruling on the Request for a FRAND Determination.

E. Notwithstanding any other provision of this Order, nothing herein shall:

1. prevent or restrict the Potential Licensee and Respondents from negotiating, arbitrating or entering into any License Agreement involving FRAND Patents on any terms or in any manner that is mutually agreed to by the Potential Licensee and Respondents;

2. prevent or restrict Respondents from enforcing any License Agreement entered into prior to the effective date of this Order;

3. as to a Potential Licensee, apply to Respondents' FRAND Patents to the extent already licensed to such Potential Licensee;

4. prevent or restrict Respondents from pursuing relief, claims or defenses other than Covered Injunctive Relief, including damages for infringement and potential enhancements for willful infringement;

5. restrict any party from arguing in any Request for a FRAND Determination that the District Court cannot or should not hear this action on jurisdictional or justiciability grounds or that an alternative forum would be more appropriate; or

6. restrict any party from making arguments in any Request for a FRAND Determination or in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding.

F. Notwithstanding any other provision of the Order, Respondents shall be permitted to file a claim seeking, or otherwise obtain and enforce, Covered Injunctive Relief against a Potential Licensee, if the Potential Licensee is seeking or has sought on or after the date of this Order, Covered Injunctive Relief against a product (including software), device or service that is made, marketed, distributed or sold by Respondents based on Infringement of the Potential Licensee's FRAND Patent ***unless*** prior to seeking the Covered Injunctive Relief, the Potential Licensee does one of the following:

1. makes Qualified Offers to the party whose infringement forms the basis for the claim of Covered Injunctive Relief ("the alleged infringer") and the alleged infringer has refused both offers; OR

2. obtains a Final Ruling on a Request for a FRAND Determination to which the alleged infringer was a party that sets at least the royalty terms for a license to the Standard for which the allegedly infringed FRAND Patents are Essential.

G. The fact that the final terms determined through Binding Arbitration or a Request for a FRAND Determination may differ from the terms Respondents proposed in an Offer to Arbitrate or an Offer to License shall not, by itself, constitute a violation of this Order.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within sixty (60) days of receiving a written request by a Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards ("Requested License"), provide a written response and begin negotiation with such Potential Licensee for the Requested License. Respondents' written response pursuant to this paragraph shall be in good faith compliance with its FRAND Commitments and all other provisions of this Order.

B. Respondents shall not sell or assign any FRAND Patent to any Third Party unless such Third Party agrees: (i) to become a successor to Respondents' FRAND Commitments to the extent the FRAND Patent is subject to such FRAND Commitments, (ii) not to seek Covered Injunctive Relief on the basis of Infringement of the FRAND Patent except to the extent Respondents would be permitted to seek such Covered Injunctive Relief by the terms of this Order, and (iii) to condition further assignment of the FRAND Patent on the assignee agreeing to the terms of this subparagraph V.B.

VI.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order has been issued, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondents shall include in its report, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including 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 this Order.

B. Beginning twelve (12) months after the date this Order has been issued, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has

complied with this Order. Respondents shall include in its report, among other things that are required from time to time, a description of all pending claims for Covered Injunctive Relief based on Infringement of a FRAND Patent and a statement of how such claims comply with the requirements of this Order, and a description of each sale or assignment of a FRAND Patents and an assurance that such sale or assignment complies with Paragraph V.B. of this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of either Respondent;

B. Acquisition, merger or consolidation of Respondents; or

C. any other change in the Respondents including, but not limited to the assignment and the creation or dissolution of other subsidiaries, if such change might affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at its expense; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on _____ (ten years after its Issuance).

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

In re Motorola Mobility LLC and Google Inc.

Exhibit A

Confirmation Letter

Exhibit A

[DATE]

[COUNSEL REPRESENTING POTENTIAL LICENSEE IN QUALIFIED REQUEST FOR A FRAND DETERMINATION]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC. This letter is required by the Federal Trade Commission's Decision and Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"), to which Google Inc. and Motorola Mobility agreed as a settlement with the FTC. Your court action [ACTION] is a Qualified Request for a FRAND Determination under the terms of the Order. As required by the Order, attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

I am also sending a proposed License Agreement that Google is ready and willing to execute. The proposed License Agreement grants a global license to all Google's FRAND Patents that are Essential to the Standard(s) included in [ACTION], specifically [IDENTIFY STANDARDS] to the extent not already licensed. [If Google is seeking reciprocity, add "Google is seeking Reciprocity as permitted in Google's relevant FRAND Commitments. Therefore, the proposed License Agreement also includes a license to all [POTENTIAL LICENSEE'S] FRAND Patents that are Essential to the same Standard(s)."]

Under the Order, Google generally cannot seek an injunction or exclusion order against [POTENTIAL LICENSEE] while the above action is ongoing. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and the Potential Licensee make the following binding commitments that cannot be revoked:

1. Google and the Potential Licensee will abide by all licensing and royalty terms set by a Final Ruling in [ACTION];
2. Google and the Potential License will pay royalties set by a Final Ruling in [ACTION] as though the license for which the royalties are set was in place from the date the action was filed; and
3. Within sixty (60) days of receiving or sending this letter, as applicable, Google and the Potential Licensee will identify in writing to the other party all terms in the attached proposed License Agreement that the sending party is willing to include in a

final License Agreement that also includes the terms and royalties set by a Final Ruling in [ACTION].

Nothing in this letter restricts the ability of any party to present any evidence or make any legal arguments in [ACTION], or any other forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents included in the proposed License Agreement or at issue in [ACTION], or any arguments that the court cannot or should not hear [ACTION] on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 60 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE ORDER.**

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit B

FRAND Term Letter

Exhibit B

[DATE]

[QUALIFIED RECIPIENT(S) OF POTENTIAL LICENSEE]

[POTENTIAL LICENSEE]

Dear [COUNSEL],

I am sending this letter on behalf of Google Inc. and its wholly-owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the Federal Trade Commission issuing an Order in *In the Matter of Motorola Mobility LLC and Google Inc.,* Docket No. C-xxxx ("the Order"). Attached is copy of the Order. All capitalized terms in this letter refer to terms defined in the Order. **Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Under the Order, Google generally cannot seek an injunction or exclusion order against you for using Google's patented technology to comply with a Standard published by a standard-setting organization such as ETSI, IEEE or ITU if Google has made a FRAND Commitment covering that technology and you are willing and able to pay Google fair and reasonable royalties. However, Google can demand that, **as a condition of not seeking an injunction or exclusion order**, Google and you agree to the following binding commitments that cannot be revoked:

> Google and the [POTENTIAL LICENSEE] agree to license each other's patents that are Essential to complying with [STANDARD OR STANDARDS] that each uses on terms that are fair and reasonable and that comply with each party's FRAND Commitments.

Nothing in this letter restricts the ability of you or Google to present any evidence or make any legal arguments in any forum, including without limitation, arguments regarding validity, Essentiality, infringement or the value of any patents, or any arguments that any forum court cannot or should not hear a particular matter on jurisdictional or justiciability grounds or because an alternative forum would be more appropriate.

Please Note: IF YOU DO NOT SIGN THIS LETTER AND DELIVER IT TO [NAME, ADDRESS AND PHONE NUMBER OF GOOGLE'S DESIGNATED RECIPIENT] **WITHIN 30 DAYS FROM RECEIPT, I.E. BY _____, GOOGLE MAY BE ABLE TO SEEK**

AN INJUNCTION OR EXCLUSION ORDER AGAINST YOU WITHOUT VIOLATING THE FTC's ORDER.

Sincerely,

[QUALIFIED REPRESENTATIVE]

GOOGLE INC.

COUNTER-SIGNATURE

_____

[NAME]

[CHIEF EXECUTIVE OFFICER, GENERAL COUNSEL OR OUTSIDE COUNSEL]

[POTENTIAL LICENSEE]

WHEN SIGNED BY BOTH GOOGLE AND [POTENTIAL LICENSEE] THIS LETTER SHALL CONSTITUTE A BINDING AND IRREVOCABLE COMMITMENT BY BOTH PARTIES TO ABIDE BY THE TERMS OF THIS LETTER

In re Motorola Mobility LLC and Google Inc.

Exhibit C

Section 15 (Definitions)

ETSI Rules of Procedure, 30 November 2011

In re Motorola Mobility LLC and Google Inc.

Exhibit D

Form Offer to Arbitrate

Exhibit [D] - Form of Offer to Arbitrate

[DATE]

[QUALIFIED RECIPIENT(S)]

[POTENTIAL LICENSEE]

Dear [QUALIFIED RECIPIENT(S)]:

I am sending this letter on behalf of Google Inc. and its wholly owned subsidiary Motorola Mobility LLC ("Google"). The Federal Trade Commission and Google reached a settlement that resulted in the FTC issuing an Order *In the Matter of Motorola Mobility LLC and Google Inc.*, Docket No. C-xxxx ("the Order"). A copy of the Order is attached. **All capitalized terms in this letter that are not specifically defined herein refer to terms defined in the Order and have the definitions given therein. Please read the Order carefully. If anything in this letter conflicts with the terms in the Order, the terms in the Order apply.**

Google hereby offers to enter into Binding Arbitration with [POTENTIAL LICENSEE] (the "Company") pursuant to the terms of the Order, before your choice of Qualified Arbitration Organization (or such other arbitrators or arbitration organizations as shall be separately agreed to in writing by Google and the Company). **If you accept this offer within the next sixty (60) days, under the Order Google cannot seek an injunction or exclusion order against you based on infringement of the patents included in the Binding Arbitration.** (You may still be able to accept this offer after that because it will remain open for a further period of time as set forth below.)

[**IF SEEKING RECIPROCITY:** The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company cross-licensing our respective Patents that are Essential to the following Standards:]

[**IF NOT SEEKING RECIPROCITY**: The purpose of the Binding Arbitration would be to establish a License Agreement between Google and the Company granting the Company a license under Google's Patents (or, at the Company's option, a License Agreement cross-licensing our respective Patents) that are Essential to the following Standards:]

[LIST STANDARDS HERE]

(the "Covered Standards").

Notwithstanding their Essentiality to the Covered Standards, the License Agreement shall ***exclude*** any Patents that were licensed by Google to the Company, or by the Company to

Google, under a separate license agreement that was effective as of the date of this Offer, in each case to the extent already licensed under such prior agreement.

[**IF SEEKING RECIPROCITY**: Google is interested in obtaining a cross-license to all of the Company's Patents that are Essential to the Covered Standards, but Google's participation in the Binding Arbitration is conditioned only on "Reciprocity" for each of the Covered Standards, as that term is defined in the Order. If the Company does not want to include Essential Patents that are not included within the scope of Reciprocity as defined in the Order within the arbitrated License Agreement, it need not do so and may still accept this Offer.]

Google's willingness to enter into such a License Agreement is further expressly conditioned upon: (i) the permitted field of use for the patents licensed under the License Agreement being limited to, unless Google and the Company separately agree otherwise in writing, uses covered by Google's and the Company's respective FRAND Commitments; and (ii) the right of the selected arbitrator(s) to require reasonable security, including an ongoing escrow of funds, from either party if the arbitrator determines such security to be necessary to ensure that such party will fulfill the financial terms of the arbitrated License Agreement (such escrow to be implemented in a manner consistent with the terms of the Order).

The Binding Arbitration would be conducted according to the process set forth in the Order, as modified by subsequent agreement between Google and the Company.

[IF GOOGLE AND THE COMPANY ARE MEMBERS OF SSO WITH MANDATORY ARBITRATION PROVISIONS, INCLUDE LANGUAGE REFERRING TO OPTION TO USE THOSE PROVISIONS HERE.]

To summarize—but without any intention to alter or supersede the terms of the Order, which continue to govern—the basic process would be:

1. Within sixty (60) days of accepting this Offer of Binding Arbitration, the Company would select one of the Qualified Arbitration Organizations ("QAO"s) named in the Order to conduct the binding arbitration (unless Google and the Company have earlier agreed to conduct the Binding Arbitration in a different arbitral forum) (the "Administrator"). If the Company does not select a QAO by that deadline, Google will be entitled to select one of the QAOs to serve as Administrator.

2. Within thirty (30) days of the Company's acceptance of this Offer of Binding Arbitration, Google and the Company would mutually agree on the number and manner of selection of the arbitrators and the language and location of the arbitration. If we cannot reach agreement on one or more of those items, they will be determined according to default rules set forth in the Order.

3. Within a reasonable time after an Administrator is selected, we will initiate an arbitration proceeding before the selected Administrator. At that time, we will also provide the Company with a proposed License Agreement that will serve as the basis for the Arbitration.

4. The Company will have sixty (60) days from receipt of the proposed License Agreement to (i) designate all terms of the proposed License Agreement that it contends are inconsistent with Google's FRAND Commitments, (ii) propose additional or alternative terms that the Company believes are necessary for the proposed License Agreement to comply with Google's and the Company's respective FRAND Commitments, and (iii) agree to the inclusion of all other terms of the proposed Agreement in the License Agreement.

5. After receiving evidence and argument from Google and the Company in accordance with the relevant rules and any relevant agreement between Google and the Company, the arbitrators will determine whether the terms contested by the Company are consistent with Google's FRAND Commitments and, if applicable, the Company's FRAND Commitments, and revise any terms that they find to be inconsistent. This does not restrict either party from making arguments in Binding Arbitration regarding the validity, Essentiality, Infringement or value of the patents at issue in such proceeding, or the ability of the arbitrator to consider these arguments, or to follow existing legal standards and burdens of proof.

6. The revised terms, together with those terms that the arbitrators found to be consistent with the parties' respective FRAND Commitments, those terms that the Company did not challenge (and thereby agreed to), and any additional terms agreed to by Google and the Company will become the Final License Agreement, which both Google and the Company will execute within thirty (30) days of receipt from the arbitrators.

This Offer of Binding Arbitration will remain open until it is withdrawn by Google in writing by written notice to the Company.

[**For pending cases:** Pursuant to section IV.D.2 of the Order, Google will not withdraw or terminate this Offer until two months after the date of this Offer or until there is a Final Ruling on any Request for a FRAND Determination brought by the Company that is pending as of the date the FTC Order issues and that relates to the Covered Standards.]

[**For future cases:** Pursuant to the Order, Google will not withdraw or terminate this Offer sooner than thirty (30) days after Google seeks Covered Injunctive Relief against the Company based on the alleged infringement of patents covered by the Offer, provided that Google may withdraw this Offer upon the expiration or termination of the Order.]

If you wish to accept this Offer of Binding Arbitration, please execute the signature block below and return it to:

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: General Counsel

Acceptance of this Offer will establish a binding arbitration agreement between Google and the Company, and a binding and irrevocable undertaking that Google and the Company will (i) enter into a License Agreement on terms and conditions established by the Arbitrators as described herein; and (ii) pay to the other party all royalties established under the License Agreement as if the License Agreement had been effective as of the date Google files for arbitration. The agreement and the undertaking shall be enforceable by either party to the greatest extent permitted by law.

Sincerely,

[SIGNATORY]

[TITLE]

on behalf of Google Inc. and Motorola Mobility LLC

On behalf of the Company named above (including its direct and indirect wholly-owned subsidiaries and majority-owned and controlled subsidiaries and joint ventures), I hereby accept Google's Offer of Binding Arbitration under the terms set forth above and in the FTC Order, receipt of a copy of which is hereby acknowledged.

Name: _____

Title: _____

Date: _____

Kelly, Andrea

From: Huber, Susan
Sent: Tuesday, May 21, 2013 9:18 AM
To: 'Harkrider, John D.'; Widnell, Nicholas; Bayer Femenella, Peggy
Cc: 'Steinthal, Russell M.'; 'Barstad, Eric P.'
Subject: RE: Call Tomorrow

John –

3:30 pm eastern today (Tuesday) works for the FTC. We can use this call-in:

(b)(7)(E)

Talk to you then,

Susan

Susan Huber
Federal Trade Commission
202.326.3331

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, May 20, 2013 5:14 PM
To: Huber, Susan; Widnell, Nicholas; Bayer Femenella, Peggy
Cc: Steinthal, Russell M.; Barstad, Eric P.
Subject: Call Tomorrow

Please reply to this string – earlier message had the wrong Nick.

Will 3:30pm work?

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

****

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written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Monday, May 20, 2013 5:13 PM
To: Huber, Susan; Nicholas Williams (nick@omnikino.com); Bayer Femenella, Peggy
Cc: Steinthal, Russell M.
Subject: Can we talk at 3:30pm?

John D. Harkrider
Partner
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New York, New York 10036
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****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Tuesday, June 25, 2013 2:32 PM
To: Huber, Susan
Cc: Bayer Femenella, Peggy
Subject: RE: Google

Close enough :-)

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Can't promise cookies but I got you a break-out room.

Susan

Susan Huber
Federal Trade Commission
202.326.3331

-----Original Message-----
From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Tuesday, June 25, 2013 11:23 AM
To: Huber, Susan
Cc: Bayer Femenella, Peggy
Subject: RE: Google

Hi Susan:

I will be at 601 at 3pm (may come with some other Axinn lawyers).

Google (Matthew Bye and Brian Blasius) are both travelling but will be available by phone so would be great to have a breakout room. I will be able to give you our recommendation in the room but final approval will be from upper management after we hammer everything out (in the same way that yours will be from the Commission).

>John D. Harkrider
>Partner
>Axinn | Veltrop | Harkrider | LLP
>114 West 47th Street
>New York, New York 10036
>(212) 728-2210
>jdh@avhlaw.com
>www.avhlaw.com
>

-----Original Message-----
From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Tuesday, June 25, 2013 7:06 AM

To: Harkrider, John D.
Cc: Bayer Femenella, Peggy
Subject: Google

John,

Peggy and I can meet on Thursday at 3:00 but we have a hard stop at 4:30. Can you come to 601?

I am planning on coming to agreement on final wording - at least among those in the room. Let me know if you can get authority to agree for Google and I will do the same at my end (not for the Commissioners of course).

S

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, June 26, 2013 7:49 AM
To: Huber, Susan
Cc: Bayer Femenella, Peggy
Subject: RE: Google

Sorry about that Susan. I am checking with the troops.

>John D. Harkrider
>Partner
>Axinn | Veltrop | Harkrider | LLP
>114 West 47th Street
>New York, New York 10036
>(212) 728-2210
>jdh@avhlaw.com
>www.avhlaw.com
>

-----Original Message-----
From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Wednesday, June 26, 2013 7:04 AM
To: Harkrider, John D.
Cc: Bayer Femenella, Peggy
Subject: Google

I believe cob tuesday has passed globally, and I don't see the google revisions in my box. What is the status?

Susan

****

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****

From:	Huber, Susan
To:	"Steinthal, Russell M."; "John D. Harkrider (jdh@avhlaw.com)"
Cc:	Ducore, Daniel P.; Widnell, Nicholas; Bayer Femenella, Peggy; Seidman, Mark
Subject:	Google Modifications
Date:	Tuesday, June 18, 2013 11:11:59 AM
Attachments:	2013.06.18.FTC.Exh.D.docx 2013.06.18.FTC.DnO.Modifications.docx

---

John and Russell,

Attached are staff's proposed modifications to the Order. These incorporate the proposed changes sent yesterday.

Susan

Kelly, Andrea

From: Huber, Susan
Sent: Wednesday, July 03, 2013 10:51 AM
To: John D. Harkrider (jdh@avhlaw.com); Russell M. Steinthal (rms@avhlaw.com)
Cc: Bayer Femenella, Peggy
Subject: Google Modifications

John and Russell,

Any update on when you'll get back to us on the modifications?

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331

From: Huber, Susan
To: "jdh@avhlaw.com"
Cc: Bayer Femenella, Peggy; "rms@avhlaw.com"; Ducore, Daniel P.
Subject: Re: Google Order Modifications
Date: Monday, June 03, 2013 6:21:04 PM

Ok with me. S

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, June 03, 2013 06:12 PM
To: Huber, Susan
Cc: Bayer Femenella, Peggy; Steinthal, Russell M. <RMS@avhlaw.com>; Ducore, Daniel P.
Subject: RE: Google Order Modifications

Hi guys:

I have a 10:00am on Wednesday that should be over by 10:30. Would that work for you?

John D. Harkrider
Partner
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New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Monday, June 03, 2013 5:22 PM
To: Harkrider, John D.
Cc: Bayer Femenella, Peggy; Steinthal, Russell M.; Ducore, Daniel P.
Subject: Re: Google Order Modifications

Unfortunately I am tied up tomorrow. On Wed Peggy and I could do a call between 8:30 and 11a. On thursday we could do a call between 1 and 4.

Susan

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, June 03, 2013 04:37 PM
To: Huber, Susan
Cc: Bayer Femenella, Peggy; Steinthal, Russell M. <RMS@avhlaw.com>
Subject: RE: Google Order Modifications

Plus Russell

Hi Susan:

Let me know if you are free to talk tomorrow about the consent modifications.

Also wanted to let you know that the client is fine with the addition of WIPO as a QAO.

John D. Harkrider
Partner

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jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Wednesday, May 29, 2013 10:26 AM
To: Harkrider, John D.
Cc: Bayer Femenella, Peggy
Subject: Google Order Modifications

John,

Hope you had a good holiday weekend. Any thoughts on when Google will be ready to respond to the proposed Order modifications?

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331

****

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****

Kelly, Andrea

From: Huber, Susan
Sent: Wednesday, June 12, 2013 2:08 PM
To: Harkrider, John D.
Cc: Bayer Femenella, Peggy
Subject: RE: Google

Thanks for the update. Susan

Susan Huber
Federal Trade Commission
202.326.3331

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Tuesday, June 11, 2013 5:46 PM
To: Huber, Susan; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy
Subject: RE: Google

Hi Susan:

We are working on getting internal sign off at Google. We'll let you know as soon as we get it. We don't want to have it hold up your language on the issues we discussed, though, if you want to send us something that we can review.

John D. Harkrider
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jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Tuesday, June 11, 2013 1:42 PM
To: Harkrider, John D.; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy
Subject: Google

John and Russell,

Any update on when you will be able to get us your proposed language for the modifications Google is suggesting. If my notes are correct, you were going to give us proposed language for the definition of Third Party, Paragraph V.A. and a proposed form letter for the Offer to Arbitrate.

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW

Washington, DC 20850
202.326.3331

****

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****

Kelly, Andrea

From: Huber, Susan
Sent: Monday, July 08, 2013 9:01 PM
To: 'jdh@avhlaw.com'
Subject: Re: Google

Great! S

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, July 08, 2013 07:59 PM
To: Huber, Susan
Subject: Re: Google

No problem.

We have client sign off.

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Thanks for the careful read. Susan

Duplicate

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Tuesday, July 09, 2013 3:06 PM
To: Huber, Susan
Subject: RE: Google

Thanks.

John D. Harkrider
Partner
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114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Tuesday, July 09, 2013 3:02 PM
To: Harkrider, John D.
Subject: RE: Google

I should know more in a day or two. I'll call you then. Susan

Susan Huber
Federal Trade Commission
202.326.3331

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Tuesday, July 09, 2013 2:30 PM
To: Huber, Susan
Subject: RE: Google

Thanks Susan:

Any idea of when (roughly) you should hear; and any idea (roughly) how much time we will have between approval and it being public?

John D. Harkrider
Partner
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114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Tuesday, July 09, 2013 9:09 AM
To: Harkrider, John D.
Subject: RE: Google

A new version with your corrections. I will update you on where things are as I get word.

Susan

Kelly, Andrea

From: Huber, Susan
Sent: Tuesday, June 18, 2013 11:30 AM
To: 'jdh@avhlaw.com'
Subject: Re: Google Modifications

much appreciated!

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Tuesday, June 18, 2013 11:19 AM
To: Huber, Susan; Steinthal, Russell M. <RMS@avhlaw.com>
Cc: Ducore, Daniel P.; Widnell, Nicholas; Bayer Femenella, Peggy; Seidman, Mark
Subject: RE: Google Modifications

Thanks Susan:

We understand the timing pressure at the FTC and will endeavor to turn around quickly.

John D. Harkrider
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114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Tuesday, June 18, 2013 11:12 AM
To: Steinthal, Russell M.; Harkrider, John D.
Cc: Ducore, Daniel P.; Widnell, Nicholas; Bayer Femenella, Peggy; Seidman, Mark
Subject: Google Modifications

John and Russell,

Attached are staff's proposed modifications to the Order. These incorporate the proposed changes sent yesterday.

Susan

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Sunday, June 23, 2013 9:53 PM
To: Huber, Susan
Subject: RE: Google Modifications

Thanks Susan.

Back from London. I think we're looking at getting the client's views on Tuesday (possibly West Coast time).

John D. Harkrider
Partner
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New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Thursday, June 20, 2013 7:03 PM
To: Harkrider, John D.
Subject: Re: Google Modifications

Thanks John. When you get the comments please send them to both Peggy and me.

S

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Thursday, June 20, 2013 06:02 PM
To: Huber, Susan
Subject: RE: Google Modifications

Hi Susan:

I am in London presently and will be returning tomorrow afternoon. We have reviewed the mark up and have provided our comments to the client. I am checking on their reaction.

John D. Harkrider
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New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Thursday, June 20, 2013 5:18 PM
To: Harkrider, John D.
Subject: Re: Google Modifications

Hi john,

Where are you on getting back to us? I need to report back to folks.

Kelly, Andrea

From: Steinthal, Russell M. <RMS@avhlaw.com>
Sent: Monday, July 01, 2013 10:55 AM
To: Huber, Susan; Harkrider, John D.
Subject: RE: Google Modifications

Thanks, Susan.

Russell M. Steinthal
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2207
(212) 728-2201 (fax)
rms@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Monday, July 01, 2013 10:55 AM
To: Harkrider, John D.
Cc: Steinthal, Russell M.
Subject: Google Modifications

Russell and John,

Attached are the proposed modifications for the Google order. This version contains mark-ups from the last version that Google sent to us (the Order file has Exh. D attached but it is treated as a new insertion – to see the changes from the last version you must view the Exh. D. redline). I am also sending a clean version with all the FTC modifications accepted. They are all read-only versions so you'll have to save new versions to make edits.

Let me know if you have any questions. And I would really appreciate anything you can do to speed review of the proposed changes.

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, July 03, 2013 12:41 PM
To: Huber, Susan; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy
Subject: RE: Google Modifications

Thanks Susan –

We're tracking down people for their approvals (complicated by the Fourth of July holiday). We'll let you know as soon as we get approvals – which could happen today (but no promises).

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
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New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Wednesday, July 03, 2013 10:51 AM
To: Harkrider, John D.; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy
Subject: Google Modifications

John and Russell,

Any update on when you'll get back to us on the modifications?

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
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202.326.3331

****

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Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Friday, July 05, 2013 2:36 PM
To: Huber, Susan
Subject: Re: Google Modifications

Checking.

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Can I report this up? Is it subject to the Monday commentor?

S

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Friday, July 05, 2013 01:29 PM
To: Huber, Susan
Subject: RE: Google Modifications

Hi Susan:

I think we are in agreement subject to acceptable language on the SSO alternative arbitration language. Thanks for moving this forward.

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Speaking only for myself, I feel pretty confident we can figure out terminology for the SSO rules that will work for everyone.

As to the 60 days (again my perspective only): because of how we read the Order, the view here is that the time limit is "give" to Google and there is no support for requiring PLs to make that selection when they accept arbitration. Our view is that it will take PLs some time to review their options and conduct diligence on the organizations, etc. and they should be given time to do that outside the initial time frame for making the arbitration decision. To accommodate providing time for negotiating the selection of arbitrator and location of arbitration after the organization is selected, we agreed to shorten the second time period to 30 days but I suspect there will be no receptivity to further time reductions.

S

Susan Huber
Federal Trade Commission
202.326.3331

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Friday, July 05, 2013 11:14 AM
To: Huber, Susan
Subject: Re: Google Modifications

I did. Hope you did as well.

We are chasing down one more person who is on vacation and back on Monday. We are trying to get her views before she returns.

So far, the only comment we have other than the 60 days is whether we can change the reference to SSO "dispute resolution rules" to "arbitration rules," as we did in Exhibit D to deal with the possibility of the choice of forum problem we raised (eg, all disputes will be brought in national court of Mozambique).

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Hope you had a good 4th.

Where are you with this? Are there other counters or is this it?

S

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Wednesday, July 03, 2013 05:39 PM
To: Huber, Susan; Steinthal, Russell M. <RMS@avhlaw.com>
Cc: Bayer Femenella, Peggy
Subject: RE: Google Modifications

Hi,

We're still pressing as hard as we can. One point of resistance we're getting is the rationale for the 60 days to select one of three specified arbitration organizations. We've emphasized that this is important to you and part of the deal, but anything you can say to help justify it would be helpful.

Thanks.

John D. Harkrider
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(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Wednesday, July 03, 2013 10:51 AM
To: Harkrider, John D.; Steinthal, Russell M.
Cc: Bayer Femenella, Peggy
Subject: Google Modifications

John and Russell,

Any update on when you'll get back to us on the modifications?

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331

****

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Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Saturday, July 06, 2013 6:02 PM
To: Huber, Susan
Subject: Re: Google Modifications

Sorry. Yes, we are in agreement as to the modifications subject to the change regarding SSO arbitration rules.

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Yes to which question?

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Saturday, July 06, 2013 10:21 AM
To: Huber, Susan
Subject: Re: Google Modifications

Yes (sorry that took so long).

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Can I report this up? Is it subject to the Monday commentor?

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Friday, July 05, 2013 01:29 PM
To: Huber, Susan
Subject: RE: Google Modifications

Hi Susan:

I think we are in agreement subject to acceptable language on the SSO alternative arbitration language. Thanks for moving this forward.

"Huber, Susan" <SHUBER@ftc.gov> wrote:

Kelly, Andrea

From: Huber, Susan
Sent: Monday, June 17, 2013 4:13 PM
To: 'rms@avhlaw.com'
Subject: Re: Google/Motorola - Proposed Language

Thanks.

From: Steinthal, Russell M. [mailto:RMS@avhlaw.com]
Sent: Monday, June 17, 2013 04:08 PM
To: Huber, Susan
Cc: Bayer Femenella, Peggy; Harkrider, John D. <JDH@avhlaw.com>
Subject: Google/Motorola - Proposed Language

Hi Susan:

Further to your conversation with John this morning, we have proposed language for Section V.A of the Order and the definition of "Third Party," as well as a proposed Offer to Arbitrate.

For Section V.A, we have two alternative proposals for your consideration. The first adopts specific fixes for the issues that we have previously identified (b)(3):6(f),(b)(4)

A. (b)(3):6(f),(b)(4)

Given your suggestion of a possible alternative approach that would side-step those issues by decoupling the item V.A response from the definition of "Offer to License", we came up with the following:

A. Respondents shall, within sixty (60) days of receiving a written request by any Potential Licensee for a license to Respondents' FRAND Patents Essential to one or more Standards, ~~provide the Potential Licensee with an Offer to License such FRAND Patents. In making such offer, Respondents shall act~~ **respond to such request** in good faith and in conformity with their FRAND Commitments.

That would allow the parties to address issues such as the scope of the license negotiation and the need for an NDA in a manner that is more consistent with ordinary business practice and the context of the individual negotiation, without running the risk that Respondents would simply ignore license requests or refuse to license.

On the definition of "Third Party," we have attempted to address your concern that the definition only include controlled affiliates, rather than, for example, a joint venture in which the firm has a non-controlling interest. We believe the following would accomplish that goal:

BB. "Third Party" means any individual, corporation, partnership, joint venture, association, unincorporated organization, or other business entity, **including in each case any other person or entity that controls, is controlled by or is under common control with the first person or entity**, other than Respondents.

Finally, we have attached a Form of Offer to Arbitrate. In the interests of keeping the Offer as simple and straightforward as possible, we have assumed that a copy of the Order would be attached to it when sent to a Potential Licensee and have incorporated by reference definitions and detailed procedural rules from the Order.

We hope these are fairly self-explanatory given our earlier conversations, but please let us know if you have questions.

Thanks,
Russell

Russell M. Steinthal
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2207
(212) 728-2201 (fax)
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****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, May 29, 2013 6:14 PM
To: Huber, Susan
Cc: Bayer Femenella, Peggy
Subject: RE: Google Order Modifications

Thanks Susan:

We've conferred with our client on all of your suggested changes and have forwarded a recommendation and hope to hear back shortly. Hopefully we can talk before the end of the week.

John D. Harkrider
Partner
Axinn | Veltrop | Harkrider | LLP
114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Huber, Susan [mailto:SHUBER@ftc.gov]
Sent: Wednesday, May 29, 2013 10:26 AM
To: Harkrider, John D.
Cc: Bayer Femenella, Peggy
Subject: Google Order Modifications

John,

Hope you had a good holiday weekend. Any thoughts on when Google will be ready to respond to the proposed Order modifications?

Thanks,

Susan

Susan A. Huber
Compliance Division
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20850
202.326.3331

****

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****

Kelly, Andrea

From: {EXTERNAL} Harkrider, John D. <JDH@avhlaw.com>
Sent: Saturday, December 01, 2012 9:22 AM
To: Bayer Femenella, Peggy; Widnell, Nicholas
Subject: Decree

Hi guys:

Any possibility of getting it in Word? Would hugely facilitate our ability to comment.

John D. Harkrider
Partner
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New York, New York 10036
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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Thursday, December 06, 2012 5:38 PM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Google - Judicial Savings Clause

PRELIMINARY DRAFT
NON BINDING
SUBJECT TO FRE 408

Hi Nick and Peggy:

This is the language we discussed.

(b)(3):6(f),(b)(4)

John D. Harkrider
Partner
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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Tuesday, December 04, 2012 2:56 PM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Google Status

We are trying super hard to have this to you before 4pm ET and are hopeful we can have a follow up meeting tomorrow at 3pm. Let me know if that will work.

John D. Harkrider
Partner
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New York, New York 10036
(212) 728-2210
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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Monday, December 10, 2012 5:44 PM
To: Bayer Femenella, Peggy
Subject: Hi

Hey Peggy:

Been trying to reach Nick - any idea when you guys will be available?

Sent from a device

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, November 28, 2012 5:32 PM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Meeting Tomorrow?

Importance: High

Is it possible to set up a meeting tomorrow in DC at 3pm to 6pm to walk through possible SEP terms?

Matthew will be taking a red-eye from MTV so let us know as soon as you can.

John

John D. Harkrider
Partner
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New York, New York 10036
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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Saturday, December 29, 2012 2:08 PM
To: Feinstein, Richard
Cc: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Re: ACCO signatures

Checking with client --

On Dec 29, 2012, at 6:49 PM, "Feinstein, Richard" <rfeinstein@ftc.gov> wrote:

> John--
> Where do we stand on the signatures?
> Rich

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Saturday, December 29, 2012 9:36 PM
To: Feinstein, Richard
Cc: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Re: ACCO signatures

Very close I think.

On Dec 29, 2012, at 6:49 PM, "Feinstein, Richard" <rfeinstein@ftc.gov> wrote:

> John--
> Where do we stand on the signatures?
> Rich

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Sunday, December 09, 2012 8:11 PM
To: Bayer Femenella, Peggy
Cc: Steinthal, Russell M.; Widnell, Nicholas; Huber, Susan; Ducore, Daniel P.
Subject: Re: Google SEP

Thanks -

Will you also send a markup of our version? Or is this it?

Sent from a device

On Dec 9, 2012, at 8:05 PM, "Bayer Femenella, Peggy" <PBAYER@ftc.gov> wrote:

> John, I apologize as I should have clarified in the initial email, that this is the only draft language we plan on sending tonight, not 2 different versions. So as written in the draft we sent, both sections A and B would be in the order. We look forward to chatting with you tomorrow.
> Peggy
>
> ---
>
> **From:** Bayer Femenella, Peggy
> **Sent:** Sunday, December 09, 2012 7:48 PM
> **To:** John D. Harkrider (JDH@avhlaw.com); Steinthal, Russell M. (RMS@avhlaw.com)
> **Cc:** Widnell, Nicholas; Huber, Susan; Ducore, Daniel P.
> **Subject:** Google SEP
>
> John, attached is our latest draft language on the judicial option. As always, this is for discussion and settlement purposes only.
>
> Thanks,
> Peggy

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Sunday, December 09, 2012 3:30 PM
To: Bayer Femenella, Peggy; Huber, Susan; Ducore, Daniel P.; Widnell, Nicholas; 'alo@google.com'
Cc: Matthew Warren (matthewwarren@quinnemanuel.com); Steinthal, Russell M.
Subject: RE: Google SEP

[plus Russell and Matthew]

Sure.

>John D. Harkrider
>Partner
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>114 West 47th Street
>New York, New York 10036
>(212) 728-2210
>jdh@avhlaw.com
>www.avhlaw.com
>

-----Original Message-----
From: Bayer Femenella, Peggy [mailto:PBAYER@ftc.gov]
Sent: Sunday, December 09, 2012 3:30 PM
To: Harkrider, John D.; Huber, Susan; Ducore, Daniel P.; Widnell, Nicholas; 'alo@google.com'
Subject: Google SEP

Can we talk at 3:45pm?

Here is the call in number:

Call-In Number:

(b)(7)(E)

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Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Monday, December 24, 2012 6:38 PM
To: Bayer Femenella, Peggy
Cc: Widnell, Nicholas; Feinstein, Richard
Subject: Re: Google SEP Order and Agreement

Thanks Peggy.

Have a great holiday!

"Bayer Femenella, Peggy" <PBAYER@ftc.gov> wrote:

Good Afternoon John, enclosed please find the Google SEP Order and Agreement. These are of course subject to the approval of the Commission. Per your conversation with Nick, please get the signed agreement back to us on Wednesday. If you have any questions, please let me know.

I hope you and your family have a great holiday season.

Sincerely,
Peggy

****

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Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Thursday, January 03, 2013 11:09 AM
To: Bayer Femenella, Peggy
Cc: Widnell, Nicholas; Huber, Susan
Subject: RE: Google SEP

Thanks – this is great.

Any chance you have word versions as well?

John D. Harkrider
Partner
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New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Bayer Femenella, Peggy [mailto:PBAYER@ftc.gov]
Sent: Thursday, January 03, 2013 10:17 AM
To: Harkrider, John D.
Cc: Widnell, Nicholas; Huber, Susan
Subject: Google SEP

John, per our conversation, attached are the signed ACCO, the draft Order and the draft Complaint. These are not yet final.
Thanks,
Peggy

****

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Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Thursday, December 27, 2012 10:29 AM
To: Feinstein, Richard
Cc: Bayer Femenella, Peggy; Widnell, Nicholas; Matthew Bye
Subject: Re: Google SEPs

Sure.

John D. Harkrider
Partner
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114 West 47th Street
New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

On Dec 27, 2012, at 4:27 PM, "Feinstein, Richard" <rfeinstein@ftc.gov> wrote:

> Thanks. Can we use the same dial-in # as yesterday?
>
> -----Original Message-----
> From: Harkrider, John D. [mailto:JDH@avhlaw.com]
> Sent: Thursday, December 27, 2012 10:27 AM
> To: Feinstein, Richard
> Cc: Bayer Femenella, Peggy; Widnell, Nicholas; Matthew Bye
> Subject: Re: Google SEPs
>
> That works for me.
>
> John D. Harkrider
> Partner
> Axinn | Veltrop | Harkrider | LLP
> 114 West 47th Street
> New York, New York 10036
> (212) 728-2210
> jdh@avhlaw.com
> www.avhlaw.com
>
>
> On Dec 27, 2012, at 4:12 PM, "Feinstein, Richard" <rfeinstein@ftc.gov> wrote:
>
>> John--
>> Nick and I would like to touch base with you by phone this afternoon to follow up on yesterday's call. Given our schedules, we propose 3:30 again, if that works for you. Let me know. Thanks.
>> Rich
>>

>> -----Original Message-----
>> From: Harkrider, John D. [mailto:JDH@avhlaw.com]
>> Sent: Wednesday, December 26, 2012 3:23 PM
>> To: Feinstein, Richard
>> Cc: Bayer Femenella, Peggy; Widnell, Nicholas; 'Matthew Bye'
>> Subject: RE: Google SEPs
>>
>> Thanks. Talk with you then.
>>
>>> John D. Harkrider
>>> Partner
>>> Axinn | Veltrop | Harkrider | LLP
>>> 114 West 47th Street
>>> New York, New York 10036
>>> (212) 728-2210
>>> jdh@avhlaw.com
>>> www.avhlaw.com
>>
>> -----Original Message-----
>> From: Feinstein, Richard [mailto:rfeinstein@ftc.gov]
>> Sent: Wednesday, December 26, 2012 3:10 PM
>> To: Harkrider, John D.
>> Cc: Bayer Femenella, Peggy; Widnell, Nicholas; 'Matthew Bye'
>> Subject: RE: Google SEPs
>>
>> 3:30 is fine.
>>
>> -----Original Message-----
>> From: Harkrider, John D. [mailto:JDH@avhlaw.com]
>> Sent: Wednesday, December 26, 2012 2:50 PM
>> To: Feinstein, Richard
>> Cc: Bayer Femenella, Peggy; Widnell, Nicholas; 'Matthew Bye'
>> Subject: RE: Google SEPs
>>
>> [Plus Matthew Bye]
>>
>> HIGHLY CONFIDENTIAL
>> SUBJECT TO FRE 408
>>
>> Thanks Rich:
>>
>> I understand but would like to make sure I understand the purpose of Paragraph 21 of the Complaint as we had been told by Jon that this would be based on a Section 5 theory of liability. (Paragraph 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 from the marketplace, and conferred monopoly power which otherwise would not have existed").
>>

(b)(3):6(f),(b)(4)

>> If 3:30 works, can we use the following dial-in in case others want to join:
>>
>> (b)(3):6(f),(b)(4)
>>
>>
>> If 3:30 does not work, feel free to suggest another time.
>>
>>> John D. Harkrider
>>> Partner
>>> Axinn | Veltrop | Harkrider | LLP
>>> 114 West 47th Street
>>> New York, New York 10036
>>> (212) 728-2210
>>> jdh@avhlaw.com
>>> www.avhlaw.com
>>
>> -----Original Message-----
>> From: Feinstein, Richard [mailto:rfeinstein@ftc.gov]
>> Sent: Wednesday, December 26, 2012 2:24 PM
>> To: Harkrider, John D.
>> Cc: Bayer Femenella, Peggy; Widnell, Nicholas
>> Subject: RE: Google SEPs
>>
>> John--
>> Although I don't have any more authority than Nick to change the Complaint at this point, I am available to discuss your concern at your convenience this afternoon. I'm in the office and can be reached at 202-326-3658.
>> Best regards,
>> Rich
>>
>> -----Original Message-----
>> From: Widnell, Nicholas
>> Sent: Wednesday, December 26, 2012 12:39 PM
>> To: Feinstein, Richard
>> Cc: 'JDH@avhlaw.com'; Bayer Femenella, Peggy
>> Subject: Google SEPs
>>
>> Rich,
>>
>> I just spoke to John and Google has one remaining concern about the complaint. I explained again that our position was that we would not make any other changes to the complaint, but suggested that he talk with you. Do you have time to do a quick call? I've cc'd John to hopefully facilitate this.
>>
>> Thanks,
>> Nick
>>
>> **********
>>
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>> **********
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>>
>> **********
>>
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>> **********
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> **********
>
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> **********
>

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, January 09, 2013 9:54 AM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: RE: Google

Sure. Will call you then.

John D. Harkrider
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(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Wednesday, January 09, 2013 9:54 AM
To: Harkrider, John D.; Bayer Femenella, Peggy
Subject: Re: Google

John,

I have a meeting that will likely run until 11:30. Can we talk then?

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Wednesday, January 09, 2013 09:43 AM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: Google

Will call to discuss

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Thursday, December 06, 2012 9:07 PM
To: Widnell, Nicholas; Huber, Susan; Bayer Femenella, Peggy
Subject: RE: New Draft

Sure.

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(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Thursday, December 06, 2012 9:03 PM
To: Harkrider, John D.; Huber, Susan; Bayer Femenella, Peggy
Subject: FW: New Draft

John,

Here is the call in info:

(b)(7)(E)

Can we do the call at 9:15?

Thanks,
Nick

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Saturday, December 08, 2012 5:35 PM
To: Widnell, Nicholas
Cc: Bayer Femenella, Peggy; Steinthal, Russell M.
Subject: RE: Order Draft.

Sure. What number?

John D. Harkrider
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www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Saturday, December 08, 2012 5:15 PM
To: Harkrider, John D.
Cc: Bayer Femenella, Peggy; Steinthal, Russell M.
Subject: FW: Order Draft.

John,

Attached is a revised order and a redline that includes some additional comments. If you have a moment, it might make sense for us to discuss this on the phone. I'm in the office.

Thanks,
Nick

Nicholas A. Widnell
Deputy Assistant Director
Anticompetitive Practices Division
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580
Phone: 202.326.2138

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Monday, December 31, 2012 6:08 PM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: RE: Revised Order

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Thanks Nick. Not sure if my fix is the perfect one – was trying to do in fewest words possible – a wordier fix is:

"Respondents may condition the Offer to License on Reciprocity, but may not require the Potential Licensee to license any patents not essential to Standards practiced by the Potential Licensee, or to license any other patents ..."

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www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Monday, December 31, 2012 6:00 PM
To: Harkrider, John D.
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: Re: Revised Order

Thanks John. I'm checking on this now and will get back to you. Let me know if you identify any other concerns.

From: Harkrider, John D. [mailto:JDH@avhlaw.com]
Sent: Monday, December 31, 2012 05:49 PM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: RE: Revised Order

Thanks.

Quick question as to your modification to IV(B)(1) to say that "Respondents … may not require the Potential Licensee to license any patents essential to Standards not practiced by the Potential Licensee…" (adding the underlined phrase). I think I understand your intent, but technically that's over-inclusive given that patents may be essential to one or more standards. I.e. assume that we have a patent that is essential to both LTE and 802.11, and we are making an Offer to License our 802.11 patents to a firm that makes Wi-Fi, but not cellular devices. Literally, the modified text would prohibit us from conditioning the Offer to License on them taking a license to that SEP for use in 802.11 implementations (which they do practice), because it is "[a] patent[] essential to" LTE, a standard that they don't practice. The original wording, while a bit awkward (in that patents and not standards are licensed) seemed to more clearly convey what I assume is still their intent --- namely that we can require the Potential Licensee to license all of our SEPs for the Standard at issue (which, by assumption, it practices, since this is a condition to our right to seek CIR against the Potential Licensee on that Standard), but not other Standards.

I suppose an alternative fix would be to say that we "may not require the Potential Licensee to license any patents that essential to only Standards not practiced by the Potential Licensee" (and then continue, as currently, "or to license any other patents or intellectual property").

Note we are still reading so this is not our only reaction. But wanted to get the question to you ASAP.

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www.avhlaw.com

From: Widnell, Nicholas [mailto:NWIDNELL@ftc.gov]
Sent: Monday, December 31, 2012 4:58 PM
To: Harkrider, John D.
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan
Subject: Revised Order

John,

I had hoped to have a quick conversation before sending you this, but in the interests of time, attached are what should be final revisions to the order. I've attached both a clean copy of the final order and a markup that identifies in redline the changes you suggested that the Commission is prepared to accept and (in comments) additional changes that we would like to make in response to proposed edits from Commissioners. The additional changes are not meant to be substantive, but are only intended to correct typos and poor wording. Email me if you would like to discuss any of these. Otherwise, could you confirm by email that Google finds all of these changes acceptable and agrees to be bound by this order pursuant to the signed Agreement Containing Consent Order that Google executed and sent to us?

Thanks,
Nick

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, December 12, 2012 9:27 PM
To: Bayer Femenella, Peggy; Steinthal, Russell M.
Cc: Widnell, Nicholas
Subject: RE: Tomorrow

Thanks Peggy:

Do you know who will be coming from your side?

John D. Harkrider
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New York, New York 10036
(212) 728-2210
jdh@avhlaw.com
www.avhlaw.com

From: Bayer Femenella, Peggy [mailto:PBAYER@ftc.gov]
Sent: Wednesday, December 12, 2012 9:21 PM
To: Steinthal, Russell M.; Harkrider, John D.
Cc: Widnell, Nicholas
Subject: Tomorrow

Just wanted to let you know that Suzanne Munck will also be joining us tomorrow morning.
Thanks,
Peggy

****

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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Tuesday, December 04, 2012 5:32 PM
To: Widnell, Nicholas; Bayer Femenella, Peggy
Subject: REDLINE AND DRAFT

DRAFT FOR SETTLEMENT PURPOSES
HIGHLY CONFIDENTIAL
SUBJECT TO FRE RULE 408

Hi guys:

Call me if you have any questions.

John

John D. Harkrider
Partner
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****

Kelly, Andrea

From: Harkrider, John D. <JDH@avhlaw.com>
Sent: Wednesday, January 02, 2013 8:29 AM
To: Widnell, Nicholas
Cc: Feinstein, Richard; Levitas, Pete; Bayer Femenella, Peggy; Ducore, Daniel P.; Huber, Susan; Seidman, Mark
Subject: RE: Revised Order

HIGHLY CONFIDENTIAL
SUBJECT TO FRE 408

Good morning FTC.

Google finds all of the changes to the Order acceptable and agrees to be bound by the Order pursuant to the signed Agreement Containing Consent Order that Google executed and sent to the FTC.

Also, please let us see the final Analysis to Aid Public Comment as soon as you are able.

Let me know if you have any questions.

As always, we appreciate your efforts to bring these matters to closure.

John

John D. Harkrider
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jdh@avhlaw.com
www.avhlaw.com

Duplicate

Corrigan, Sarah E.

From: Ratte, Kathryn D.
Sent: Friday, October 29, 2010 8:53 AM
To: Brin, Katherine Race
Subject: FW: Question for when you return to office

Do you mind calling Kim? I'm logging off soon and determined to take a proper AWS day and weekend off. I will call John Lynch on Monday.

-----Original Message-----
From: Mithal, Maneesha
Sent: Friday, October 29, 2010 8:52 AM
To: Brin, Katherine Race; Ratte, Kathryn D.
Subject: Re: Question for when you return to office

It would be great if someone could call DOJ. And would one of you call Kim? She had questions re the states. Thanks!

Duplicate

Corrigan, Sarah E.

From: Ratte, Kathryn D.
Sent: Friday, October 29, 2010 8:11 AM
To: Mithal, Maneesha; Brin, Katherine Race
Subject: RE: Question for when you return to office

We had also been in touch with John Lynch at DOJ early on, but I didn't hear back from him when I tried to schedule a call to give them a heads up last week. Should I try again?

Duplicate

Corrigan, Sarah E.

From: Ratte, Kathryn D.
Sent: Tuesday, October 05, 2010 3:32 PM
To: 'Nielsen, Christine'; 'Schafer, Scott (AGO)'
Cc: Brin, Katherine Race
Subject: RE: call this week

That's great for us – same number as before?

From: Nielsen, Christine [mailto:cnielsen@atg.state.il.us]
Sent: Tuesday, October 05, 2010 3:29 PM
To: Ratte, Kathryn D.; 'Schafer, Scott (AGO)'
Cc: Brin, Katherine Race
Subject: RE: call this week

We actually have a Google Executive Committee call on Thursday at 3:30. Can we say 4:30pm Eastern just in case the EC call goes an hour?

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From: Ratte, Kathryn D. [mailto:KRATTE@ftc.gov]
Sent: Tuesday, October 05, 2010 2:29 PM
To: Nielsen, Christine; 'Schafer, Scott (AGO)'
Cc: Brin, Katherine Race
Subject: call this week

Hi Christine and Scott – I see that we have a call scheduled for tomorrow to discuss status on Google WiFi. Would it be possible to delay the call 24 hours and do it at 4 pm Thursday? If that time is not good, could we look for another time on Thursday after 1:15, or else something the following week?

Thanks very much,
Katie

Kathryn Ratté
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Mail Stop NJ-8122
Washington, D.C. 20580
Phone: (202) 326-3514
Fax: (202) 326-3768

Corrigan, Sarah E.

From: Ratte, Kathryn D.
Sent: Wednesday, June 09, 2010 7:06 AM
To: Brin, Katherine Race
Subject: RE: FYI

Thanks for the reminder – I totally forgot about that. You rock! I think we should do it today and it should be its own letter – I suspect the follow-up Qs letter will have to go through a lot of levels of review. I'll take care of the heads up letter this morning – I still have the Nithan draft from a couple of weeks ago.

From: Brin, Katherine Race
Sent: Tuesday, June 08, 2010 8:03 PM
To: Ratte, Kathryn D.
Subject: RE: FYI

Also, remember we have to send a letter to Google giving them the heads up about the Congressional briefing on Friday. Didn't know whether you wanted to do this tomorrow or Thursday, and also whether or not you wanted to combine it with our letter containing substantive questions re WiFi.

From: Ratte, Kathryn D.
Sent: Tuesday, June 08, 2010 5:52 PM
To: Brin, Katherine Race
Subject: RE: FYI

I'm absolutely counting on you having some time for Google after tomorrow, Not Responsi Not Responsive I will start drafting a follow-up letter to Google incorporating your questions and Ashkan's, and I'll hand that off to you Not Responsive Not Responsive We can meet Thursday afternoon after we talk to Maneesha to strategize on the Hill briefing, and then once we do that and get the letter off, I will be all report all the time for a little while.

(b)(5)

Not Responsive

From: Brin, Katherine Race
Sent: Tuesday, June 08, 2010 10:30 AM
To: Ratte, Kathryn D.
Subject: RE: FYI

Not Responsive

I'll be checking in periodically today, but I'll definitely be in the office tomorrow. The Not Responsive so I'll scrambling somewhat in preparation for that, but once that is out of the way my focus will be 100% Google!

Have you heard anything from Maneesha about her attending the briefing on Friday? Maybe we can touch base with Kim tomorrow or Thurs morning to talk about what to expect (maybe you know, I've never been to a Congressional briefing like this before….)

Chender, Julian M.

From: (b)(6),(b)(7)(C)
Sent: Tuesday, September 25, 2012 4:39 PM
To: 'Sher, Scott' (SSher@wsgr.com)
Cc: Rubinstein, Franklin (frubinstein@wsgr.com); (b)(6),(b)(7)(C) Blank, Barbara; (b)(6),(b)(7)(C) Heyer, Kenneth
Subject: August 17 2011 Data Request

Scott,

I'm following up on where Google is in regards to providing the data requested in the August 17 2011 letter and subsequently discussed in numerous meetings culminating in the March 7 2012 letter from Google to the FTC, leading to initial production on July 5 2012 with the last production provided on September 4 2012.

It is my understanding Google still plans to provide (b)(3):21(f)
(b)(3):21(f)

Please let me know.

Chris

(b)(3):21(f),(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)
Sent: Friday, October 19, 2012 2:47 PM
To: Rubinstein, Franklin
Cc: (b)(6),(b)(7)(C); Blank, Barbara; (b)(6),(b)(7)(C) Heyer, Kenneth; Shelanski, Howard; Sher, Scott
Subject: RE: August 17 2011 Data Request

Franklin,

Thanks for the update.

(b)(6),
(b)(7)
(C)

(b)(3):21(f),(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)
Sent: Monday, October 15, 2012 2:54 PM
To: Rubinstein, Franklin; Sher, Scott

Cc: (b)(6),(b)(7)(C) Blank, Barbara; (b)(6),(b)(7)(C) Heyer, Kenneth; Shelanski, Howard
Subject: RE: August 17 2011 Data Request

Franklin,

Thanks for the update and the data.

(b)(6),(b)(7)(C)

(b)(3):21(f),(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)
Sent: Wednesday, September 26, 2012 8:52 AM
To: Rubinstein, Franklin; Sher, Scott

Chender, Julian M.

From: Blank, Barbara
Sent: Friday, October 26, 2012 3:17 PM
To: 'Creighton, Susan'; Sullivan, Laura M.
Cc: Parnes, Lydia B.
Subject: RE: Call re AdWords policies

Hi Susan - I won't be in town on Tuesday, but could talk Wednesday, if that works.

-----Original Message-----
From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Friday, October 26, 2012 3:16 PM
To: Blank, Barbara; Sullivan, Laura M.
Cc: Parnes, Lydia B.
Subject: Call re AdWords policies

Barbara and Laura: Assuming DC still exists next week, would you guys be free for a quick call on Tuesday? We'd like to give you an update about some AdWords policy-related changes that the company will be rolling out. Afternoon would be be better as it might involve some folks in CA. Thanks, and have a good weekend, Susan

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Chender, Julian M.

From: Blank, Barbara
Sent: Friday, September 14, 2012 8:46 AM
To: 'Sher, Scott'
Subject: RE: Google Meeting

Sounds good, Scott; thanks. See you next Friday.

Best Regards,

Barbara

From: Sher, Scott [mailto:SSher@wsgr.com]
Sent: Thursday, September 13, 2012 1:53 PM
To: Blank, Barbara
Subject: Google Meeting

Barbara,

The earliest I can get everyone together is next Friday morning, at approximately 11am. Several Google lawyers need to be at this meeting, including Nikhil Shanbhag, who is flying out from California. Kevin Yingling, who also is attending, is in Nevada this week for work. John Schmidtlein, from Williams & Connelly, Susan Creighton, and I also will attend.

Thanks for having us! We'll see you next Friday at 11am.

Scott

Scott A. Sher | Wilson Sonsini Goodrich & Rosati | 1700 K Street, NW, Fifth Floor, Washington, DC 20006 | Direct: 202.973.8822 | Mobile: 202.431.6836 | Email: ssher@wsgr.com

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Chender, Julian M.

From: Blank, Barbara
Sent: Tuesday, October 23, 2012 8:35 AM
To: 'Alepin, Dominique'; Sher, Scott
Cc: (b)(6),(b)(7)(C) Rubinstein, Franklin
Subject: RE: Google search advertising revenues

Thanks Dominique.

(b)(3):21(f),(b)(6),(b)(7)(C)

From: Blank, Barbara [mailto:bblank@ftc.gov]
Sent: Wednesday, October 17, 2012 5:51 AM
To: Alepin, Dominique; Sher, Scott
Cc: (b)(6),(b)(7)(C) Rubinstein, Franklin
Subject: RE: Google search advertising revenues

Hi Dominique,

Following up on the request below. Please get back to us as soon as possible.

Thanks very much.

Best Regards,

Barbara

(b)(3):21(f),(b)(6),(b)(7)(C)