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PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Larry Golden, respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

PETITION FOR REHEARING

The original certiorari petition asked this Court to resolve patent infringement claims that are issues-of-fact tried by a jury under the Seventh Amendment [U.S. CONST. amend. VII] that was never addressed, adjudicated, or presented to a jury. The following patent infringement issues-of-fact of first impression are:

(1) is it a violation of patent law; antitrust law; or both when Qualcomm collects a 5% running royalty on the price of each of Petitioner's patented inventions (handsets) sold without authorization or legal right to do so?

(2) is it direct patent infringement under statute 35 U.S.C. § 271(a) for the unauthorized "use" of Petitioner's patented handsets and CPUs; patent "misuse" because Qualcomm extended its standard essential patents (SEPs) monopoly beyond the scope of the patents; or both when Qualcomm "unjustly" enrich itself through elevated royalties and higher prices on Petitioner's patented inventions?

(3) does Qualcomm's Smartphone for Snapdragon Insiders literally infringe; infringes under the doctrine of equivalents, or both? 35 U.S.C. § 271(a)

(4) is it a violation of patent law (induced infringement—35 U.S.C. § 271(b)); antitrust law (illegal “tying” arrangement); or both when Qualcomm illegally ties Petitioner's patented inventions (CPUs for handsets) and through threatening advertising (“no license, no chip”) forces the OEMs to buy its cellular modems that are sold as a combination Snapdragon chipset?

(5) is Qualcomm contributing [35 U.S.C. § 271(c)] to the infringement of Petitioner's patented smartphone invention with its Snapdragon chipsets; jointly infringing with the OEMs [Google, etc.] with its Snapdragon chipsets; or both?

(6) Petitioner presented eight causes of action triable by a jury under the Seventh Amendment of the U.S. Constitution that was never presented to a jury and never adjudicated by the Courts: a- “use” of a another's patented invention to collect patent royalties without authorization; b- patent misuse to unjustly enrich; illegal “tying” arrangement; c- literal patent infringement; d- infringement under the doctrine of equivalents; e- induced infringement; f- contributory infringement; g- joint infringement; and, h- willful infringement.

(1)

In *FTC. v. Qualcomm*, 411 F. Supp. 3d 658 (N.D. Cal. 2019), the *FTC* provided the NDC Court with three years of discovery material and several witnesses to testify under oath that Qualcomm is collecting a running 5% royalty on the price of each handset (smartphone) sold.

The *FTC* claims Qualcomm's collection of a 5% running royalty on the price of each handset sold without authorization or legal right to do so falls into the realm of "unfair or deceptive acts or practices".

Petitioner asserted five valid patents with twenty-eight independent patent claims and eighteen dependent patent claims that was issued from the USPTO with the presumption of validity [35 U.S.C. § 282(a)] for patented invention of a cell phone or smartphone (handset).

(a) A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims . . .

Qualcomm presented no defense to Petitioner's claim that Qualcomm is illegally collecting a 5% running royalty on the price of each of Petitioner's patented handset (smartphone) sold.

Judge Lucy H. Koh in *FTC. v. Qualcomm*, 411 F. Supp. 3d 658 (N.D. Cal. 2019) concluded Qualcomm is being "unjustly enriched" from its anticompetitive

practices of collecting a 5% running royalty on the price of each “smartphone” sold by the OEMs Samsung, Google, etc.

Qualcomm monopolized the market on illegally collecting royalties on Petitioner’s patented smartphone invention, thereby restraining Petitioner from collecting royalties from the OEMs Samsung, Google, etc. for the making, using, offering for sell, and selling the Petitioner’s smartphone invention [35 U.S.C. § 271(a)].

Without doubt Petitioner was harmed and suffered injury under both the patent laws of the United States and the antitrust laws of the United States.

(2)

The power to issue patents arises from Article I, Section 8 of the Constitution, which authorizes Congress “to promote the progress of science and useful arts” by giving inventors exclusive rights to their discoveries for a limited time. Once a patent has been issued, its holder can prevent others from making, using, or selling the invention.

“Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” 35 U.S.C. § 271(a)

Petitioner claims Qualcomm is “using” Petitioner’s patented handset invention(s) to collect a running 5% royalty on the price of at least 200 of Petitioner’s patented handset models sold. [35 U.S.C. § 271(a)]

Petitioner also claims Qualcomm is “using”, Petitioner’s patented CPU inventions for handsets that Qualcomm “ties” to its SEP cellular modems, “offers for sell”, and “sells”, as a combination Qualcomm Snapdragon chipset or system-on-a-chip (SoC). [35 U.S.C. § 271(a)]

In addition, the Supreme Court developed the doctrine of patent misuse to bar a patentee such as Qualcomm, who holds standard essential patents (SEPs) for the handset modems, from extending its patent monopoly beyond the scope of their patents, *See Carbice Corp. of Am. v. American Patents Dev. Corp.*, 283 U.S. 27 (1931).

In *FTC. v. Qualcomm*, 411 F. Supp. 3d 658 (N.D. Cal. 2019), the Northern District of California Court found Qualcomm:

“Qualcomm has licensed its cellular SEPs to many OEMs. Qualcomm has historically offered licenses to OEMs at a base royalty rate . . . [t]his rate is significantly higher than those of other licensors of cellular SEPs” . . . “Among SEP holders, Qualcomm garners an outsized share of licensing revenues paid by OEMs. OEMs pay Qualcomm far more in royalties than they pay other SEP licensors”

Therefore, according to the Supreme Court's doctrine of patent misuse, Qualcomm is limited to demanding royalties on the price of the standard-compliant products, which are Qualcomm's standard-compliant cellular modems. *Realtek Semiconductor Corp. v. LSI Corp.*, No. C-12-3451, 2014 WL 2738226, at *6 (N.D. Cal. June 16, 2014).

The Supreme Court's doctrine of patent misuse interpretative meaning is: Qualcomm is barred from extending its standard essential patents (SEPs) to collect a royalty on the price of the Snapdragon chipsets that "ties" Petitioner's patented CPU inventions; and, is also barred from collecting a 5% running royalty on the price of each of Petitioner's patented handsets sold.

The NDC Court fail to honor precedence set by its own Court [horizontal stare decisis]; and the NDC Court and U.S. Court of Appeals for the Federal Circuit fail to honor precedence set by the higher Supreme Court [vertical stare decisis].

(3)

The Federal Circuit on 09/08/2022, in *Larry Golden v. Google LLC*; Case No. 22-1267 "DISCUSSION: 'Under the pleading standards set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a court must dismiss a complaint if it fails to allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570 . . . this court has explained that a plaintiff . . . must plead "'enough fact[s] to raise a reasonable expectation that discovery will reveal'

that the defendant is liable for the misconduct alleged.’”

The Federal Circuit in *Larry Golden v. Google LLC*; Case No. 22-1267 first, examined and determined Golden has allege “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570 and that Golden has alleged facts that give rise to “more than a sheer possibility that the defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. The Federal Circuit explained how Golden has pled enough fact[s] to raise a reasonable expectation that discovery will reveal’ that the defendant is liable for the misconduct alleged.

The Federal Circuit in *Larry Golden v. Google LLC*; Case No. 22-1267 also examined and determined Golden has described how the Google “smartphone” literally infringes at least claim 5 of Golden’s ‘287 U.S. Patent; claim 23 of Golden’s ‘439 U.S. Patent; and claim 1 of Golden’s ‘189 U.S. Patent. See the chart below:

| Literal Infringement (Precedence) | Literal Infringement (Fed. Cir. <i>Golden v. Google</i>) |
|--|---|
| <p>Literal infringement means that each and every element recited in a claim has identical correspondence in the allegedly infringing device or process. To literally infringe a patent, the accused</p> | <p>“Mr. Golden’s complaint includes a detailed claim chart mapping features of an accused product, the [] Smartphone, to independent claims from U.S. Patent Nos. 10,163,287, 9,589,439, and 9,069,189 . . . It</p> |

| | |
|--|---|
| <p>system, method, etc. must include each limitation of a claim. E.g., <i>Southwall</i> (Fed. Cir. 05/10/95) To establish literal infringement, every limitation set forth in a claim must be found in an accused product, exactly. <i>Becton Dickinson</i> (Fed. Cir. 12/13/90). “Infringement, both literal and under the doctrine of equivalents, is an issue of fact.”; <i>Cobalt Boats</i> (Fed. Cir. 05/31/19) “patent infringement is an issue of fact, tried by a jury” [U.S. CONST. amend. VII]</p> | <p>[claim chart] attempts [] to map claim limitations to infringing product features, and it does so in a relatively straightforward manner . . . [W]e conclude that the district court’s decision in the Google case is not correct with respect to at least the three claims mapped out in the claim chart. Mr. Golden has made efforts to identify exactly how the accused products meet the limitations of his claims in this chart. . . .”</p> |
|--|---|

Petitioner submitted to the lower Courts a chart comparison of the Google “smartphone” the Federal Circuit determined literally infringes Golden’s patented smartphone invention, to that of the Qualcomm “Smartphone” for Snapdragon Insiders.

Each element of the Qualcomm “smartphone” mirrored each element of the Google “smartphone”. Therefore, the Qualcomm “smartphone” literally infringes Golden’s patents.

In reviewing the Qualcomm “smartphone” and the Google “smartphone” as a whole, or comparing each

smartphones' elements to that of Golden's patented claims for the "smartphone", under the doctrine of equivalents, the end results are the same.

As a whole, each "smartphone" infringes Golden's patents for the "smartphone" because both "smartphones" are equivalent to Golden's claimed invention. When consideration is given to each element, such as the CPU, operating system, cellular modem, biometric authentication, Bluetooth, Wi-Fi, NFC, disabling lock, GPS location and tracking, of the Qualcomm "smartphone" and the Google "smartphone, whereby each comparable element of both "smartphones" are equivalent to Golden's claimed invention because each comparable element "do the same work, in substantially the same way, and accomplish substantially the same result; they are the same, even though they differ in name, form, or shape *Machine Co. v. Murphy*, 97 U.S. 120, 125 (1877).

The Northern District of California Court fail to honor precedence set by the U.S. Court of Appeals for the Federal Circuit in *Larry Golden v. Google LLC*; Case No. 22-1267 [vertical stare decisis].

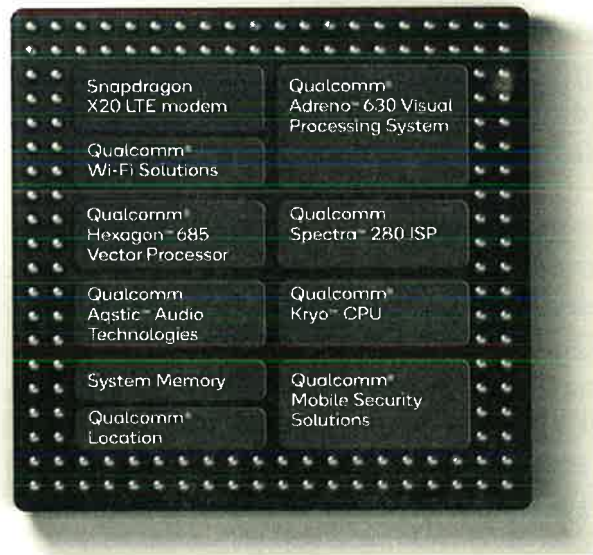
(4)

According to the Department of Justice Antitrust Division, Qualcomm's illegal tying agreement happens when Qualcomm forces the OEMs to buy its cellular modems for handsets through the anticompetitive practice of "no license, no chip" See *FTC. v. Qualcomm*, 411 F. Supp. 3d 658 (N.D. Cal. 2019) in order to purchase Petitioner's patented central processing units (CPUs).

The two products are bundled or “tied” together, which gives the tying agreement its name. This practice restricts a customer’s choice, limits competition, and creates liability for Qualcomm for its unauthorized “use” of Petitioner’s patented CPUs. Qualcomm sells the combination as its Snapdragon chipset or system-on-a-chip (SoC).

A chipset is the motherboard in a handset that is designed to accept all the components to sit upon it, and connect with each other. It is made of ICs (integrated circuits) and provides all the inter communication channels (buses) to connect for e.g., camera, Bluetooth, Wi-Fi, CPU, cellular modems, etc.

An example of a Qualcomm chipset is featured below. Featured is the Snapdragon X20 LTE modem and the Qualcomm Kryo CPU (Petitioner’s patented invention).



Qualcomm had knowledge that Petitioner’s patents exist for Petitioner’s CPUs, and knowledge that the forced acts of “no license, no chip” would induce infringement.

Under 35 U.S.C. § 271(b), “Whoever actively induces infringement of a patent shall be liable as an infringer.” The Supreme Court concluded that actual knowledge [Petitioner provided actual knowledge evidence to the courts] is required to show induced infringement.

Following *Global-Tech Appliances, Inc. v. SEB S. A.*, 563 U.S. 754 (2011), some courts questioned whether the knowledge requirement applies to knowledge of the patent’s existence or knowledge that the acts would induce infringement. The Supreme Court clarified in *Commil USA, LLC v. Cisco Systems, Inc.*, 135 S.Ct. 1920 (2015), the knowledge requirement applies to both.

In *Jefferson Parish v. Hyde* 466 US 2, 12 (1984), the prevailing United States Supreme Court precedent on “tying”, the Court ruled, “[T]he essential characteristic of an invalid tying arrangement lies in the seller’s exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms.”

(5)

The threshold requirement for a claim of contributory infringement is the existence of direct

infringement. See *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518 (1972). There must also be a showing that the alleged contributory infringer knew of the patent and that his or her actions would lead to infringement of the patent. See *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476 (1964).

Petitioner has satisfied the three requirements of contributory infringement under 35 U.S.C. § 271(c): “Whoever sells a component of a patented . . . apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.”

Petitioner has demonstrated Qualcomm sells a patented CPU that constitute a material part of Petitioner’s patented handset/smartphone invention; with actual knowledge that Petitioner’s patents exist and knowledge that the acts would contribute to the infringement of Petitioner’s patented inventions; and with a product [Qualcomm’s Snapdragon chipsets] of commerce suitable for substantial noninfringing use. Examples of the Qualcomm’s Series 8 chipsets that constitutes a material part of Petitioner’s handset/smartphone invention are:

- Snapdragon 8s Gen 3 Mobile Platform [Qualcomm® Kryo™ CPU | Snapdragon™ X70 5G Modem-RF System]

- Snapdragon® 8 Gen 3 Mobile Platform [Qualcomm® Kryo™ CPU | Snapdragon™ X75 5G Modem-RF System]
- Snapdragon® 8 Gen 2 Mobile Platform [Qualcomm® Kryo™ CPU | Snapdragon™ X70 5G Modem-RF System]
- Snapdragon® 8+ Gen 1 Mobile Platform [Qualcomm® Kryo™ CPU | Snapdragon™ X70 5G Modem-RF System]

“*Joint*” or “*divided*” infringement liability for direct infringement are shared between two [Qualcomm and Google] or more actors but can be legally attributed to a single actor. *Travel Sentry, Inc. v. Tropp*, Appeal No. 16-2386 (Fed. Cir. Dec. 19, 2017)

According to a Qualcomm press release (2020), Qualcomm Technologies, Inc. and Google announced their collaboration to enhance and extend Project Treble with the goal of enabling more of Petitioner’s handset/smartphone devices with Qualcomm® Snapdragon™ mobile platforms to run the latest Google Android OS.

The enhancements are intended to enable Original Equipment Manufacturers (OEMs), such as Google, Samsung, etc. to upgrade their Snapdragon based smartphone devices to the latest Google Android OS without modifying Qualcomm Technologies’ chipset-specific software and to use a common Google Android software branch to upgrade devices based on a wide range of Snapdragon mobile platforms across Qualcomm Technologies’ portfolio.

As part of this collaboration with Google, Qualcomm Technologies will now support four Google Android OS versions [] for all Snapdragon platforms utilizing the Project Treble enhancements, starting with the new Snapdragon 888 Mobile Platform.

“We are excited to work with Google to extend our support for the Google Android OS and security updates on future Snapdragon mobile platforms utilizing the Project Treble enhancements,” said Kedar Kondap, vice president, product management, Qualcomm Technologies, Inc.

(6)

Petitioner’s intervening circumstances of a substantial or controlling effect is that the Seventh Amendment guarantees a right to a trial by jury for the eight (8) causes of action described in Petitioner’s “petition for a writ of certiorari” and this “petition for rehearing”.

The other substantial ground not previously presented is Qualcomm is repeating its anticompetitive practices by charging royalties the Snapdragon chipsets that includes Petitioner’s patented CPUs for Petitioner’s patented vehicle stall, stop, slow-down system (i.e., advanced driver assist system (ADAS)).

GM completely redesigned the compute architecture that powers its “hands-free” driving system that is integrated with the “Snapdragon Ride Platform” of Qualcomm. GM has the first advanced driver assist system (ADAS) to use Qualcomm’s new Snapdragon

Ride Platform. The Snapdragon Ride Platform is built on scalable and modular heterogeneous high-performance multi-core CPUs—Petitioner’s patented CPUs. It is intended to address the needs of complex self-driving technology and ADAS with high performance and power efficiency.

If the Court remands this case back to the District Court, Petitioner can amend the case to include literal, doctrine of equivalents, induced, contributory, joint, and willful infringement. If this Court does not remand, Petitioner will continue preparing the case to be filed in the District Court of Texas. Petitioner is alleging Qualcomm and GM products infringe at least ind. claim 44, and dep. claims 47, 48, 49, 50, 51, & 53 of Petitioner’s ‘891 patent; ind. claims 3-6 of Petitioner’s ‘287 patent; ind. claims 1 & 11, and dep. claims 2-10 & 12-20 of Petitioner’s ‘619 patent; and, ind. claims 1 & 2 of Petitioner’s ‘898 patent, that just recently issued May 9, 2023.

Petitioner should never be confronted with the inherent due process problems that exist when the Courts act as investigator, prosecutor, judge, and jury.



CONCLUSION

For the reasons set forth in this Petition, Larry Golden respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

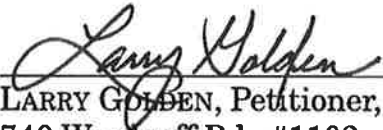
Respectfully submitted this 9th
day of April, 2024

LARRY GOLDEN, Petitioner, Pro Se
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Greenville, South Carolina 29607
(864) 288-5605
atpg-tech@charter.net

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this Petition for Rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.

Respectfully submitted this 9th
day of April, 2024



LARRY GOLDEN, Petitioner, Pro Se
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AFFIDAVIT OF SERVICE

SUPREME COURT OF THE UNITED STATES

No. 23-740

-----X

LARRY GOLDEN,

Petitioner,

v.

QUALCOMM INC.,

Respondent,

-----X

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Simone Cintron, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

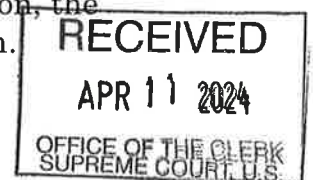
I am retained by Counsel of Record for *Petitioner*.

That on the 9th day of April, 2024, I served the within *Petition for Rehearing* in the above-captioned matter upon:

John Allen Yates
PATTERSON + SHERIDAN LLP
24 Greenway Plaza, Suite 1600
Houston, TX 77046
Tel: 713-623-4844
jyates@pattersonsheridan.com

by sending three copies of same, addressed to each individual respectively, through the United States Postal Service, by Priority Mail, an electronic version was also served by email to each individual.

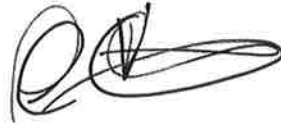
That on the same date as above, I sent to this Court forty copies of the within *Petition for Rehearing* and two hundred dollar filing fee check through the Overnight Next Day Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.



All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of April, 2024.



Simone Cintron

Sworn to and subscribed before
me this 9th day of April, 2024.



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026



SUPREME COURT OF THE UNITED STATES

No. 23-740

-----X

LARRY GOLDEN,

Petitioner,

v.

QUALCOMM INC.,

Respondent,

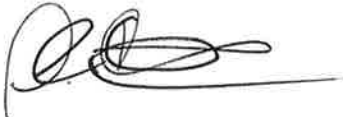
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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 2,995 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of April, 2024.



Simone Cintron

Sworn to and subscribed before me this 9th day of April, 2024.



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

