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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18 FEDERAL TRADE COMMISSION

19 Plaintiff,

20 vs.

21 QUALCOMM INCORPORATED,  
a Delaware corporation

22 Defendant.  
23  
24

Case No. 5:17-cv-00220-LHK

**DEFENDANT QUALCOMM  
INCORPORATED'S REPLY IN  
SUPPORT OF MOTION FOR STAY  
PENDING APPEAL**

Dept.: Courtroom 8, 4th Floor  
Judge: Hon. Lucy H. Koh

1 In its Motion For Stay Pending Appeal (ECF No. 1495, the “Mot.”), Qualcomm  
 2 demonstrated that, absent a stay, the Order would cause Qualcomm irreparable harm, that  
 3 Qualcomm’s appeal raises serious questions on which Qualcomm has a fair prospect of success,  
 4 and that staying the injunction pending appeal will not impair but rather further the public  
 5 interest. On June 11, 2019, the Federal Trade Commission (“FTC”) filed its Opposition. (ECF  
 6 No. 1500, the “Opp.”) The FTC’s Opposition does nothing to undermine the strong justification  
 7 for a stay of the Order pending appeal; all of the factors applied by the Ninth Circuit strongly  
 8 weigh in favor of a stay.

9 Qualcomm focuses its Reply on the irreparable harm prong of the stay test, and  
 10 specifically on certain fundamental errors in the FTC’s discussion of that factor, which  
 11 mischaracterizes Qualcomm’s business and the cellular industry. Qualcomm only briefly  
 12 discusses the other two prongs of the stay test and some of the many misstatements in the *amicus*  
 13 briefs from LG Electronics (“LGE”) and ACT The App Association (“ACT”).

14 **A. Qualcomm Has Shown That It Will Be Irreparably Harmed Absent a Stay.**

15 Absent a stay, Qualcomm will suffer irreparable harm from implementing each of the first  
 16 two provisions of the injunction,<sup>1</sup> which require Qualcomm to (1) negotiate new agreements with  
 17 many licensees; (2) sell chips to unlicensed customers; and (3) grant exhaustive licenses to chip  
 18 makers. (Mot. at 7-10; ECF No. 1495-1 (“Rogers Decl.”) ¶¶ 5-9.)

19 **1. Qualcomm will suffer irreparable harm if it is compelled to negotiate**  
 20 **new agreements with many OEMs in view of the Order.**

21 Qualcomm showed in its Motion that if it is required to enter into new license agreements  
 22 during an appeal, there is no practical way to undo those agreements if Qualcomm prevails on  
 23 appeal, causing irreparable harm. (Mot. at 9-10; Rogers Decl. ¶ 8.) In response, the FTC makes  
 24 two misplaced assertions. *First*, the FTC asserts that Qualcomm would not be harmed because  
 25 the Order allows it to obtain “fair value” for its SEPs. (Opp. at 6.) This response is a red herring.

26 \_\_\_\_\_  
 27 <sup>1</sup> Should the Court determine that the irreparable harm Qualcomm would suffer as a result of  
 28 provisions (1) and (2) of the injunction does not warrant a stay of the entire Order, Qualcomm respectfully submits that the Court should enter a partial stay of only provisions (1) and (2) of the injunction.

1 The FTC’s main goal in this case was to lower Qualcomm’s royalty rates; the Court concluded—  
2 and the Order states—that Qualcomm’s rates are “unreasonably high” (Order at 157). Any  
3 negotiation or renegotiation that would take place in the shadow of the Order (absent a stay)  
4 would thus prejudice Qualcomm, not because of the loss of any purported leverage based on  
5 Qualcomm’s chip supply, but because of the need to negotiate in the shadow of an Order that  
6 declares—erroneously, in Qualcomm’s view—that Qualcomm’s typical licensing terms are  
7 unreasonable. (Mot. at 9; Rogers Decl. ¶ 7.) Licensees in these negotiations are likely to use  
8 tactics to further harm Qualcomm, such as stopping payment of royalties under valid contracts,  
9 even if temporarily. (See Mot. at 10; Rogers Decl. ¶ 9; Han Decl. ¶ 8.) For example, Huawei  
10 stopped paying royalties to Qualcomm for a period of time during ongoing licensing  
11 negotiations—even though it has an active license agreement—resulting in significant lost royalty  
12 revenue to date. (Han Decl. ¶ 8.)

13 The FTC’s further assertion that Qualcomm could, upon prevailing on appeal, seek  
14 “damages for any past infringement” to overcome the suspension of royalty payments is likewise  
15 erroneous. (Opp. at 6.) In this payment suspension case, the licensee still retains its license. But  
16 it is hornbook law that a license is a defense to a patent infringement claim. 35 U.S.C. § 271(a)  
17 (“Except as otherwise provided in this title, *whoever without authority* makes, uses, offers to sell,  
18 or sells any patented invention . . . infringes the patent”) (emphasis added); *De Forest Radio Tel.*  
19 *& Tel. Co. v. United States*, 273 U.S. 236, 242 (1927). Thus, the FTC’s proposed solution  
20 completely lacks merit. And absent a stay, if Qualcomm were forced to agree to a license with  
21 reduced royalties, Qualcomm could not recover its lost royalty revenue if it prevailed on appeal.  
22 (Han Decl. ¶ 6.) This irrecoverable loss of revenue constitutes irreparable harm.

23 Moreover, any royalty concessions to one licensee can cause irreparable harm to  
24 Qualcomm as a result of the effect on other licensees because of the non-discrimination provision  
25 of Qualcomm’s FRAND commitment or “most favored” provisions in some of Qualcomm’s  
26 license agreements. And this reduced royalty effect would become further entrenched beyond the  
27 appeal because licensing negotiations are often conducted by reference to comparable licenses;  
28 licensees would therefore seek to use unjustifiably reduced royalty terms negotiated in the

1 shadow of the Order as a benchmark for their agreements, artificially lowering the royalties  
2 Qualcomm receives below a reasonable royalty. (*Id.* ¶ 7; *see also* Trial Tr. at 1876:7-1877:3  
3 (Nevo) (explaining that Qualcomm’s most-favored royalty rate provisions and non-discrimination  
4 obligations under its FRAND commitments could drive Qualcomm’s royalties to the “lowest  
5 common denominator”).)

6 *Second*, the FTC asserts that any harm to Qualcomm is avoidable if Qualcomm negotiates  
7 “short-term or interim licenses”, and that Qualcomm is free to negotiate “contractual provisions  
8 that would mitigate or eliminate any long-term adverse consequences to Qualcomm”. (Opp. at 7.)  
9 This response is entirely impracticable and does nothing to address or mitigate the irreparable  
10 harm Qualcomm will suffer.

11 The FTC’s response presupposes that licensees will simply accept “interim licenses” and  
12 contractual provisions that would mitigate lasting harm to Qualcomm; however, nothing in the  
13 Order mandates licensees to accept the interim license agreements and the damage-mitigating  
14 provisions the FTC hypothesizes. (Han Decl. ¶¶ 4-5.) Qualcomm’s experience from past  
15 licensing negotiations is that licensees value the stability and certainty of long-term agreements.  
16 (*Id.* ¶ 5.) Licensees are unlikely to accept provisions that create uncertainty, such as contingent  
17 future payment of additional royalties for devices that already have been manufactured and sold,  
18 simply to benefit Qualcomm. (*Id.*) And even if some licensees would be open to *negotiating*  
19 such provisions, such provisions will not be agreed to for free—licensees would demand  
20 concessions on other license terms, including reduced royalty rates. (*Id.*) These concessions  
21 would themselves cause irreparable harm to Qualcomm, as there would be no way for Qualcomm  
22 to recover royalty revenue lost during the pendency of the appeal or to undo other licensing terms  
23 and their effects once the appeal is decided. (*Id.* ¶ 6.) And the FTC proposes no way—because  
24 none exists—to restore existing license agreements entered into prior to the interim agreements if  
25 Qualcomm prevails on appeal. (*See* Mot. at 9; Rogers Decl. ¶ 8.)

26 The cases on which the FTC relies for the proposition that there would be no harm from  
27 negotiating and renegotiating many new license agreements (Opp. at 3) are nonprecedential and  
28 inapposite. In *Winding Creek Solar LLC v. Peevy*, 2018 WL 1912136, at \*1 (N.D. Cal. Apr. 23,

1 2018), the court concluded that an order that a utility commission use a “readily available”  
2 standard form contract rather than another form contract adjudged illegal, to accomplish the same  
3 result and with the same counterparties, did not cause irreparable harm. Unlike in *Winding*  
4 *Creek*, the Order does not permit Qualcomm to comply by using an available and easily  
5 implementable alternative to accomplish the same result, and the contract in that case did not  
6 potentially affect many other contracts through mechanisms like Qualcomm’s FRAND  
7 commitment or “most favored” contractual provisions. Here, Qualcomm would be forced to  
8 radically reshape its licensing business in a way that is unprecedented in the cellular industry,  
9 undo many existing license agreements, and negotiate many new agreements with new  
10 counterparties and make exhaustive modem chip sales. (*See* Trial Tr. at 1418:24-1423:16  
11 (Gonell); Rogers Decl. ¶¶ 5-8.) None of the damage resulting from these activities could be  
12 remedied if the Order is reversed. And in *Overstreet v. Thomas David Medical Centers., P.C.*,  
13 978 F. Supp. 1313, 1315 (D. Ariz. 1997), the court concluded only that the movant’s claims of  
14 expense and extensive business changes were not proven, not that they would not constitute  
15 irreparable harm had they been established.

16 LGE’s submission (ECF No. 1501) provides no support for the FTC’s position. Notably,  
17 LGE acknowledges that it currently is in “continuing negotiations over the next set of *long-term*  
18 agreements”. (ECF No. 1501-1 at 3 (emphasis added).) The current interim agreement between  
19 Qualcomm and LGE was negotiated prior to and free from any effect of the Court’s Order, and  
20 entered into after the parties had already reached a mutual understanding of the material terms of  
21 a future long-term agreement. (Han Decl. ¶ 13.) This agreement is exceptional and is nothing  
22 like the short-term agreements with undefined mitigation provisions that the FTC postulates. (*Id.*  
23 ¶ 16.)

24 Moreover, LGE’s submission (supported by a declaration of an attorney not involved in  
25 the license negotiations) misstates the facts, demonstrating the opportunistic use of the Order by  
26  
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28

1 licensees to gain leverage in licensing negotiations with Qualcomm.<sup>2</sup> Indeed, LGE’s public  
 2 statements directly contradict its submission to this Court: since filing its *amicus* brief, LGE has  
 3 publicly stated that “[t]here will be no disruption of supplies from Qualcomm”. (Byars Decl. Ex.  
 4 B.) And indeed, contrary to LGE’s insinuation (Lee Decl. (ECF No. 1501-2) ¶ 8), Qualcomm  
 5 continuously supplied chips to LGE, without any interruption, throughout the negotiations. (Han  
 6 Decl. ¶ 15.) Moreover, Qualcomm made a written offer to enter into binding FRAND arbitration  
 7 with LGE to try and resolve the dispute, which included an express guarantee of chip supply  
 8 during the pendency of the arbitration, but LGE declined that offer. (Han Decl. ¶ 17.)

9 **2. Qualcomm will suffer irreparable harm if it is compelled to sell chips**  
 10 **to unlicensed OEMs.**

11 Qualcomm also demonstrated in its Motion that it will face irreparable harm if it must sell  
 12 modem chips to unlicensed OEMs while the appeal is pending. (Mot. at 8-9.) OEMs would  
 13 claim that such sales exhaust Qualcomm’s rights to seek royalties for its SEPs, and as a result  
 14 Qualcomm would be unable to recover the fair value of its patents from them. (Mot. at 8; *see*  
 15 Rogers Decl. ¶ 6.) The FTC asserts that Qualcomm can avoid this harm if it “price[s] its modem  
 16 chips to reflect the fair value of its patents”. (Opp. at 5.)

17 But the FTC’s argument fails to recognize that, at least so long as other chip makers are  
 18 not licensed and thus do not price into their chip offerings the cost of Qualcomm’s patents, this  
 19 would leave Qualcomm in the untenable position of either charging much more for its chips than  
 20 do its competitors (and therefore likely losing the sales), or reducing its chip prices so that, once  
 21 again, they do not reflect the fair value of Qualcomm’s patents. Whether it is losing chip sales or  
 22 the ability to recover for the value of its SEPs, Qualcomm is irreparably harmed.

23  
 24 \_\_\_\_\_  
 25 <sup>2</sup> Qualcomm objects to the *amicus* submission by LGE based on LGE’s refusal to seek  
 26 Qualcomm’s consent before filing and LGE’s refusal to participate in meaningful discovery or to  
 27 be cross-examined by Qualcomm in this case. (*See* Qualcomm’s pre-trial Motion in Limine  
 concerning LGE (ECF No. 944).) LGE should not be permitted to make self-serving statements  
 under the guise of an *amicus* submission while it used its presence outside the United States to  
 shield itself from discovery and prevent Qualcomm from making a record.

28 In addition to the discussion here, the accompanying declaration of John Han corrects the record  
 as to other assertions in LGE’s submission.

1                   **3. Qualcomm will suffer irreparable harm from being required to grant**  
2                   **exhaustive licenses to chip makers.**

3                   Qualcomm also demonstrated in its Motion that, absent a stay, it will suffer irreparable  
4 harm from the requirement in the injunction to grant exhaustive licenses to chip makers as a result  
5 of the substantial difficulties inherent in multi-level licensing. (Mot. at 8-9.) Qualcomm has  
6 maintained throughout the case that its practice of licensing only at the device level is industry  
7 standard and is justified because it is much more efficient than licensing at multiple levels in the  
8 supply chain. (*See* Trial Tr. at 355:15-22 (Moynihan), 805:4-15 (Mollenkopf), 992:15-19  
9 (Donaldson), 1432:12-24, 1436:3-8, 1439:15-23 (Gonell), 1670:14-1674:17 (Weiler).) The FTC  
10 asserts that if Qualcomm’s position is correct, it is “implausible” to believe that “chip suppliers  
11 would nonetheless insist on licensing Qualcomm patents that their OEM customers could license  
12 more efficiently”. (Opp. at 7.) The FTC ignores basic motivations. The self-interest of chip  
13 makers is not to promote fair, quick and efficient collection of royalties by Qualcomm, but rather  
14 to delay and minimize the payment of royalties from those chip makers. Multi-level licensing  
15 would facilitate obstruction and delay. The OEMs would point to the chip makers and assert that  
16 most of Qualcomm’s valuable patents are substantially embodied in the modem chips, such that  
17 chip makers should have to pay the bulk of the royalty. Conversely, the chip makers would point  
18 to the OEMs and assert that most of Qualcomm’s valuable patents are substantially embodied in  
19 the complete devices as they communicate with the cellular network, such that OEMs should  
20 have to pay the bulk of the royalty (a claim they could make even if Qualcomm were to try and  
21 license to them its entire SEP portfolio, as the ACT brief proposes). (*See* Rogers Decl. ¶ 5.) This  
22 would force Qualcomm into negotiations over *which* portion of Qualcomm’s patent portfolio each  
23 licensee needs to license—and inevitably disputes over that question—before Qualcomm was  
24 even in a position to begin addressing the value of those patents. (Trial Tr. at 1432:25-1434:21  
25 (Gonell).) Licensing at only one level of the supply chain allows Qualcomm to avoid this “delay  
26 and disagreement among multiple parties”, which “undermine Qualcomm’s ability to obtain fair  
27  
28

1 value for its intellectual property”. (Rogers Decl. ¶ 5.)<sup>3</sup>

2 The serious difficulties in multi-level licensing set forth in the Rogers Declaration are  
 3 confirmed by the brief of *amicus* ACT, which asserts that “[c]ellular standards are implemented at  
 4 the chip level” and, as a result, Qualcomm will not need to license cellular SEPs to OEMs. (ECF  
 5 No. 1503-2 at 8.) ACT’s bald assertion is entirely unsupported by any technical evidence; there  
 6 is no evidence that all cellular SEPs are practiced by modem chips. To the contrary, Qualcomm  
 7 submitted evidence that cellular standards describe the functionality of complete cellular devices,  
 8 not modem chips. (*See* ECF No. 912 (Decl. of Lorenzo Casaccia) ¶¶ 5, 8, 10, 19-35.) ACT is an  
 9 organization aligned with the interests of powerful OEMs such as Apple and Samsung, *see*  
 10 <https://allthingsfrand.com/about/> (an ACT website listing its members), and its brief illustrates the  
 11 finger-pointing that would inevitably occur under a multi-level licensing regime.

12 ACT further claims that its “views on these issues are mainstream and have been  
 13 supported by an extensive array of industry . . . stakeholders”, and as support cites a “Core  
 14 Principles and Approaches for SEP Licensing” proposal that ACT (and others, including Apple  
 15 and Lenovo) submitted to a CEN-CENELEC Workshop. (ECF No. 1503-2 at 3-4.) But many of  
 16 the ideas espoused in that document were specifically and opportunistically used by OEMs to  
 17 “devalue SEPs”.<sup>4</sup> And ACT is not presenting the Court with the whole story. Rather, ACT omits  
 18 the competing proposal submitted at the same CEN-CENELEC Workshop by many other  
 19 industry participants (including Qualcomm) that contradicted ACT’s positions and argued that  
 20 “licensing a product or service at a single point in the supply chain is an efficient approach” to  
 21 ensuring that SEP owners “allow access to [standard-essential] patented technology for

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23 <sup>3</sup> The FTC miscites Paragraph 5 of the Declaration of Alex Rogers for the proposition that  
 24 “Qualcomm asserts” that “should the injunction become effective, rivals will prove eager to  
 25 conclude licenses with Qualcomm”. (Opp. at 12.) Mr. Rogers made no such assertion in  
 26 Paragraph 5 of his Declaration or anywhere else. To the contrary: he declares that “OEMs will  
 27 contend that all or nearly all cellular SEP claims are practiced or exhausted at the component  
 28 level and that Qualcomm must, under [the] Order, first license at the component level”, causing  
 “delay and disagreement among multiple parties”. (Rogers Decl. ¶ 5.)

<sup>4</sup> (*See, e.g.*, Byars Decl. Ex. F at 7 (internal Apple document listing strategies to “[d]evalue  
 SEPs”, including by setting the royalty base as the “smallest priceable component” and  
 “build[ing] favorable, arms-length ‘comp’ licenses”).)

1 implementing and using the standard”. (Byars Decl. Ex. A at 7.) ACT’s *amicus* submission itself  
2 represents an effort to use arguments about where cellular SEPs are practiced to make it  
3 substantially more difficult for Qualcomm (and other SEP holders) to license its SEPs and obtain  
4 fair value for its patents.

5 The irreparable harm is exacerbated by the prospect of inconsistencies between the Order  
6 and foreign regulators. The Taiwan Fair Trade Commission (“TFTC”) and the Chinese National  
7 Development and Reform Commission (“NDRC”) each recently investigated the same set of  
8 Qualcomm practices and concluded their investigations without ordering Qualcomm to license  
9 component makers. (*See, e.g.*, Byars Decl. Ex. C, Ex. D, Ex. E at 2 (TFTC settlement providing  
10 that “Qualcomm will not assert any SEP claim against a [chip maker] without first offering them  
11 a license to such claim on [FRAND] terms and conditions”); Trial Tr. 1982:23-1983:13 (Rogers)  
12 (Rectification Plan with NDRC does not require Qualcomm to sell chips to unlicensed companies  
13 or to license at the component level).) Many chip makers (and OEMs) are based in Taiwan or  
14 China. These deliberate decisions by foreign governments that it is in their respective national  
15 interests not to impose the requirements in this Court’s Order are entitled to adjudicative comity.  
16 *See Mujica v. AirScan Inc.*, 771 F.3d 580, 599 (9th Cir. 2014).

17 The irreparable harm facing Qualcomm warrants a stay, and nothing in the FTC’s  
18 Opposition or the *amicus* briefs undermines that fact.

19 **B. Qualcomm’s Appeal Presents a Substantial Case on the Merits.**

20 Qualcomm demonstrated that its appeal presents a “substantial case on the merits”, which  
21 means “serious questions” or questions on which Qualcomm has a “fair prospect of success”.  
22 (Mot. at 6.) None of the FTC’s arguments casts any doubt on the seriousness of the issues  
23 Qualcomm intends to raise on appeal or its prospect of success. In the interest of space,  
24 Qualcomm responds here only to the FTC’s misstatements of the legal standards.

25 As an initial matter, the FTC asserts that Qualcomm “would have to show a strong  
26 likelihood of success on appeal to obtain a stay”. (Opp. at 11.) Qualcomm has easily made that  
27 showing. However, the standard on this motion for a stay is lower, namely “a substantial case on  
28 the merits”. *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011).

1           The FTC also asserts that Qualcomm’s argument on appeal that the record lacks the  
2 necessary evidence of current market conditions justifying an injunction is a “case-management  
3 decision” “entitled to considerable deference on appeal”. (Opp. at 12.) But the Ninth Circuit has  
4 held that evidence that a violation that is “ongoing or likely to recur” is a *necessary element* of the  
5 FTC’s request for injunctive relief. *FTC v. Evans Prods. Co.*, 775 F.2d 1084, 1087 (9th Cir.  
6 1985); *see also FTC v. Shire ViroPharma, Inc.*, 917 F.3d 147, 158 (3d Cir. 2019) (“a court uses  
7 [the likelihood of recurrence standard] to determine the FTC’s entitlement to an injunction”);  
8 *FTC v. AbbVie Inc.*, 329 F. Supp. 3d 98, 145 (E.D. Pa. 2018) (denying a permanent injunction  
9 because the record contained “no basis to conclude that” antitrust violations are “likely to  
10 reoccur”); *FTC v. Merch. Servs. Direct, LLC*, 2013 WL 4094394, at \*3 (E.D. Wash. Aug. 13,  
11 2013) (concluding that, after “stale” evidence regarding past alleged violations was “excised”,  
12 “there is little to suggest that the violations . . . are likely to recur” and denying preliminary  
13 injunction).

14           This Court should find that Qualcomm’s appeal presents a substantial case for relief on  
15 the merits.

16           **C.       Staying the Order Pending Appeal Is in the Public Interest.**

17           All witnesses at trial agreed that chip markets are characterized by falling prices,  
18 increased output and dynamic innovation. (Mot. at 3-4, 18-19; Trial Tr. at 1695:20-1696:7  
19 (Chipty), 1797:6-1800:23 (Snyder), 2031:16-24, 2062:20-2064:22 (Shapiro).)

20           Nevertheless, the FTC asserts that this motion should be denied because of an alleged  
21 threat to future modem chip markets, including 5G. (Opp. at 8-9.) There is no record evidence,  
22 however, supporting the FTC’s contention that 5G modem chips are, or are about to become, a  
23 properly defined antitrust market, or that Qualcomm will have monopoly power in that market  
24 once the sale of 5G modem chips begins. Nor has the FTC presented any evidence that should  
25 Qualcomm gain a leadership position in 5G, such position would be based on anything but a  
26 legitimate time-to-market advantage or superior chips. *See United States v. Grinnell Corp.*, 384  
27 U.S. 563, 570-71 (1966) (distinguishing between exclusionary conduct and “growth or  
28 development as a consequence of a superior product, business acumen, or historic accident”).





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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 QUALCOMM INCORPORATED, a  
22 Delaware Corporation,

23 Defendant.

Case No. 5:17-cv-00220-LHK-NMC

**DECLARATION OF M. BRENT BYARS  
IN SUPPORT OF QUALCOMM'S REPLY  
IN SUPPORT OF MOTION FOR STAY  
PENDING APPEAL**

Dept: Courtroom 8, 4<sup>th</sup> Floor  
Judge: Hon. Lucy H. Koh

**DECLARATION OF M. BRENT BYARS**

I, M. Brent Byars, declare and state that:

1. I am associated with Cravath, Swaine & Moore LLP, counsel of record for Defendant Qualcomm Incorporated (“Qualcomm”) in *Federal Trade Commission v. Qualcomm Incorporated*, Case No. 17-cv-00220-LHK-NMC. I submit this declaration in support of Qualcomm’s Reply in Support of its Motion to Stay. I have personal knowledge of the facts set forth herein. If called upon as a witness in this action, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of a CEN-CENELEC Workshop Agreement CWA 17431, *Principles and guidance for licensing Standard Essential Patents in 5G and the Internet of Things (IoT), including the Industrial Internet*, dated June 2019.

3. Attached hereto as Exhibit B is a true and correct copy of a news article from Mobile World Live by Steve Costello, titled *LG plays down impact of Qualcomm quarrel*, dated June 14, 2019.

4. Attached hereto as Exhibit C is a true and correct copy of the Rectification Plan Related to the National Development and Reform Commission’s (“NDRC”) Investigation of Qualcomm, dated February 9, 2015.

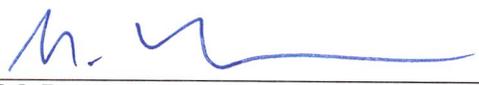
5. Attached hereto as Exhibit D is a true and correct copy of a press release by the NDRC, dated February 10, 2015.

6. Attached hereto as Exhibit E is a true and correct copy of the Settlement Transcript between Qualcomm and the Taiwan Fair Trade Commission, together with the translated content thereof, Exhibit 1 comprising Qualcomm’s Behavioral Commitments, and a form Cellular Modem Component Patent Commitment Agreement, dated August 22, 2018.

7. Attached hereto as Exhibit F is a true and correct copy of Qualcomm’s opening statement slides in *In re: Qualcomm Litigation*, No. 3:17-cv-0108-GPC-MDD (S.D. Cal.), dated April 16, 2019.

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I declare under penalty of perjury that the foregoing is true and correct. Executed this day, June 18, 2019, in New York, New York.

By:   
M. Brent Byars

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
QUALCOMM INCORPORATED, a  
Delaware Corporation,  
  
Defendant.

Case No. 5:17-cv-00220-LHK-NMC  
  
**DECLARATION OF JOHN HAN IN  
SUPPORT OF QUALCOMM'S REPLY IN  
SUPPORT OF MOTION FOR STAY  
PENDING APPEAL**  
  
Dept: Courtroom 8, 4<sup>th</sup> Floor  
Judge: Hon. Lucy H. Koh

**DECLARATION OF JOHN HAN**

I, John Han, declare and state that:

1. I am Senior Vice President and General Manager of Qualcomm Technology Licensing (“QTL”), an operating segment of Defendant Qualcomm Incorporated (“Qualcomm”). I submit this declaration in support of Qualcomm’s Reply in Support of its Motion to Stay. I have personal knowledge of the facts set forth herein. If called upon as a witness in this action, I could and would testify competently thereto.

2. I am responsible for the general management of Qualcomm’s intellectual property licensing business. In addition to my general management and oversight responsibilities, I am responsible for QTL’s licensing group and have personally participated in patent licensing negotiations on behalf of Qualcomm for the past two and a half years. From 2000 to 2016, I worked at Ericsson, where I became vice president of licensing and was the head of the licensing group. Over the past 20 years I have been involved in numerous license negotiations involving grants of rights under cellular essential patents to device makers throughout the world.

3. I understand that the Court issued an Order that requires Qualcomm to negotiate or renegotiate many existing and new license agreements, and that the Court stated that Qualcomm’s existing royalty rates are unreasonably high.

4. I understand that the FTC has asserted that Qualcomm could avoid the harm resulting from being required to enter into new license agreements in the shadow of the Order by negotiating short-term or interim license agreements during the appeal period—the length of which, I understand, is uncertain—that would contain contractual provisions mitigating or eliminating any long-term adverse consequences to Qualcomm. The FTC’s view is impractical. Interim agreements are the exception, not a common occurrence. In my experience, licensees would not agree to enter into such agreements, and certainly would not agree to provisions that they view as contrary to their interests.

5. Licensees generally want long-term stability and certainty, and will seek to lock in the terms that are acceptable to them. Accordingly, my experience from past licensing negotiations is that licensees would see no reason to terminate the existing license arrangement unless the terms

1 of a new agreement are substantially more favorable to them, particularly as to reduced royalties.  
2 If Qualcomm is compelled to accept new agreements on terms that are worse for Qualcomm and  
3 more favorable to licensees, the licensees will then seek to lock in these favorable terms for a  
4 long period. Qualcomm would have no unilateral ability to insist that licensees enter into interim  
5 or short-term agreements, and certainly would not be able to make licensees accept agreements  
6 that would revert to the terms of Qualcomm's current license agreements if Qualcomm prevails  
7 on appeal. On the contrary, based on my experience, licensees are unlikely to accept any  
8 provisions that would increase their royalties, or that could result in the obligation to pay  
9 retroactively additional royalties for devices that already have been manufactured and sold,  
10 contingent on a future event outside their control, such as the Court of Appeals' decision on  
11 Qualcomm's appeal.

12 6. If the Order is overturned or modified on appeal, there is no practical way for Qualcomm  
13 to abandon the newly negotiated or renegotiated agreements and revert to the terms of the  
14 currently existing agreements and also apply those reverted terms retroactively.

15 7. Even if Qualcomm prevails on its appeal, licensees will point to concessions given under  
16 the Order, including reduced royalties, as a benchmark for Qualcomm's licensing negotiations  
17 going forward. This could significantly damage Qualcomm's ability to obtain fair royalties for its  
18 patents in future negotiations.

19 8. Unless the Order is stayed, the Order will create substantial uncertainty for Qualcomm's  
20 licensing program also in that existing licensees may act opportunistically and either cease paying  
21 or reduce the amount of royalties paid while demanding concessions from Qualcomm on new  
22 license terms. For example, Huawei, which has an active license agreement with Qualcomm,  
23 stopped paying royalties to Qualcomm for a period of time while negotiating for a new license  
24 agreement, resulting in significant lost royalty revenue to date.

25 9. I have reviewed the Declaration of JongSang Lee, dated June 11, 2019, which I  
26 understand accompanied an amicus brief filed by LG Electronics ("LGE"). I disagree with a  
27 number of assertions in Mr. Lee's declaration.

28 10. I am personally familiar with the recent licensing negotiations between Qualcomm and

1 LGE. I have led the negotiations for Qualcomm. I have met with representatives of LGE ten or  
2 more times and have participated in numerous additional telephone calls with them. The  
3 negotiations for LGE have been led by Saeng Gyu Jeon and Young Han Song. Mr. Jeon is  
4 Executive Vice President of LGE and the head of LGE's IP Center, and Mr. Song reports to Mr.  
5 Jeon. It is my understanding that all of LGE's patent licensing responsibilities fall within Mr.  
6 Jeon's IP Center. However, I have never met Mr. Lee and he has not participated in any of our  
7 patent licensing negotiation meetings or conference calls.

8 11. Qualcomm has been in negotiations with LGE for a long-term license agreement for over  
9 a year.

10 12. LGE's previous license agreement with Qualcomm enabled LGE to elect to terminate the  
11 agreement as of December 31, 2018. LGE elected to terminate. During negotiations in the  
12 summer and fall of 2018, Qualcomm and LGE exchanged representative standard essential patent  
13 lists and claim charts, and the parties met to discuss those claim charts.

14 13. In December 2018, after extensively negotiating the terms of a new license agreement,  
15 Qualcomm and LGE reached a mutual understanding of the material terms and came close to  
16 executing a memorandum of understanding for a long-term license agreement with an effective  
17 date of January 1, 2019.

18 14. Qualcomm and LGE did not ultimately execute a new license agreement, and LGE  
19 became unlicensed. Qualcomm and LGE then entered into an interim license agreement while  
20 discussions continued regarding a long-term agreement.

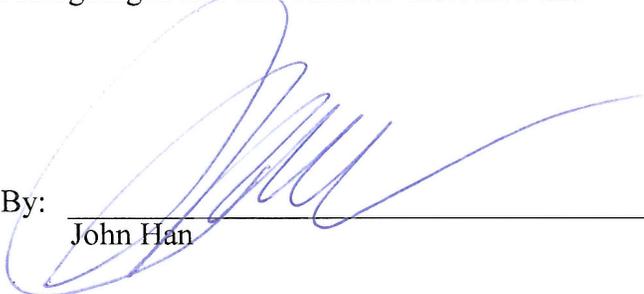
21 15. Throughout negotiations with LGE, up until the present, Qualcomm never disrupted  
22 LGE's chip supply or took any action to withhold software or technical support.

23 16. Qualcomm negotiated the interim agreement with LGE while a long-term agreement  
24 remained under discussion. In the past, Qualcomm has negotiated a handful of short-term or  
25 interim agreements for a similar purpose. None of Qualcomm's short-term or interim agreements  
26 are similar to the type proposed by the FTC in its opposition to Qualcomm's stay motion.

27 17. During negotiations in 2018, Qualcomm offered to enter into binding arbitration with  
28 LGE to resolve the terms of a FRAND license. In doing so, Qualcomm expressly guaranteed to

1 LGE that it would continue to supply LGE with chips during arbitration. I set out this offer in  
2 writing in a letter to Mr. Jeon dated December 30, 2018. LGE declined Qualcomm's offer of a  
3 binding FRAND determination.

4  
5 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
6 day, June 18, 2019, in San Diego, California.

7  
8 By:   
9 John Han

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# **Exhibit A**

**CEN**

**CWA 17431**

**WORKSHOP**

June 2019

**AGREEMENT**

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ICS 03.140; 35.240.01

English version

## Principles and guidance for licensing Standard Essential Patents in 5G and the Internet of Things (IoT), including the Industrial Internet

This CEN/CENELEC Workshop Agreement has been drafted and approved by a Workshop of representatives of interested parties, the constitution of which is indicated in the foreword of this Workshop Agreement.

The formal process followed by the Workshop in the development of this Workshop Agreement has been endorsed by the National Members of CEN and CENELEC but neither the National Members of CEN and CENELEC nor the CEN-CENELEC Management Centre can be held accountable for the technical content of this CEN/CENELEC Workshop Agreement or possible conflicts with standards or legislation.

This CEN/CENELEC Workshop Agreement can in no way be held as being an official standard developed by CEN and CENELEC and its Members.

This CEN/CENELEC Workshop Agreement is publicly available as a reference document from the CEN Members National Standard Bodies and CENELEC National Electrotechnical Committees.

CEN and CENELEC members are the national standards bodies and national electrotechnical committees of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom.



EUROPEAN COMMITTEE FOR STANDARDIZATION  
COMITÉ EUROPÉEN DE NORMALISATION  
EUROPÄISCHES KOMITEE FÜR NORMUNG

**CEN-CENELEC Management Centre: Rue de la Science 23, B-1040 Brussels**

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Ref. No.:CWA 17431:2019 E

CWA 17431:2019 (E)

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## European foreword

CWA 17431:2019 was developed in accordance with CEN-CENELEC Guide 29 “CEN/CENELEC Workshop Agreements” and with the relevant provisions of CEN/CENELEC Internal Regulations - Part 2.

A CEN/CENELEC Workshop Agreement (CWA) is an agreement, developed and approved by a CEN/CENELEC Workshop and owned by CEN/CENELEC as a publication, which reflects the consensus of identified individuals and organizations responsible for its contents. A CWA is for voluntary use by those parties who wish to implement its content. A CWA should not be construed as legal advice authoritatively endorsed by CEN/CENELEC.

This Workshop Agreement, including its Annexes (CWA) has been drafted and approved by a Workshop of representatives of interested parties, the constitution of which was supported by CEN and CENELEC following a public call for participation. The Workshop’s Kick-Off meeting took place on 2017-10-06.

The formal process followed by the Workshop in the development of this CWA has been endorsed by the National Members of CEN/CENELEC but neither the National Members of CEN/CENELEC nor the CEN-CENELEC Management Centre can be held accountable for the content of the CWA.

Public consultation for this CWA started on 2018-10-10 and ended on 2018-12-31.

The final text of this CWA was submitted to CEN for publication on 2019-05-22.

Below is a list of companies/organizations that developed and approved this CWA:

- Cuirassier
- Dolby Laboratories Inc.
- EnergySquare
- Ericsson
- Fractus
- France Brevets
- IKUSI (VELATIA)
- InterDigital
- KNOWENCE
- KONINKLIJKE PHILIPS N.V.
- Mitsubishi Electric
- Nokia
- Orange
- OSTIUM Group
- Panasonic R&D Center Germany GmbH
- Qualcomm
- Vitrover

**CWA 17431:2019 (E)**

**IMPORTANT NOTE:** This CWA does not comprise legal advice of any kind. Interested parties should seek legal or expert advice in respect of the topics discussed in this CWA. This document is a workshop output and may not represent the complete position of any participant.

This Workshop Agreement is publicly available as a reference document from the National Members of CEN/CENELEC: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

## Introduction

Following on from the wave of technology that saw the widespread adoption of smartphones and tablets, we are now riding a new wave of technology which some call a fourth industrial revolution. This new wave is based, among other things, on the spread of the Internet of Things (IoT) where products beyond smartphones and tablets rely on a connection to the internet that will use mobile communications technology such as 5G.

As companies with experience in licensing Standard Essential Patents (SEPs) - as SEP owners and as users of standards - we want to play our part to help new participants in SEP licensing feel more confident negotiating the licences that they may require. To do this we formed a Workshop under the auspices of CEN and CENELEC which has resulted in this CEN/CENELEC Workshop Agreement (CWA), "Principles and Guidance for Licensing Standard Essential Patents in 5G and the Internet of Things (IoT)". This document has been developed and approved by consensus of the organisations responsible for its content.

It has two main elements. The first is a set of Principles and Guidance which draws on our combined experience of SEP licensing for Information and Communication Technologies (ICT)<sup>1</sup> standards. Licensing is a complex and evolving area and the development of new IoT products and services may bring new approaches and practices. We have therefore identified broad principles which should form a solid foundation for future practice.

The second element is a set of Questions and Answers. These are addressed mainly to those who are new to the implementation and use of standardised technology and the licensing of patents that cover those technologies. As with other Q&A documents, it is only intended to be informative and does not cover every situation.

This document ends by looking forward to SEP licensing in 5G and the IoT.

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<sup>1</sup> ICT standards here include mobile communication standards, other wireless communication standards such as Wi-Fi, and video and audio compression standards.

**CWA 17431:2019 (E)****Background**

Standards have been recognised as an effective way to enable components and products designed and produced by different companies to operate and communicate with one another. A standard's ultimate success will depend on its wide adoption by industry and users.

To effectively compete and maximise the value of their standards, Standards Development Organisations (SDOs) often seek to attract broad participation by stakeholders at every level of value creation, as well as contribution to the standard of the most advanced technical solutions developed by these stakeholders. SDO policies and membership agreements are for these reasons intended to strike a balance between the varying interests of the broadest set of stakeholders.

New technologies contributed to standards are often protected by patents or are the subject of patent applications at the time the standards are developed. Most standards relating to connectivity therefore incorporate patented technologies. SDO policies regarding patented technologies incorporated into standards therefore play a central role in achieving the required balance of interests.

To successfully attract contribution of the best and most valuable technologies, many SDOs have policies that allow contributing members to charge for the use of their patented technologies.<sup>2</sup> Rewards for developers of these technologies in turn encourage companies to contribute their best technologies to standards, rather than reserving them as proprietary technologies. This usually results in competition between a large number of technically advanced companies to have their technical solution incorporated into a standard and also incentivises future investments in R&D.

At the same time, SDOs also seek to ensure the widespread availability of standardised technologies on reasonable terms – terms consistent with the value that the technology provides. Accordingly, SDO policies typically seek commitments from patent owners that they will license those patents which are “essential” for using a standard (so-called Standard Essential Patents or SEPs) on Fair, Reasonable, and Non-Discriminatory (FRAND) terms.<sup>3</sup>

ICT companies have been engaged in SEP licensing for ICT standards for decades. These licensing activities have covered different products and services but have been primarily focused on video and telecoms equipment, such as mobile phones, smartphones, tablets, TV sets, set-top boxes, routers and base stations. Over the years, practices have been established and companies have learned how to negotiate with one another and how to value each other's SEPs.<sup>4</sup>

As IoT develops, products will go beyond the familiar ones, and new services will be offered. These new products and services will rely on ICT standards. This means that more companies from a wide spectrum of different industries will use these standards and will need to engage in SEP licensing negotiations. In some sectors, this process has already begun.

This CWA therefore seeks to provide some guidance and information to companies which are new to SEP licensing, and to better enable these new entrants to assess their licensing needs and conduct SEP licensing negotiations where and when necessary.

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<sup>2</sup> Note that some SDOs have policies which, alternatively, may seek royalty free commitments from their members in respect of their SEPs or may aim to avoid technologies covered by IPR.

<sup>3</sup> See Questions & Answers section for more details.

<sup>4</sup> This is not to say that SEP licensing negotiations between ICT companies always run smoothly; the differences between parties have occasionally been so wide that they have ended up before courts around the world, leading to the gradual development of case law on matters such as how parties should behave in SEP licensing negotiations and what are FRAND terms.

## 1 Principles and Guidance

**Principle 1: Owners of patent rights which are essential for using standardised technologies (SEPs) should allow access to that patented technology for implementing and using the standard.**

### GUIDANCE

- This Principle only relates to patented technology that an owner, at the time of its ownership, agreed to have included in the standard by making a licensing commitment, and that is actually included in that standard.
- Access to SEPs may be provided directly between the parties through a licence, indirectly through a licence concluded at another point in the supply chain, or because the owner does not require a licence for access at the time. Access is often provided directly to companies that sell products or services, and indirectly to suppliers of those companies.
- Licences for SEPs should be on Fair, Reasonable and Non-Discriminatory (FRAND<sup>5</sup>) terms and conditions.
- As a general matter, licensing a product or service at a single point in the supply chain is an efficient approach. A SEP owner should consider licensing practices in both parties' specific industries to assist in determining the most appropriate and efficient point to license.

**Principle 2: Both the SEP owner and the potential licensee should act in good faith with respect to each other with the aim of concluding a FRAND licence agreement in a timely and efficient manner.**

### GUIDANCE

- When a SEP owner believes that a party implementing a standard is infringing its SEPs and would require that party to take a licence, the SEP owner should notify that party, describe the alleged infringement and ask it to enter into negotiations over a FRAND licence.
- The SEP owner should provide the potential licensee with information about its SEP portfolio and why a licence is needed.
- The SEP owner should make an initial licence offer, and explain why it believes that the offer is FRAND. If the potential licensee does not agree, it should promptly provide a counter-offer, and explain why it believes that the SEP owner's offer is not FRAND and that its counter-offer is FRAND.
- The potential licensee is free to challenge the essentiality or validity of the SEP owner's patents, in parallel to the negotiation, but that should not be used to unnecessarily delay negotiations over a licence.

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<sup>5</sup> Also referred to as RAND.

**CWA 17431:2019 (E)**

**Principle 3: Each party should provide to the other party, consistent with the protection of confidentiality, information that is reasonably necessary to enable the timely conclusion of a FRAND licence.**

**GUIDANCE**

- If requested by either party, parties should promptly conclude a reasonable non-disclosure agreement if confidential information is to be exchanged.
- Contractual obligations of confidentiality to third parties may apply and limit the information exchanged.

**Principle 4: "Fair and reasonable" compensation should be based upon the value of the patented standardised technology to its users.**

**GUIDANCE**

- Fair and reasonable compensation balances the incentive to contribute technology to standards with the cost of access to the standardised technology.
- Fair and reasonable compensation should be evaluated considering the facts and circumstances that reasonable commercial parties would take into account when negotiating a patent licence.
- Comparable licences which result from commercial negotiations are often reliable indicators for determining the value of the patented standardised technology to users of the licensed product or service.
- Other indicators which may be considered include consumer demand, measurable benefits of the patented standardised technology, and the price difference between substantially identical products with and without the standardised technology.
- As a cross-check when evaluating whether compensation is fair and reasonable, the aggregate of fair and reasonable royalties likely to be borne by users for the standard concerned may also be considered.
- Such aggregate royalties may be too high if wide access to the standard is prevented or too low if the royalties are not sufficient to incentivise the contribution of technology to standards.

**Principle 5: A SEP owner should not discriminate between similarly situated competitors.**

**GUIDANCE**

- Non-discrimination does not require licensing terms, offered or agreed, to be identical among similarly situated licensees.

**Principle 6: If the parties are unable to conclude a FRAND licence agreement within a reasonable timeframe they may seek to agree to third party determination of a FRAND licence either by a court or through binding arbitration.**

**GUIDANCE**

- An offer by either party to resolve the terms of a worldwide FRAND licence to the SEP owner's relevant SEPs through a fair and binding arbitration process should not be considered contrary to good faith behaviour.
- Such an offer should not be rejected by the counter-party without reasonable justification.
- Discussions on mediation, arbitration, court adjudication or other dispute resolution methods should not be abused in order to unreasonably delay the negotiation and conclusion of a licence.

## 2 Questions and Answers

### Q1. What is a patent?

A “patent” is an exclusionary right usually granted on a national basis for a new innovation or invention.<sup>6</sup> It enables the patent owner to prevent others from using the idea or invention without the patent owner’s permission (or “licence”).

To obtain a patent, technical information has to be disclosed in an application to a patent office. The patent office decides whether the invention is new and inventive, and may refuse or grant a patent accordingly. The patent explains what the invention is and how it works. Following this explanation is a set of numbered “claims”. The claims define the scope of the protection.

A patent application should be filed before the invention is made public otherwise the opportunity to obtain a patent may be lost. As a result, applications are often made at a very early stage of development, before it is known if and how an invention will be used. In many areas of technology it is usual to apply for patent protection in several countries or regions. A granted patent usually lasts for 20 years after the application is filed, after which the patented invention is free for anyone to use.

Patents can also be bought and sold, so the current owner may not be the original inventor(s).

### Q2. What is a Standard Essential Patent (SEP) and why are SEPs important?

In the ICT sector, standards are often developed through cooperation between research engineers working for many different companies. The standard development process involves considering the proposed technical solutions and deciding by consensus how to create the best possible technical solution for the given requirement.

Once an industry standard is adopted (for example, for mobile communications, video compression or audio compression) it is usually published in the form of detailed technical specifications. These specifications enable a company to develop products or services that comply with the standard and so have full compatibility and interoperability with other devices or services using the same industry standard. Examples are the successive generations of mobile communication standards often referred to as 2G, 3G and 4G.

There are many types of technical standards, which vary in the extent of the technology they cover; some are wide ranging, others are narrow. For example, mobile communication standards are extremely complex and incorporate technical developments from many different contributors.

A “Standard Essential Patent” (SEP) is a patent covering technology that must be used by a product or service to comply with a mandatory or optional part of a given industry standard. The exact meaning and scope of what is “essential” depends on the relevant Standard Development Organisation’s (SDOs) Intellectual Property Rights (IPR) Policy.

### Q3. What is a FRAND commitment?

To ensure any proposed technical solution will be available for third parties to use, SDOs usually ask participants to commit that they will offer to license their SEPs on Fair, Reasonable and Non-Discriminatory” (FRAND) terms - i.e. to make a “FRAND commitment”. FRAND commitments are often subject to reciprocity, i.e conditional on the potential licensee making available its relevant SEPs on FRAND terms.

The form and extent of the FRAND commitment may vary between SDOs. Some SDOs have provisions to ensure that anyone who purchases a SEP subject to a FRAND commitment will also make a FRAND commitment.

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<sup>6</sup> See also WIPO definition: <http://www.wipo.int/patents/en/>

**CWA 17431:2019 (E)****Q4. What is a global portfolio licence?**

Patents are usually national rights, so there will often be separate patents for the same invention in many different countries. This is particularly so for technologies used worldwide, such as mobile communication standards. A global portfolio licence provides a licence to all of the SEP owner's relevant SEPs around the world, so enabling a licensee to manufacture and sell its products or services anywhere in the world. The licence will usually require the licensee to account for all worldwide sales and pay a royalty to the licensor for those sales.

Global portfolio licensing is a common practice. However, there may be circumstances when it may not be appropriate, for example, if the SEP owner has a portfolio in a single country.

**Q5. I want to develop a product/service for the Internet of Things. Will I need to obtain licences to SEPs?**

This is a broad question because the Internet of Things (IoT) will incorporate many technologies, many of which will be standardised. It depends on, among other things, what standards you are going to use, whether those standards incorporate patented technology, the IPR policies of the SDOs which developed those standards, industry practice and the licensing practices of any company that owns relevant SEPs.

If your product or service incorporates communications technology like 3G UMTS, 4G LTE, Wi-Fi, NB-IoT, Cat-M or video codecs such as H.264, it is likely that one or more SEP owners will seek to license you or someone else in the supply chain (*see Q6 below*). The same may be true of other standards.

It is advisable to seek publicly available information identifying principal SEP owners for the standards in question, to understand from whom a licence may need to be obtained. Some SDOs have databases to support this. Information can also be obtained from specialist consultancies and professional advisers.

In some circumstances you may not need to obtain a licence yourself; for example, if another company in the supply chain has a licence covering all relevant patent rights.

The likelihood and cost of SEP licensing should be considered during product development. Your business plan may need to include a reasonable allocation for potential licensing fees.

**Q6. Does every party in a supply chain for a given product or service need a licence?**

No, there is usually one point or level in the supply chain where a SEP owner will choose to license its technology for a given product or service.<sup>7</sup> This is to simplify licensing, reduce costs for all parties and maintain a level playing field between licensees. For communications technology, the licensing point is often at the end-user equipment level. This may vary between different industries.

Therefore whether you need a licence will depend on where in the supply chain the licensing is taking place, and on the licensing terms.

If you are relying on a licence to another company that is your supplier (i.e. upstream in the supply chain) or a customer (i.e. downstream), then you should confirm with them that their licence rights cover all your needs.

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<sup>7</sup> Because of a legal doctrine called "patent rights exhaustion", it is likely that only one licence will be needed with any particular SEP owner.

**Q7. What is a patent pool and how do they work?**

A patent pool is an agreement between patent owners to jointly license their patents. In the context of SEPs, patents in a patent pool relate to the same standard. A patent pool administrator may run different patent pools for different standards and there may be multiple patent pools covering the same standard. For SEP owners, patent pools can be a useful alternative to running their own licensing programmes. For potential licensees, they can help to: lower transaction costs by reducing the number of licences, provide access to SEPs owned by all the members of the patent pool – but not to other SEPs – under a single licence, and increase transparency by providing clarity on aggregate licensing fees for the SEPs in the patent pool.

Some SEP owners may not license patents via patent pools. It is therefore possible that additional licences will need to be obtained through bilateral licensing, i.e. by agreement with the SEP owners.

Patent pools may approach potential licensees who they believe are using relevant standardised technology. However, please note that even if SEPs are in a pool the SEP owner may also be required to offer a bilateral licence .

**Q8. What happens if a SEP owner contacts me?**

In this event, the SEP owner should explain why it believes you may need a licence and provide you with information about its relevant patents (*see Q9 below*). The SEP owner may also request information regarding your use or intended use of the relevant standard.

You, as an implementer, may also approach a SEP owner to ask for a licence. The SEP owner will usually then make an offer but may not do so if, for example, it does not have a licensing programme or if its licensing practice is to license at a different level in the supply chain. If the SEP owner does not make an offer, it should not prevent you from using the standard.

Currently, fully published licence terms are not generally available and most SEP licences are individually negotiated. This document describes current practice. However, in the future as more products and services begin to be developed for the IoT, SEP owners may begin to offer licences on published fixed terms for particular types of product or use. For instance, a SEP owner might offer a licence on published terms for the manufacture of domestic equipment, such as refrigerators, cookers and washing machines, or for household security systems, or personal location devices.

**Q9. As a potential licensee, what type of information should I expect from the SEP owner?**

First, the SEP owner should provide a list (or, if too large, an exemplary list) of its patents that it believes are likely SEPs that your products or services are infringing, or will infringe, and explain the basis for its belief (usually that your product or service implements or complies with a standard). The SEP owner may provide further information at this stage to assist you, such as specific references to the relevant standard and section(s) of the standard for some or all of its relevant SEPs. The SEP owner should also provide additional information (*see Q11 below*). This may include sensitive commercial information, requiring the parties to agree to an NDA (*see Q10 below*).

**Q10. If I am asked to sign a confidentiality/non-disclosure agreement (NDA), do I have to?**

An NDA is important for both licensor and licensee as confidential information may need to be exchanged as part of licensing discussions, and confidentiality concerns are sometimes a cause of delay. The information involved may be confidential to either party, for example: “claim charts” that demonstrate how the claims of a patent are being infringed by the potential licensee, commercial information relating to the potential licensee's products or services, and the licence terms and financial proposals being offered by either party. Therefore it is common practice for parties to enter into a confidentiality agreement or NDA prior to exchanging confidential information.

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Most lawyers are familiar with such arrangements, so legal advice can be easily obtained. In addition, although drafted from the perspective of a joint R&D collaboration, template NDAs such as those provided by the European IPR Helpdesk<sup>8</sup> may offer a suitable reference.<sup>9</sup>

It should be noted that undue delay in agreeing an NDA, without well-founded reasons, might be taken as evidence of a lack of good faith in negotiations, which could have significance in any future court proceedings (*see Q21 and Q22 below*).

**Q11. After signing an NDA, what further information should I, as a potential licensee, expect from a SEP owner?**

The following additional information should be provided by a SEP owner:

- *A sample set of claim charts* identifying the features disclosed in the SEP owner's patents and mapping these features to the standard. This is a convenient way to present and analyse technical information relating to patent claims. These charts usually set out in detail the reasoning behind a SEP owner's assertion of infringement by breaking down the relevant claims of a patent into separate elements (sometimes referred to as "integers") and mapping these to a standard and/or the potential licensee's products or services. A chart typically has two columns: the left-hand side sets out the patent claim with rows separating the integers of the claim; the right-hand column contains the relevant technical information in the standard (or product) relating to each integer of the claim.
- *An offer of a licence or a term sheet* including details of the most important terms and conditions such as the term of the agreement, the products or services covered by the agreement, and the compensation/royalties requested (*see Q15 and 16 below*).
- *An explanation* of why the SEP owner believes its offer is FRAND.

**Q12. As a SEP owner, what types of information should I expect from the potential licensee?**

This information can include, subject to competition law, relevant present and future product information (e.g. a list of products using relevant standards), sales prices of the products, any past sales volumes and possibly future sales forecasts depending on how royalty compensation might be paid (*see Q16 below*).

**Q13. What is a typical SEP licensing negotiation process - technical and commercial discussions?**

There is no one typical licensing negotiation process. The process can depend on the scope and value of the licence, both as to the size of the SEP owner's patent portfolio (which may comprise thousands of patents) and the extent of the commercial activity to be licensed (at one extreme, the manufacture of hundreds of millions of handsets to be sold worldwide).

In the context of disputes, courts in Europe, USA and Asia have started to describe negotiation processes that they consider should be observed before either party seeks legal relief against the other. The description that follows is informed by those court decisions, which are evolving, so any description is necessarily in broad terms. For most parties, of whatever size, it should be possible to negotiate and conclude a FRAND licence without recourse to legal proceedings - which should be the objective of both parties. Court proceedings are very much the exception, and not the norm.

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<sup>8</sup> See: <https://www.iprhelpdesk.eu>

<sup>9</sup> See: [European IPR Helpdesk mutual NDA](#)

It is common for both commercial and technical negotiations to take place. Commercial negotiations will relate to the terms and conditions of the licence (*see Q15 below*), including the term of the licence, the products or services covered by the licence, the remuneration/royalty requested by the SEP owner for the use of its SEPs. Technical negotiations will usually consider technical issues relating to the relevant SEPs. In the case of large patent portfolios, these will often be focused on a sample set of patents. It is worth noting that technical negotiations may not be required if commercial negotiations are productive, and significant costs can be avoided by not pursuing them.

**Q14. As a potential licensee, how should I respond to a SEP owner's offer?**

If you wish to accept the offer, you should sign the licence promptly. If you wish to reject an offer, you should inform the SEP owner in a timely way and make a counter-offer - and explain why you believe its offer was not FRAND and how your counter-offer is FRAND. Reasons may be that the royalty is too high or is not structured properly (*see Q16 below*), the term is too long or short, there are circumstances that make a global portfolio licence inappropriate (*see Q4 above*), etc. The reasons should be clearly justified to enable timely and efficient progress to be made in negotiations.

**Q15. What principal terms are included in a typical SEP patent licence?**

The principal terms of a typical SEP licence will include:

- The standards covered and therefore the SEPs licensed
- Products/services and fields of use covered
- Territories covered, usually global (*see Q4 above*)
- Term/duration of the licence
- Royalties, payment terms and auditing rights
- Dispute resolution clauses, which may also cover future licensing

If agreed, licences may also include non-SEPs (*see Q18 below*) or a cross-licence of the potential licensee's relevant SEPs or other commercial terms, each of which may influence the remuneration/royalty payable to the SEP owner.

**Q16. How can the royalty in a SEP licence be structured?**

There is no single rule. Common royalty calculation terms - depending on the SEP owner's practices, circumstances and technology - are structured as either a per unit cost, or a percentage of the net selling price of the licensed product or service, or as lump sum payments. Equally, a calculation might include a cap or a floor, and the percentage, rate per unit or lump sum costs may be adjusted depending on sales volumes.

**Q17. How can I assess what might be a fair and reasonable licence?**

This will be fact dependent, and various valuation methods exist; you may wish to seek expert advice. Methods used by courts can include looking to licences of similarly situated companies and wider economic evidence. A complicating factor is that licences are often subject to confidentiality provisions and so not available to third parties. In the absence of such information, a potential licensee can look to publicly available market data to provide some guidance on whether a licence offer is FRAND. Such data and sources may contain factual information that can be helpful. They include:

- Public announcements on royalties by SEP owning companies and patent pools
- Information on royalties and licensing terms available from court decisions

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Third party patent “landscape” reports may also provide a broad guide to the relative portfolios of different companies, and are usually obtainable for a fee from patent consulting companies. Equally, press releases and company/patent pool websites may help to indicate which SEP owners seek to license their patents and for what technologies.

SEP owners should be mindful that SMEs may lack information from which to draw assurance that proposed terms are FRAND, and should provide such information as they can under NDA to help the negotiation process. Equally, where a SEP owner is an SME, a more experienced potential licensee should take a similar approach.

**Q18. What if a patent owner offers me a licence to both SEPs and non-SEPs?**

A potential licensee is entitled to require that any licence offer be limited to SEPs. However, the SEP owner may also own other patents that cover non-standardised technology that the potential licensee wants to use in its products or services. A SEP owner may not require a potential licensee to license non-SEPs as a condition for licensing SEPs. Nevertheless, non-SEPs may be included in the same licence as SEPs provided it remains the case that the SEPs are being licensed on FRAND terms.

**Q19. What is the time period for parties to respond to offers and counter-offers, and what is the overall time limit for negotiations?**

FRAND principles require willingness and good faith behaviour by both parties during negotiations. One aspect of this is that the exchange of offers and the conclusion of a licence should happen in a timely and efficient manner and both parties should avoid tactical behaviour leading to delay in agreeing terms.

A reasonable time period for negotiations can vary depending on the circumstances. For complex negotiations, such as those involving hundreds of patents for which licensing terms have not been widely accepted, several months may be needed to offer an informed response or counter-offer; after such time any response will need to be comprehensive. In simpler situations, such as those involving fixed terms that have been widely accepted, the time limit for responding will be much shorter.

**Q20. How should the parties proceed if both offer(s) and counter-offer(s) are rejected?**

Generally speaking, both parties should persist in actively continuing negotiations with the aim of concluding a FRAND licence in a timely manner. If an impasse becomes apparent, the parties should try to find other means to resolve the dispute - e.g. by using alternative dispute resolution mechanisms (*see Q21 below*). At this stage both parties should seek legal advice on available dispute resolution mechanisms and how to use them, to understand and assess alternatives to agreeing a licence.

**Q21. If there is a dispute between a SEP owner and a potential licensee, how might this be resolved? What is alternative dispute resolution?**

Parties should aim to resolve a dispute between themselves. If this is not possible through negotiation then resolution may occur through mediation, court proceedings or arbitration. Mediation can be used on a voluntary basis to try to reach an agreement at any time and in any circumstances, including when court or arbitration proceedings are ongoing. Arbitration proceedings are a voluntary alternative to court proceedings. Mediation and arbitration are often described as “alternative dispute resolution”.

*Mediation* is a non-binding process with a mediator helping parties to come to a negotiated resolution; a successful mediation is therefore not a decision taken by the mediator but rather an agreement between the parties facilitated by the mediator. This can be helpful where the parties' positions are not too far apart or they have reason to maintain a good working relationship in other respects. Mediation is worthwhile if resolution of a dispute or any significant issue within it appears possible, but is not a cure-all for all circumstances where parties have a dispute, and it may cause delay. A mediator should be alert to ensuring both parties are entering into mediation in good faith, and may halt a mediation if they are not.

*Court proceedings* relating to SEP disputes can take several forms, may arise in more than one country, and can become very complex and costly. For example, a SEP owner might start patent infringement proceedings in a particular country seeking an injunction (*see Q22 below*) against a potential licensee. The potential licensee might respond by challenging the validity or essentiality of the SEP owner's patents, possibly in another country, in addition to responding in the infringement proceedings.

When deciding whether to impose an injunction, courts may consider whether an offer made was FRAND or, in some cases, determine what the FRAND compensation should be or set the terms of a FRAND licence.

Alternatively, instead of patent infringement proceedings, either party may ask a court to resolve the licensing dispute as a whole. In some countries courts may be willing to do this, especially if both parties agree. However, this may not be possible in other countries, and issues of jurisdiction may arise, including which country's courts should resolve the dispute. Therefore arbitration may be the best option for both parties where they want a global resolution.

*Arbitration* is usually a binding process agreed by the parties, including the rules and procedures under which arbitration proceeds; these are much like court proceedings but have the advantages of being international and confidential. The parties define the issues to be resolved. Arbitrations are generally not subject to appeal except on very limited grounds. An award made by an arbitration panel can be enforced through national courts in most principal countries.

Recognised arbitration bodies (such as the International Chamber of Commerce (ICC)) provide their own rules, which parties may choose to adopt or modify, and administrative facilities for arbitration with information on their processes available on their websites. The World Intellectual Property Organisation (WIPO)<sup>10</sup> has developed an example of an arbitration agreement designed for FRAND arbitration.<sup>11</sup>

Offers for alternative dispute resolution should be considered carefully and, if rejected, clear reasons given to allow an amended offer. Neither offers nor rejections should be aimed at delaying the negotiation process. Recognising the importance of timely conduct, any dispute resolution proceedings should be run in a timely and cost-effective manner relative to the complexity and value of the dispute.

## **Q22. What is an injunction and how might this affect my organisation?**

An injunction is a court-ordered remedy requiring the party subject to it not to perform certain acts, and imposing penalties in the event they breach the injunction. Court-awarded injunctions against patent infringement typically require the infringer to stop selling and manufacturing, and require the recall and destruction of any infringing products or services.

The willingness of a court to award an injunction will differ from country to country. In some, the award is often granted, whilst in others it may be an unusual outcome. Courts have various tests and requirements; for example, the court may consider whether a monetary award will be an adequate remedy without the need for an injunction.

Where a dispute concerns SEPs, competition/anti-trust law may also be relevant to whether a court will award an injunction. Again, this differs by country. Factors taken into account may include:

- The nature of the offers made by either party, including whether they were FRAND
- The behaviour of the parties, such as whether they showed willingness to negotiate and conclude a FRAND licence and acted in good faith

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<sup>10</sup> See: <http://www.wipo.int>

<sup>11</sup> See: [WIPO Arbitration for FRAND Disputes](#)

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- Duration of negotiations, including whether either party used delaying tactics
- Whether financial security of some form has been provided by the potential licensee
- The particular circumstances of each party

In some cases, where a court has determined the FRAND compensation or set the terms of a FRAND licence, an injunction may be awarded by the court against the potential licensee if it refuses to accept a licence on those terms. If proceedings appear likely a potential licensee should seek legal advice, in particular on the question of financial security.

## Looking forward

The successful FRAND licensing of SEPs helps to incentivise the rapid development and deployment of standardised mobile communication technologies. Few other technologies have evolved to such a degree in such a short amount of time.

This document is intended to explain the current SEP licensing practices that have developed over many years in the ICT sector. While it is expected that many of these SEP licensing practices will continue, we expect that some may evolve in time to accommodate new products and services enabled by 5G and the IoT.

The Principles and Guidance herein are intended to serve as a solid foundation for the conduct of SEP licensing negotiations, whereas the Questions and Answers are intended to help new participants understand how to access and license today's technology as efficiently as possible.

It is also clear that more accessible and better information about standardisation, SEPs and licensing would enable wider participation, and quicker and easier licensing transactions. This would aid those implementing 5G and IoT standards and, in turn, help promote the development of new products and services for consumers.

Having developed this guide as a first step, we therefore believe that it would be useful if a new entrant could readily find information about the SEP licensing environment in one place. New entrants may then understand what aspects of 5G and the IoT they may need to license and from whom, and plan their product development accordingly. We propose that a useful next step would be to explore the establishment of a gateway, to determine the information needed and work to provide such information.

We hope that this document is useful to companies which are new to SEP licensing and will assist with the development of new products, services and markets.

This document is also an invitation to constructive dialogue between stakeholders in the standardisation ecosystem, which can only thrive if parties try to find efficient solutions that incentivise all players in this very dynamic market.

# **Exhibit B**

## LG plays down impact of Qualcomm quarrel - Mobile World Live

[mobileworldlive.com/devices/news-devices/lg-plays-down-impact-of-qualcomm-quarrel/](https://mobileworldlive.com/devices/news-devices/lg-plays-down-impact-of-qualcomm-quarrel/)

June 14,  
2019

14 JUN 2019



LG Electronics responded to suggestions its smartphone shipments could be hit by a dispute with Qualcomm made in reports following a US court filing.

“There will be no disruption of supplies from Qualcomm and no delay in the rollout of the LG V50 ThinQ 5G,” the company said.

In May, the US Federal Trade Commission ruled Qualcomm had engaged in anticompetitive practices in negotiations with suppliers and called. The watchdog called for the company to change its licensing regime and submit to compliance monitoring.

Unsurprisingly, Qualcomm filed for a stay on enforcement, because it could suffer irreparable damage while an appeal is pending.

*Reuters* reported LG’s existing deal runs until 30 June, meaning it will expire before the result of Qualcomm’s appeal is known.

The consumer electronics giant said Qualcomm is trying to “put a sweeping US antitrust decision against it on hold” in its renewal negotiations.

What is less clear is the terms on which LG and Qualcomm’s procurement relationship

continues while the chip vendor is still embroiled in its legal dispute.

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## Author

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**Steve Costello**

Steve works across all of Mobile World Live's channels and played a lead role in the launch and ongoing success of our apps and devices services. He has been a journalist...[More](#)

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# **Exhibit C**

**Rectification Plan Related to NDRC’s Investigation of Qualcomm**  
**高通公司对于国家发改委对本公司的调查所提出的整改方案**  
**February 9, 2015**  
**2015年2月9日**

This Rectification Plan sets forth the rectification measures proposed by Qualcomm to address the suspected abusive conducts identified by the NDRC in its Notice. Capitalized terms are defined at the end of this document.

本“整改方案”列出了高通提出的用以解决贵委在其“告知书”中认定的涉嫌滥用行为的整改措施。双引号内的术语定义见本文件最后部分。

- I. Rectification with respect to suspected abuse of dominant position in Chinese Wireless SEP licensing and suspected charging unfair high royalties  
对涉嫌滥用在“无线标准必要中国专利”许可市场的支配地位，涉嫌收取不公平的高价许可费的整改措施

- A. Scope of rectification measures  
整改措施的范围

These rectification measures apply to Qualcomm’s licensing of Manufacturers under its Chinese Wireless SEPs to (i) make Devices and sell such Devices For Use in China or (ii) make Devices in China and sell such Devices For Use in a Territory. These rectification measures do not apply to Qualcomm’s licensing of its Non-Rectification IPRs or to Qualcomm’s licensing of Chinese Wireless SEPs for other purposes.

这些整改措施适用于高通对“制造商”许可其“无线标准必要中国专利”用以：（i）制造“设备”和销售该等“设备”“在中国使用”，或者（ii）在“中国”制造“设备”并销售该等“设备”在“某地域使用”。这些整改措施不适用于高通对其“非整改知识产权”的许可或高通以其他目的对“无线标准必要中国专利”进行许可。

- B. Rectification regarding suspected abuse by potentially charging royalties on expired wireless SEPs  
关于对过期无线标准必要专利可能收取许可费的涉嫌滥用行为的整改措施

Qualcomm will provide a list of patents to each Chinese Manufacturer with which Qualcomm engages in license negotiations subject to this Rectification Plan and will negotiate the length of the term of the license agreement with such Manufacturer.

高通将会向每一个和高通依照本“整改方案”进行许可协商的中国“制造商”提供专利清单，并将和该“制造商”协商许可协议的期限长度。

- C. Rectification regarding suspected abuse by requiring of free cross-license from licensees  
关于要求从被许可人处获得免费交叉许可的涉嫌滥用行为的整改措施

A Rectification Licensing Offer will not require that a Chinese Manufacturer cross-license any of its patents without compensation.

“整改许可要约”将不要求中国“制造商”无偿交叉许可其任何专利。

If Qualcomm desires a cross-license from a Chinese Manufacturer under the Chinese Manufacturer's patents as part of the consideration for a license to Qualcomm's Chinese Wireless SEPs:

如果高通有意从某个中国“制造商”获得该中国“制造商”的专利的交叉许可作为高通的“无线标准必要中国专利”许可对价的一部份：

1. Qualcomm will fairly and reasonably value such Manufacturer's patents and the scope of such cross-license and will negotiate the terms of such cross-license in good faith.

高通会公正合理地对“制造商”的专利及其交叉许可的范畴估值，并会对该交叉许可的条款进行诚意协商。

2. Qualcomm will treat entities with equal standing similarly when negotiating for such cross-licenses.

在就该等交叉许可进行协商时，高通将对待条件等同的实体提供相似待遇。

- D. Rectification regarding royalties  
关于许可费的整改措施

A Rectification Licensing Offer will provide that, for each Applicable Sale of a Branded Device after the Notice Date, Qualcomm agrees to charge a royalty equal to 5% (for a Branded Device that implements CDMA2000 and/or WCDMA, whether or not such Branded Device also implements LTE) or 3.5% (for a Branded Device that implements LTE (FDD and/or TDD) and that does not implement CDMA2000 or WCDMA) of, in each case, the Manufacturer's Adjusted Net Selling Price of such Branded Device.

“整改许可要约”将规定，对每一个“品牌设备”在“告知书日期”后的“适用销售”，高通同意许可费应为，在以下每种情况下，该“制造商”的“品牌设备”的“调整后净销售价”的5%（对实施CDMA2000和/或WCDMA的“品牌设备”，不论该“品牌设备”是否也实施LTE）或3.5%（对实施LTE（FDD和/或TDD）但不实施CDMA2000或WCDMA的“品牌设备”）。

“Adjusted Net Selling Price” means sixty-five percent (65%) of the Manufacturer's net selling price (as such term is defined in Qualcomm's typical license agreement) of a Branded Device.

“调整后净销售价”是指该“制造商”的“品牌设备”的净销售价（该术语由高通典型的许可协议中定义）的百分之六十五（65%）。

“Applicable Sale” means (i) a sale of a Device in China For Use in China or (ii) a sale in either China or a Territory of a Device made in China For Use in a Territory.

“适用销售”是指（i）“在中国使用”的“设备”在“中国”的销售，或（ii）在“中国”制造的“在某地域使用”的“设备”在“中国”或者在某“地域”的销售。

“Branded Device” means a Device that meets both of the following criteria: (i) the overall design of such Device was created by or for, and is owned by, Manufacturer; and (ii) such Device is, at the time of sale to an end user, conspicuously branded with at least one trademark, logo, or brand name owned either by (a) such Manufacturer such that an end-user would recognize such Device as Manufacturer’s product; or (b) a Chinese wireless network operator (i.e., China Mobile, China Unicom, or China Telecom) (each, a “Chinese Carrier”) or a Mobile Virtual Network Operator (MVNO) that is allocated spectrum in China by a Chinese Carrier; and, in either case, does not display any trademark, logo, or brand name owned by any other entity.

“品牌设备”是指同时满足以下两个条件的“设备”：（i）该“设备”的整体设计是由“制造商”创建，或者为了“制造商”所创建，并且被“制造商”所拥有；以及（ii）该“设备”在销售给终端用户时有明显的品牌，包括在以下两种情况下被拥有的至少一个商标、徽标、或者品牌名称：（a）该“制造商”所拥有的，能够让终端用户识到该“设备”是该“制造商”的产品的品牌名称，或者（b）中国的无线网络运营商（即，中国移动，中国联通，或中国电信）（每个被称之为“中国运营商”），或者是由“中国运营商”分配在“中国”的频谱的移动虚拟网络运营商（MVNO）的品牌名称；并且，在以上任何一种情况下，不显示被任何其它实体所拥有的任何商标、徽标、或者品牌名称。

This rectification measure is limited to Branded Devices in recognition that sales of non-Branded Devices generally are made by contract manufacturers at transfer prices that are below the full wholesale price.

考虑到通常代工制造商以低于全额批发价格的转移价格销售非“品牌设备”的情况，这一整改措施仅限于“品牌设备”。

**II. Rectification regarding suspected abuse by forcibly tying wireless SEPs with non-wireless SEPs without justifiable causes**

关于对没有正当理由强制搭售无线标准必要专利与非无线标准必要专利许可的涉嫌滥用行为的整改措施

A Rectification Licensing Offer will include all Qualcomm Chinese Wireless SEPs and will include only Qualcomm Chinese Wireless SEPs (i.e., it will not include any other Qualcomm patents). This rectification measure does not preclude Qualcomm from offering a license to other patents simultaneously with a Rectification Licensing Offer if, for example, the Manufacturer wants a license that is broader in scope.

“整改许可要约”将包括高通所有的“无线标准必要中国专利”，并且将仅包括高通的“无线标准必要中国专利”（也就是说，它将不包括任何其它的高通专利）。这一整改措施不排除高通在“整改许可要约”同时，就其它专利也发出许可要约，例如，当“制造商”想要范围更宽广的许可时。

III. Other SEPs

“其他标准必要专利”

Qualcomm will not change its licensing practices with respect to Other SEPs in a manner that violates the AML and has significant eliminative or restrictive effects on market competition and directly harms consumer interest in China.

高通将不会以违反《反垄断法》并对中国境内市场竞争具有显著的排除、限制影响，并且直接损害消费者利益的方式改变其对“其他标准必要专利”的有关许可行为。

IV. Rectification regarding suspected abuse of dominant position in baseband chip market by imposing unreasonable conditions in the sale of baseband chips

对涉嫌滥用在基带芯片市场的支配地位，在基带芯片销售中附加不合理条件的整改措施

With respect to a Chinese Manufacturer that purchases chips from Qualcomm pursuant to a chip sales agreement (each, a “Chip Customer”), Qualcomm will not terminate the Chip Customer’s chip sales agreement or supply of chips under that agreement for good faith disputes over such Chip Customer’s Chinese Wireless SEP license agreement for Devices (the “Chinese Wireless SEP Agreement”), and Qualcomm will not terminate the chip sales agreement or supply of chips under that agreement due to a breach of the Chinese Wireless SEP Agreement without first obtaining a determination by a third party adjudicator that such breach is material and, if such breach is determined to be material by such third party adjudicator, thereafter giving the Chip Customer at least sixty (60) days to cure the breach.

对于根据芯片销售协议从高通购买芯片的中国“制造商”（即，“芯片客户”），高通将不会因关于该“芯片客户”的针对“设备”的高通“无线标准必要中国专利”许可协议（即“无线标准必要中国专利协议”）的有诚意的争议而终止该“芯片客户”的芯片销售协议或基于该协议的芯片供应，且在“芯片客户”违反“无线标准必要中国专利协议”的情况下，如果没有首先由第三方裁决确定此等违约是实质性的，高通也将不会终止芯片销售协议或基于协议的芯片供应。如果第三方裁决确定此等违约为实质性的，“芯片客户”有至少六十（60）天的时间来补救此等违约。

With respect to a Chinese Manufacturer that is not a Licensed Manufacturer and seeks to purchase chips from Qualcomm (each, a “Potential Chip Customer”), Qualcomm will not require that the Potential Chip Customer enter into a license agreement for Chinese Wireless SEPs that is inconsistent with the License Rectification Measures.

对于寻求从高通购买芯片但不是“许可制造商”的中国“制造商”（即，“潜在芯片客户”），高通不会要求该“潜在芯片客户”签署与“许可整改措施”不一致的有关“无线标准必要中国专利”的许可协议。

This rectification measure does not require Qualcomm to sell chips to any entity that is not a Qualcomm licensee, and does not apply where a Chip Customer refuses to report its sales (for all Devices or for certain types of Devices) in a calendar quarter as required by its patent license agreement. This rectification measure also does not apply to terminations of agreements related to a corporate restructuring.

此整改措施不要求高通向任何非高通被许可人的实体销售芯片，且不适用于以下情形，即“芯片客户”拒绝按照其专利许可协议的要求报告其（所有“设备”或特定类型“设备”的）日历季度销售量。此整改措施也不适用于与企业重组有关的协议终止。

V. Voluntary measures regarding other issues

关于其他问题的自愿措施

A. A Rectification Licensing Offer will not include a provision that gives Qualcomm the right to terminate the agreement if the Manufacturer brings patent infringement litigation against Qualcomm and loses. A Rectification Licensing Offer will not include a provision that provides for an increased royalty rate if the Manufacturer challenges its royalty obligation under the agreement and loses.

“整改许可要约”将不会包括给予高通在“制造商”发起针对高通的专利侵权诉讼且败诉的情况下终止协议的权利的条款。“整改许可要约”将不包括在“制造商”挑战其协议要求的许可费义务并失败的情况下提高许可费率的条款。

B. Qualcomm will remove any provision from a license agreement with a Chinese Manufacturer that modifies the royalty rate payable depending on which chip vendor's modem chips are used in a Device.

高通将删除与中国“制造商”的许可协议中的任何根据在“设备”中使用特定芯片提供商的调制解调器芯片来修改应支付的许可费率的条款。

C. A Rectification Licensing Offer will permit the Manufacturer to sell its Branded Devices to another Qualcomm patent licensee. This rectification measure does not apply to any Device that is not a Branded Device. With respect to Devices that are not Branded Devices, Qualcomm will not contractually prohibit its licensees from selling such Devices to its other licensees, it being understood that only the final licensee in the chain of supply will be responsible for paying royalties to Qualcomm.

“整改许可要约”将允许“制造商”销售其“品牌设备”给高通公司的其它专利被许可人。这一整改措施不适用于任何非“品牌设备”的“设备”。对于非“品牌设备”的“设备”，

高通将不会通过合同禁止其被许可人向高通其它被许可人销售该等“设备”，应该理解到，仅仅是供应链中的最终被许可人将会有责任向高通支付许可费。

D. Qualcomm will not condition any contractual discount or rebate to any Chip Customer based on such Chip Customer buying any specific ratio of its total chip purchases from Qualcomm.

高通将不会基于任何“芯片客户”购买的高通芯片占其芯片购买总量的特定比例向该“芯片客户”提供任何合同折扣或返利。

E. Qualcomm will not impose unreasonable trading terms in licensing its Chinese Wireless SEPs for factory test technologies in violation of the AML.

高通将不会违反“反垄断法”规定，在许可“无线标准必要中国专利”用于工厂测试技术时附加不合理的交易条件。

F. Qualcomm will not engage in tying of chips performing non-wireless communications functions with baseband chips without reasonable justification in violation of the AML.

高通将不会违反“反垄断法”规定，没有正当理由地将实现非无线通信功能的芯片与基带芯片进行搭售。

\* \* \*

Qualcomm will fulfill the applicable License Rectification Measures as to each Licensed Manufacturer, as follows: within ten (10) days after the Order Date, Qualcomm will send to each Licensed Manufacturer a new agreement for a license to Qualcomm’s Chinese Wireless SEPs that is consistent with all of the License Rectification Measures and requires such Licensed Manufacturer to report and pay royalties to Qualcomm within sixty (60) days in accordance with the royalty terms of such Licensed Manufacturer’s existing license agreement(s) for any licensed products sold by Licensed Manufacturer prior to the Notice Date, including for licensed Devices. A Licensed Manufacturer will be entitled to accept and benefit from the terms of the License Rectification Measures only so long as such Licensed Manufacturer does not claim that it overpaid royalties (or owes less than what is required by the terms of its existing license agreement with Qualcomm) based on the resolution of the investigation, any decision by the NDRC related to the NDRC investigation, or the terms of this Rectification Plan.

对每一个“被许可的制造商”，高通将会履行可适用的“许可整改措施”如下：在“命令日期”后的十（10）天之内，高通将会向每个“被许可的制造商”发送关于高通“无线标准必要中国专利”许可的新协议，该协议与所有“许可整改措施”相一致，并要求该“被许可的制造商”依据该“被许可的制造商”现存许可协议的许可条款，就该“被许可的制造商”在“告知书日期”之前销售的任何被许可产品在六十（60）天内向高通报告和支付许可费。只有在“被许可的制造商”不基于调查解决方案、贵委关于贵委调查的任何决定、或此等“整改方案”的条款主张其多付了许可

费（或者所欠许可费比与高通的现存许可协议中条款所要求的要少）的情况下，该“被许可的制造商”才将有权接收和受益于“许可整改措施”中的条款。

This Rectification Plan will apply starting as of the Notice Date. If at any time, market conditions, competitive dynamics, or the AML (including opinions, interpretations, or implementations of the AML by NDRC or another Chinese government agency or court with authority to interpret or enforce the AML) change, Qualcomm may apply to NDRC to amend or for relief of any or all of the above rectification measures. Except as otherwise specifically provided in these rectification measures, nothing in this Rectification Plan will be construed as requiring Qualcomm to conduct its patent licensing activities in a manner that is inconsistent with Qualcomm’s business practices in effect prior to the Notice Date. For the avoidance of doubt, nothing in this paragraph is intended to weaken or modify any of these rectification measures.

此“整改方案”自“告知书日期”开始适用。如果在任何时间，市场条件，竞争动态或“反垄断法”（包括贵委或其他对“反垄断法”有解释权或执行权的中国政府机构或法院对“反垄断法”的意见，解释或实施）发生变化，高通可向贵委提出申请以修改或免除任何或所有以上整改措施。除了在以上整改措施中所特定提及，这一“整改方案”不应被解释为要求高通以与其在“告知书日期”之前的商业行为不一致的方式来进行专利许可活动。为避免疑问，本段绝不是为了削弱或修改以上整改措施。

Qualcomm appreciates NDRC’s acknowledgment of the value of Qualcomm’s technology and willingness to support and protect Qualcomm’s receipt of reasonable fees for the use of such patented technology in Devices (including 3G Devices, 3G/LTE Devices and other LTE Devices). Qualcomm will continue to invest in the development of new technology that advances and benefits the wireless industry, semiconductor industry and consumers in China.

高通感谢贵委对高通的技术价值的认可，以及贵委同意对高通就在“设备”（包括 3G “设备”，3G/LTE “设备”和其他 LTE “设备”）中使用我们的专利技术收取合理费用给予支持和保护。高通将继续投资开发新技术以推动并造福中国无线通信业、半导体工业、和中国消费者。

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Definitions:

定义:

“Adjusted Net Selling Price” has the meaning set forth in rectification measure I.D.

“调整后净销售价”定义见整改措施 I.D.

“AML” means China’s Anti Monopoly Law.

“反垄断法”指中国《反垄断法》。

“Applicable Sale” has the meaning set forth in rectification measure I.D.

“适用销售”定义见整改措施 I.D。

“Branded Device” has the meaning set forth in rectification measure I.D.

“品牌设备”定义见整改措施 I.D。

“Cellular Standard” means commercially available 2G CDMA standards, 3GPP UMTS or LTE standards up to and including 3GPP Release 11 (e.g., excluding any release after Release 11) and 3GPP2 Radio Access Network standards up to and including CDMA2000 1X Revision F and CDMA EV-DO Revision B.

“蜂窝标准”是指商用 2G CDMA 标准、3GPP UMTS 或 LTE 标准，直到并包含 3GPP Release 11（即，不包含 Release 11 以后的任何版本）和 3GPP2 的无线接入网络标准，直到并包含 CDMA2000 1x Revision F 和 CDMA EV-DO Revision B。

“China” means the mainland of the People’s Republic of China, excluding Taiwan, Hong Kong and Macao.

“中国”是指中华人民共和国大陆地区（台湾，香港，澳门除外）。

“Chinese Carrier” has the meaning set forth in rectification measure I.D.

“中国运营商”定义见整改措施 I.D。

“Chinese Wireless SEP Agreement” has the meaning set forth in rectification measure IV.

“无线标准必要中国专利协议”定义见整改措施 IV。

“Chinese Wireless SEPs” means those claims of any patents owned by Qualcomm and filed in China as of the Notice Date that are Essential to comply with any of the Cellular Standards.

“无线标准必要中国专利”是指任何高通拥有的在“告知书日期”前在“中国”申请的专利中的那些为遵循任何“蜂窝标准”所“必要”的权利要求。

“Chip Customer” has the meaning set forth in rectification measure IV.

“芯片客户”定义见整改措施 IV。

“Devices” means complete cellular telephones, cellular-enabled tablets, and cellular-enabled laptops.

“设备”是指完整的蜂窝电话、支持蜂窝功能的平板电脑、和支持蜂窝功能的笔记本电脑。

“Essential” means, as applied to a patent claim, that it is not possible on technical (where “technical” does not include and is not otherwise construed to mean “commercial”) grounds to implement the air interface specifications of a Cellular Standard in a Device without practicing that patent claim.

“必要”是指，对于一项专利权利要求来说，技术上（“技术上”不包括，也不应被解释为“商业上”）如果不实施这一专利权利要求就不可能在一个“设备”中实施一个“蜂窝标准”的空中接口规范。

“For Use in a Territory” means that a Device (i) is designed primarily for use on a wireless network in a Territory, (ii) is actually sold in China or in such Territory with a SIM card that provides access to a wireless network in such Territory and (iii) at the time of sale is intended and reasonably expected to be used by an end-user primarily in such Territory.

“在某地域使用”是指“设备”（i）其设计主要是为了在某一“地域”的无线网络上使用，（ii）和能提供在该“地域”的无线网络进行访问的SIM卡一起在“中国”或在该“地域”确实被销售，以及（iii）在销售时有意并且有合理预期会被主要在该“地域”的终端用户所使用。

“For Use in China” means that a Device (i) is designed primarily for use on a wireless network in China, (ii) is actually sold in China by a Manufacturer or is sold outside of China by a Manufacturer and delivered by such Manufacturer to its customer in China, and in either case is sold with a SIM card or a R-UIM that provides access to a wireless network in China and (iii) at the time of sale is intended and reasonably expected to be used by an end-user primarily in China.

“在中国使用”是指“设备”（i）设计主要是为了在“中国”的无线网络上使用，（ii）确实被“制造商”在“中国”销售，或被“制造商”在“中国”以外销售并由该“制造商”交付给其在“中国”的客户，并且在任一以上情况下，和能提供对“中国”的无线网络进行访问的SIM卡或R-UIM一起被销售，以及（iii）在销售时有意并且有合理预期会被主要在“中国”的终端用户所使用。

“Licensed Manufacturer” means a Manufacturer that is already licensed under Qualcomm’s Chinese Wireless SEPs for Devices as of the Order Date.

“被许可的制造商”是指在“命令日期”前已经就“设备”获得高通“无线标准必要中国专利”许可的“制造商”。

“License Rectification Measures” means the rectification measures in Section I and Section II and rectification measures V.A and V.C.

“许可整改措施”是指第I节和第II节中的整改措施以及整改措施V.A和V.C。

“Manufacturer” means a manufacturer of Devices or a supplier of Branded Devices .

“制造商”是指“设备”的制造商或“品牌设备”的供应商。

“Non-Rectification IPRs” means all patent claims that are not “Chinese Wireless SEPs”.  
“非整改知识产权”是指所有的非“无线标准必要中国专利”的专利权利要求。

“Notice” means the NDRC’s Advance Notice of Administrative Sanction issued as of December 30, 2014 (the “Notice Date”).

“告知书”是指贵委于 2014 年 12 月 30 日（“告知书日期”）颁布的《行政处罚事先告知书》。

“Other SEPs” means claims of any patents owned by Qualcomm and filed outside of China as of the Notice Date that are Essential to comply with any of the Cellular Standards.

“其他标准必要专利”是指任何高通拥有的在“告知书日期”前在“中国”以外申请的专利中的那些为遵循任何“蜂窝标准”所“必要”的权利要求。

“Order Date” means the date on which the NDRC issues its formal sanction order based on the Notice.

“命令日期”是指贵委根据“告知书”颁布的正式处罚命令的日期。

“Potential Chip Customer” has the meaning set forth in rectification measure IV.

“潜在芯片客户”定义见整改措施 IV。

“Rectification Licensing Offer” means an offer by Qualcomm to a Manufacturer for a license under Qualcomm’s Chinese Wireless SEPs to (i) make Devices and sell such Devices For Use in China or (ii) make Devices in China and sell such Devices For Use in a Territory.

“整改许可要约”是指高通向“制造商”提出的对高通“无线标准必要中国专利”的许可的要约，为了（i）制造“设备”和销售该等“设备”“在中国使用”，或者（ii）在中国制造“设备”并销售该等“设备”“在某地域使用”。

“Rectification Plan” means this Rectification Plan Related to NDRC’s Investigation of Qualcomm dated February 9, 2015.

“整改方案”是指和贵委对高通的调查相关的日期为 2015 年 2 月 9 日的本整改方案。

“Territory” means a country in which no patents have been issued to Qualcomm or any of its affiliates.

“地域”是指高通或者其附属公司没有获得任何专利授权的国家。

# **Exhibit D**

**国家发展改革委对高通公司垄断行为  
责令整改并罚款 60 亿元**  
**NDRC Orders Qualcomm to Rectify Its Monopolistic Conducts  
and Imposes a Fine of RMB 6 Billion**

近日，国家发展改革委对高通公司滥用市场支配地位实施排除、限制竞争的垄断行为依法作出处理，责令高通公司停止相关违法行为，处 2013 年度我国市场销售额 8% 的罚款，计 60.88 亿元。

Recently, NDRC has concluded a decision on Qualcomm's abuse of dominant market positions to engage in monopolistic conducts which eliminate and restrict market competition, ordering Qualcomm to cease the relevant illegal conducts and imposing a fine of RMB 6.088 billion, which equals to 8% of its annual China market turnover in 2013.

2013 年 11 月，国家发展改革委根据举报启动了对高通公司的反垄断调查。在调查过程中，国家发展改革委对数十家国内外手机生产企业和基带芯片制造企业进行了深入调查，获取了高通公司实施价格垄断等行为的相关证据，充分听取了高通公司的陈述和申辩意见，并就高通公司相关行为构成我国《反垄断法》禁止的滥用市场支配地位行为进行了研究论证。In November 2013, NDRC initiated an antimonopoly investigation on Qualcomm based on complaints. In the course of the investigation, NDRC conducted thorough survey with dozens of domestic and foreign handset manufacturers and baseband chipmakers, collected relevant evidences of Qualcomm's conducts of price monopoly, etc., fully heard Qualcomm's statements and defenses, and conducted research and study with regard to Qualcomm's relevant conducts that constitute abuse of dominant positions as prohibited by the Anti-Monopoly Law of China.

经调查取证和分析论证，高通公司在 CDMA、WCDMA、LTE 无线通信标准必要专利许可市场和基带芯片市场具有市场支配地位，实施了以下滥用市场支配地位的行为：

Upon investigation and evidence collection, and analysis and study, Qualcomm has dominant market positions in CDMA, WCDMA and LTE wireless standard essential patent ("SEP") licensing market and baseband chip market, and has engaged in the following abusive conducts:

**一是收取不公平的高价专利许可费。**高通公司对我国企业进行专利许可时拒绝提供专利清单，过期专利一直包含在专利组合中并收取许可费。同时，高通公司要求我国被许可人将持有的相关专利向其进行免费反向许可，拒绝在许可费中抵扣反向许可的专利价值或提供其他对价。此外，对于曾被迫接受非标准必要专利一揽子许可的我国被许可人，高通公司在坚持较高许可费率的同时，按整机批发净售价收取专利许可费。这些因素的结合导致许可费过高。

**Firstly, charging unfairly excessive patent royalties.** Qualcomm has not provided Chinese licensees with a list of patents in its patent license, and expired patents has been included in its patent portfolio and Qualcomm charged royalties for such expired patents. Meanwhile, Qualcomm required Chinese licensees to cross license relevant patents they possessed, but refused to deduct the value of such cross licensed patents from its royalties or provide other consideration. In addition, for those Chinese licensees who were coerced to accept portfolio license containing non-wireless-SEPs, while insisting on charging relatively high royalty rates, Qualcomm has also charged royalties on the basis of full wholesale net sale price of the device. The combination of such factors has resulted in excessively high royalties.

**二是没有正当理由搭售非无线通信标准必要专利许可。**在专利许可中，高通公司不将性质不同的无线通信标准必要专利与非无线通信标准必要专利进行区分并分别对外许可，而是利用在无线通信标准必要专利许可市场的支配地位，没有正当理由将非无线通信标准必要专利许可进行搭售，我国部分被许可人被迫从高通公司获得非无线通信标准必要专利许可。

**Secondly, tying non-wireless-SEPs license without justifiable causes.** In its patent license, Qualcomm has not differentiated wireless SEPs and non-wireless-SEPs, which are different in nature, nor license them separately; instead, Qualcomm has tied its non-wireless-SEPs license without justifiable cause by leveraging its dominant market position in the wireless-SEP license market. Some Chinese licensees were forced to obtain non-wireless-SEP license from Qualcomm.

三是在基带芯片销售中附加不合理条件。高通公司将签订和不挑战专利许可协议作为我国被许可人获得其基带芯片供应的条件。如果潜在被许可人未签订包含了以上不合理条款的专利许可协议，或者被许可人就专利许可协议产生争议并提起诉讼，高通公司均拒绝供应基带芯片。由于高通公司在基带芯片市场具有市场支配地位，我国被许可人对其基带芯片高度依赖，高通公司在基带芯片销售时附加不合理条件，使我国被许可人被迫接受不公平、不合理的专利许可条件。

**Thirdly, imposing unreasonable terms in baseband chip sales.** Qualcomm conditions Chinese licensees' procurement of Qualcomm's baseband chips on signing and non-challenging of the patent licensing agreement. If a potential licensee failed to sign patent licensing agreement that included the unreasonable terms noted above, or licensees had any dispute in connection with such patent licensing agreement and lodged lawsuits, Qualcomm would in either case refuse to supply baseband chips to such licensees. Since Qualcomm has a dominant position in the baseband chip market, and Chinese licensees are highly reliant on Qualcomm's baseband chips, Qualcomm's imposing unreasonable terms in its baseband chip sale has coerced Chinese licensees to accept unfair and unreasonable patent licensing terms.

高通公司的上述行为，排除、限制了市场竞争，阻碍和抑制了技术创新和发展，损害了消费者利益，违反了我国《反垄断法》关于禁止具有市场支配地位的经营者以不公平的高价销售商品、没有正当理由搭售商品和在交易时附加不合理交易条件的规定。

The above Qualcomm's conducts eliminated and restricted the market competition, hindered and impeded technology innovation and development, and eventually harmed the interests of consumers, violating the provisions of the AML which prohibit undertakings with dominant market positions from selling products at an unfairly high price, "tying" products without justification, and imposing unreasonable trade terms in a transaction.

在反垄断调查过程中，高通公司能够配合调查，主动提出了一揽子整改措施。这些整改措施针对高通对某些无线标准必要专利的许可，包括：（1）对为在我国境内使用而销售的手机，按整机批发净售价的 65%收取专利许可费；（2）向我国被许可人进行专利许可时，将提供专利清单，不得对过期专利收取许可费；（3）不要求我国被许可人将专利进行免费反向许可；（4）在进行无线标准必要专利许可时，不得没有正当理由搭售非无线通信标准必要专利许可；（5）销售基带芯片时不要求我国被许可人签订包含不合理条件的许可协议，不将不挑战专利许可协议作为向我国被许可人供应基带芯片的条件。高通提交的一揽子整改措施满足了本机关决定和整改的要求。高通公司同时表示，将继续加大在我国的投资，谋求更好的发展。国家发展改革委对高通公司在我国持续投资表示欢迎，并支持高通公司对使用其受到专利保护的技术收取合理的专利费。

In the course of the antimonopoly investigation, Qualcomm has been able to cooperate during the investigation and proactively proposed a package of rectification measures. The rectification measures address Qualcomm's licensing of certain wireless standards essential patents and include: (1) for handsets sold for use within China, Qualcomm will charge patent royalties calculated on the basis of 65% of the wholesale net sale price of the devices; (2) Qualcomm will provide patent list when licensing such patents to Chinese licensees and shall not charge royalties on expired patents; (3) Qualcomm will not require Chinese licensees to grant free cross-licenses. (4) when conducting license of its wireless-SEPs, Qualcomm shall not tie the non-wireless-SEPs license without justifiable causes; (5) Qualcomm will not require Chinese licensees to enter into license agreements that include the unreasonable terms, and will not condition its supply of baseband chips to

Chinese licensees on non-challenging of patent license agreements. The package of rectification measures submitted by Qualcomm satisfies the requirements of our decision and rectification order. Qualcomm has also stated that they will continue to increase their investment in China to pursue better development. NDRC welcomes Qualcomm's continued investment in China and supports Qualcomm's collection of reasonable royalties for use of its patented technology.

由于高通公司滥用市场支配地位实施垄断行为的性质严重，程度深，持续时间长，国家发展改革委在责令高通公司停止违法行为的同时，依法对高通公司处以2013年度在我国市场销售额8%的罚款。此次反垄断执法，制止了高通公司的垄断行为，维护了市场公平竞争秩序，保护了消费者利益。

As Qualcomm's abusing its dominant market position to carry out monopolistic conducts has been serious in nature, deep in extent, and long in duration, NDRC, while ordering Qualcomm to cease its illegal conducts, has imposed a fine on Qualcomm in the amount which equals 8% of its 2013 annual turnover in China market in accordance with the law. The law enforcement action in this case has stopped Qualcomm's monopolistic conducts, maintained fair market competition order, and protected consumer interests.

中文原文见：[http://www.ndrc.gov.cn/xwzx/xwfb/201502/t20150210\\_663822.html](http://www.ndrc.gov.cn/xwzx/xwfb/201502/t20150210_663822.html).

Chinese text available at:

[http://www.ndrc.gov.cn/xwzx/xwfb/201502/t20150210\\_663822.html](http://www.ndrc.gov.cn/xwzx/xwfb/201502/t20150210_663822.html).

# **Exhibit E**

本書狀暨附件涉及原告機密謹請求以保密方式處理 (請勿揭露或提供予被告以外之第三人)

存底

1

### 行政訴訟共同陳報狀

案 號 : 106 年度行公訴字第 1 號

股 別 : 勇股



原 告 QUALCOMM 5775 Morehouse Dr., San

(即受處分人) INCORPORATED Diego, CA 92121, USA

代 表 人 Carol Lam 住同上

訴訟代理人兼 林怡芳律師 臺北市 106 大安區仁愛路

送達代收人 4 段 376 號 8 樓

訴訟代理人 陳秋華律師 電話 : (02)2705-8086

蘇佑倫律師 傳真 : (02)2705-0840

被 告 公平交易委員會 設臺北市中正區濟南路 1

段 2-2 號 12 樓

法 定 代 理 人 黃美瑛 住同上

本書狀暨附件涉及原告機密謹請求以保密方式處理（請勿揭露或提供予被告以外之第三人）

1 為公平交易法事件，謹依 鈞院諭示，陳報本件和解內容事：

2 原告與被告業已就本件行政訴訟以及原處分（公處字第 106094  
3 號處分）所調查事項之整體和解方案達成共識，並經被告 107 年 8 月  
4 8 日委員會議決議通過。原告及被告謹此共同陳報和解相關文件如附  
5 件，敬請 鈞院鑒核。

6  
7  
8 謹 狀

9 智慧財產法院 公鑒

10  
11 【附件明細】

和解筆錄內容中、英文版各乙份

高通公司行為承諾及其附錄乙份

12

本書狀暨附件涉及原告機密謹請求以保密方式處理 (請勿揭露或提供予被告以外之第三人)

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具狀人

原告 QUALCOMM INCORPORATED

代表人 Carol Lam

訴訟代理人 林怡芳律師

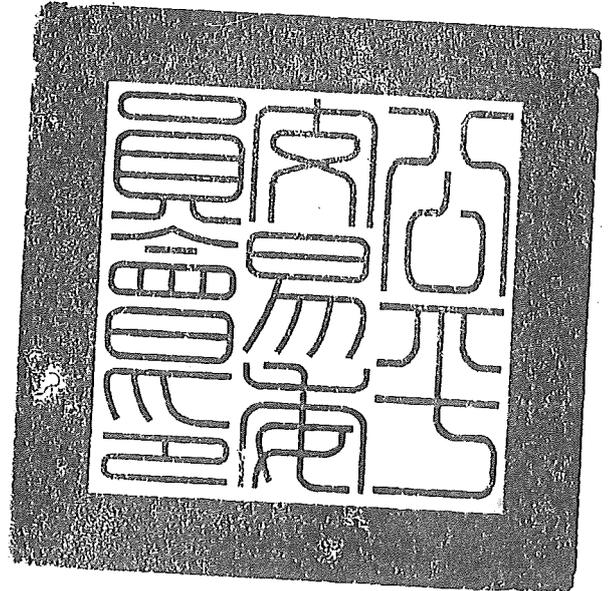
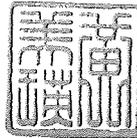
陳秋華律師

蘇佑倫律師



被告 公平交易委員會

代表人 黃美瑛



中 華 民 國 1 0 7 年 8 月 8 日

### 和解筆錄內容

原告：Qualcomm Incorporated（高通公司）

被告：公平交易委員會

原告及被告（經被告委員會議決議通過）同意下列之和解條件：

- 一、 由於被告公處字第 106094 號處分（下稱「原處分」）所調查之事項尚有爭議，原告及被告雙方同意以本和解筆錄（下稱「本和解筆錄」）之內容代替原處分全部，且原處分自本和解筆錄作成之翌日起，視為自始撤銷。
- 二、 自本和解筆錄作成之日起，原告同意遵守並執行附件 1「行為承諾」。若於附件 1 之英文及中譯文有實質上不一致之處，智慧財產法院應探求原、被告雙方當事人之真意解釋，以適用於有爭議之條款。
- 三、 原告同意就已繳納之罰鍰，在新臺幣 27 億 3 千萬元之範圍內放棄返還請求權。被告同意將原告依分期繳款申請書所提交予被告之 53 張剩餘擔保本票，返還予原告。
- 四、 本行政訴訟和解之成立或原處分不應作為或解釋為原告有任何違法行為之證據，或於本行政訴訟或任何其他案件或程序中作為原告有承認任何違法責任或違法行為。
- 五、 關於被告於原處分所調查原告之授權及晶片經營模式，本和解筆錄所定之和解條件（下稱「本和解條件」）將完全且終局解決所涉及之所有疑慮。就本行政訴訟、被告之調查或原處分相關或所生之任何及所有爭議，被告於本和解筆錄作成之日起，不得再為任何調查及裁處。
- 六、 就本和解條件第一至五點（包含但不限於附件 1 所列之行為承諾）所生之任何爭議或請求，雙方同意請求履行之一方（即請求方）應先(a)以書面通知他方該等爭議或要求，及(b)給予他方至少一百二十（120）日之期間（下稱「通知期間」）進行會面、協商及解決該等爭議或要求。如該等爭議或要求於通知期間內仍無法解決，雙方同意，請求方之唯一救濟途徑，係向就本行政訴訟及和解有管轄權之智慧財產法院提出聲請，命他方履行有爭議或要求之特定和解條款。於該等爭議或要求尚在智慧財產法院審理時，本和解條件之所有內容仍持續有完整之效力。
- 七、 原告亦承諾基於誠信原則進行已與被告達成共識之五年期產業方案以支持臺灣產業，產業方案內容係依據原告與被告間之討論、協議及處理程序執行，包括有助於臺灣行

動及半導體生態系成長之投資及合作。

八、 訴訟費用各自負擔。

以上筆錄經交閱原告及被告雙方朗讀無訛始簽名。

### Content of the Settlement Transcript

Plaintiff: Qualcomm Incorporated

Defendant: Taiwan Fair Trade Commission

Plaintiff and Defendant (after resolved and passed by the Defendant's commissioners' meeting) agree the following settlement terms:

- I. Because the matters being investigated under the Defendant's Decision, Gong Chu -Zi No. 106094 (the "TFTC Decision") are in dispute, Plaintiff and Defendant hereby agree that the Content of this settlement transcript ("Settlement Transcript") will replace the whole TFTC Decision; and from the next day after the Settlement Transcript is finalized, the TFTC Decision is deemed revoked *ab initio*.
- II. From the date the Settlement Transcript is finalized, Plaintiff agrees to abide by and implement the "Behavioral Commitments" listed in Exhibit 1. If there is any material discrepancy between the English and the Chinese translation of Exhibit 1, the IP Court shall determine the true intent of Plaintiff and Defendant, and then apply that interpretation to the disputed provision.
- III. With respect to the payments of fine made by Plaintiff, Plaintiff agrees to waive its claim for returning those payments within the amount of NTD 2,730,000,000. Defendant agrees to return to Plaintiff the remaining 53 promissory notes Plaintiff provided to Defendant as security in accordance with the installment payment application.
- IV. Neither the resolution of the administrative litigation nor the TFTC Decision shall constitute or be construed as any evidence of wrongdoing by Plaintiff, or an admission of liability or wrongdoing by Plaintiff in this administrative litigation or in any other case or proceeding.
- V. The agreed terms of resolution as set forth in the Settlement Transcript (the "Resolution") shall fully and finally resolve all concerns expressed by the Defendant in the TFTC Decision with respect to the investigation of Plaintiff's licensing and chip businesses. From the date of entering the Settlement Transcript, the TFTC is precluded from further investigation and disposition with respect to any and all issues relating to or arising from this administrative litigation or the Defendant's investigation.

- VI. In the event there is any dispute or claim arising from Points I to V of this Resolution, including but not limited to the Behavioral Commitments set out in Exhibit 1, both parties agree the party seeking compliance (the “Complaining Party”) shall firstly (a) give the other party a written notice of the dispute or claim, and (b) provide the other party a period of at least one hundred and twenty (120) days (the “Notice Period”) to meet and confer and cure the disputed claim within the Notice Period. If such dispute or claim cannot be resolved within the Notice Period, both parties agree the sole remedy of the Complaining Party shall be by way of an application to the IP Court, which has jurisdiction over this administrative litigation and Resolution, seeking compliance with the specific term of the Resolution that is the subject of the dispute or claim. All aspects of this Resolution shall remain in full force and effect during the pendency of any such dispute or claim before the IP Court.
- VII. Plaintiff based on good faith principles also commits to undertake agreed-upon commercial initiatives over a five-year period to support Taiwan industry, subject to communications, agreements, and processes between Plaintiff and Defendant regarding such initiatives, including investments and collaborations that support the growth of the mobile and semiconductor ecosystem in Taiwan.
- VIII. The court fee should be paid by each party respectively.

The abovementioned transcript had been handed over to Plaintiff and Defendant, which read aloud, verified and then executed the same.

## EXHIBIT 1

### 附件 1

## Qualcomm Behavioral Commitments

### 高通公司行為承諾

#### I. Commitments

##### 一、承諾

Capitalized terms are defined at the end of these Commitments.

粗體底線詞彙之定義如本承諾部分之後所示。

#### Commitments Regarding Handset Manufacturers

##### 關於手機製造商之承諾

1. Upon a Licensed Manufacturer's request, Qualcomm will engage in good faith renegotiations over terms in such Licensed Manufacturer's patent license agreement granting rights to Qualcomm's Taiwanese SEPs for Handsets that such Licensed Manufacturer alleges were coerced and are unreasonable. If, after six (6) months, the parties have not reached agreement on such renegotiated terms, either party may invoke the dispute resolution procedures of their existing patent license agreement to resolve such matters. For clarification, the parties may also agree to other neutral dispute resolution procedures such as court or arbitration to resolve such renegotiated terms.

經授權製造商要求，高通公司將就授權高通公司台灣手機 SEP 予該授權製造商之專利授權合約中，該授權製造商認其係被迫同意且不合理之授權條款，本於善意重新協商。如在六(6)個月以後，雙方均未能就協議條款達成合意，任一方均可援引其既有專利授權協議之爭端解決程序，以解決該等爭議。進一步說明，針對重新協商條款之爭議，雙方亦可另行協議採取其他如法院或仲裁之中立爭端解決程序。

If the Licensed Manufacturer also purchases cellular modem chips from Qualcomm pursuant to a chip supply agreement (a "Chip Customer"), Qualcomm will not terminate or threaten to terminate the supply of cellular modem chips to such Licensed Manufacturer during the renegotiation or dispute resolution process, as applicable, so long as the Licensed Manufacturer continues to perform its obligations under its existing supply and licensing agreements and acts in good faith in the renegotiations.

若授權製造商亦依據晶片供應合約向高通公司購買行動數據機晶片（「晶片客戶」），在重行協商或爭端解決程序期間（如有適用），只要授權製造商繼續履行其依現存供應和授權合約之義務，並本於善意進行重行協商，高通公司將不會終止或威脅終止供應行動數據機晶片予該授權製造商。

2. Qualcomm commits to treat Taiwanese Manufacturers in a non-discriminatory manner as compared to similarly situated non-Taiwanese Handset manufacturers with respect to Qualcomm's SEP licensing program. For example, with respect to branded Handsets, Qualcomm will offer the same SEP branded Handset license terms to Taiwanese Manufacturers and non-Taiwanese manufacturers; with respect to non-branded Handsets, Qualcomm will offer the same SEP non-branded Handset license terms to Taiwanese Manufacturers and non-Taiwanese manufacturers.

就高通公司 SEP 授權方案，高通公司承諾將對條件相當之台灣製造商與非台灣手機製造商給予無歧視之待遇。例如，對於品牌手機，高通公司將提供台灣製造商與非台灣製造商相同的 SEP 品牌手機授權條款；對於非品牌手機，高通公司將提供台灣製造商與非台灣製造商相同的 SEP 非品牌手機授權條款。

## Commitments Regarding Chip Suppliers and Chip Supply Agreements

### 關於晶片供應商與晶片供應合約之承諾

#### Chip Suppliers

##### 晶片供應商

3. Upon a Chip Supplier's request, Qualcomm will send to such Chip Supplier a Cellular Modem Component Patent Commitment Agreement in the form attached to these Commitments as Attachment. This agreement provides that Qualcomm will not assert any SEP claim against such Chip Supplier without first offering them a license to such claim on fair, reasonable and non-discriminatory ("FRAND") terms and conditions; and that if Qualcomm enters into an exhaustive license or grants a covenant not to assert with respect to Qualcomm SEPs at the cellular modem chip level to a third party, Qualcomm will offer the same terms to such Chip Supplier. 經晶片供應商要求，高通公司將寄給晶片供應商一份如本承諾附錄範本之通信基頻元件專利承諾合約。該合約約定，如未先就 SEP 請求項向晶片供應商提出依公平、合理且無歧視（「FRAND」）之授權條款，高通公司不得本於任何 SEP 請求項對該晶片供應商提起任何訴訟，且如高通公司就高通公司 SEP 於行動數據機晶片層級簽署耗盡性授權或授予第三人不主張權利承諾，高通公司將對該晶片供應商提供同樣條件。

#### Chip Supply Agreements

##### 晶片供應合約

4. In its chip supply agreements with a Chip Customer:  
在其與晶片客戶之晶片供應合約中：
  - a. Qualcomm will not enter any agreements that provide for it to rebate royalties in exchange for the customer agreeing to use Qualcomm's cellular modem chips exclusively; and

高通公司不會簽署任何以客戶同意獨家採用高通公司行動數據機晶片為條件，而給予權利金折讓之約定；以及

- b. Qualcomm will not condition any contractual license discount or royalty rebate based on such Chip Customer buying a specific ratio of its total chip purchases from Qualcomm.

高通公司不會以該晶片客戶之全部晶片採購有一定比率係向高通公司採購，作為契約之授權金折扣或權利金折讓約定之條件。

### **Term, Reporting, and Ongoing Compliance**

#### **期間、報告以及持續遵循**

5. Every six (6) months for a period of five (5) years after the Effective Date, Qualcomm will report to the TFTC certifying Qualcomm's compliance with these commitments and, in addition, with respect to Commitments 1 and 3, Qualcomm will report to the TFTC concerning completed negotiations within 30 days after amendments or new license agreements are signed. In addition to and without limiting the foregoing reporting measures, Qualcomm will respond to other reasonable requests by TFTC about Qualcomm's compliance with the Commitments. 在生效日後五(5)年期間內，每六(6)個月高通公司將向公平會進行報告，以確認高通公司遵循此等承諾。此外，高通公司將就承諾 1 與 3 已完成之協商，於完成增修或新訂之契約簽署後 30 日內向公平會進行報告。在上述報告方法以外（且不限於上述報告），高通公司將對公平會有關高通公司是否遵循該承諾之合理要求進行回應。

## **II. Further Provisions**

### **二、其他約定**

The Commitments will apply as of the Effective Date.

承諾將於生效日起適用。

Except as provided in these Commitments, nothing will be construed as requiring Qualcomm to conduct its patent licensing activities in a manner that is inconsistent with Qualcomm's business practices in effect prior to the Effective Date. Qualcomm appreciates the TFTC's recognition of the value of Qualcomm's technology.

除了本承諾約定外，任何條款均不得被解釋為高通公司應以任何與在生效日前所採行之高通公司商業模式不一致之方式，進行其專利授權活動。高通公司感謝公平會對於高通公司技術價值之肯定。

### **Definitions**

#### **定義**

"Chip Customer" has the meaning set forth in Commitment 1.

「晶片客戶」之定義如承諾 1 所載。

“Chip Supplier” means a supplier of cellular modem chips organized and existing under the laws of Taiwan.

「晶片供應商」係指依台灣法所成立並存續之行動數據機晶片供應商。

“Commitments” means the commitments set forth in this “Qualcomm Behavioral Commitments.”

「承諾」係指本「高通公司行為承諾」所載之承諾。

“Effective Date” means the date of entering a settlement transcript in the Administrative Litigation between the TFTC and Qualcomm.

「生效日」係指就公平會及高通公司間之本行政訴訟和解筆錄作成之日期。

“Handsets” means complete cellular telephones.

「手機」係指完整之行動電話。

“Licensed Manufacturer” means a Taiwanese Manufacturer that is licensed under Qualcomm’s Taiwanese SEPs to make and sell Handsets as of the Effective Date.

「授權製造商」係指在生效日前取得高通公司台灣 SEP 授權而得製造與銷售手機之台灣製造商。

“SEP” means a patent claim, that it is not possible on technical (where “technical” does not include and is not otherwise construed to mean “commercial”) grounds to avoid practicing when implementing the air interface specifications of a cellular standard in a Handset.

「SEP」係指當實施手機通信標準空中介面規格，在技術上不可能（「技術上」並不包括且不得另行解釋為「商業上」）避免實施之專利請求項。

“Taiwanese Manufacturer” means a manufacturer of the Handsets organized and existing under the laws of Taiwan.

「台灣製造商」係指依台灣法所成立與存續之手機製造商。

“TFTC” means the Taiwan Fair Trade Commission.

「公平會」係指台灣之公平交易委員會。

雙方同意並授權有權代表之人簽署本高通公司行為承諾。

Both parties agree to and hereby authorize their representatives to execute this Qualcomm Behavioral Commitments.

**公平交易委員會 Fair Trade Commission**

代表人 黃美瑛 Representative: Huang, Mei-Ying

日期 (Date) :

**Qualcomm Incorporated**

---

姓名 (Name): Alexander H. Rogers

職稱 (Title): Executive Vice President & President, Qualcomm Technology Licensing  
執行副總裁 & 高通技術授權總裁

日期 (Date) :

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ATTACHMENT  
FORM - CELLULAR MODEM COMPONENT  
PATENT COMMITMENT AGREEMENT

附錄  
範本 - 通信基頻元件  
專利承諾合約

THIS CELLULAR MODEM COMPONENT PATENT COMMITMENT AGREEMENT (the "Agreement") is entered into effective as of \_\_\_\_\_ (the "Effective Date") between QUALCOMM Incorporated, a Delaware corporation ("Qualcomm"), and \_\_\_\_\_, a company organized and existing under the laws of Taiwan ("Company").

本通信基頻元件專利承諾合約（下稱「本合約」）於\_\_\_\_\_（下稱「生效日」），由德拉瓦州之美商高通公司（下稱「高通」）及依台灣法律所組織及存續之\_\_\_\_\_（下稱「台灣公司」）簽訂並生效。

AGREEMENT:

合約：

1. **CONSTRUCTION AND DEFINITIONS.** Section headings used in this Agreement are inserted for the purpose of convenience only and are not intended to affect the meaning or interpretation of any provision in this Agreement. Unless expressly stated otherwise, references in this Agreement to "Sections" mean sections of this Agreement and include all subsections thereof. For the purpose of the construction and interpretation of this Agreement, the words "including," "include," "includes," and "such as" are not terms of limitation, but rather will be deemed to be followed by the words "without limitation," and the words "hereby," "herein," "hereof," and "hereunder" refer to this Agreement as a whole. References to "Third Party" or "Third Parties" do not mean either Party or any Affiliate of either Party. Whenever a Party's approval or consent is required under this Agreement, the Party may grant or withhold its consent, or impose conditions on granting its consent, in its absolute discretion without any requirement to act reasonably, unless expressly stated otherwise. Capitalized terms used in this Agreement that are not defined elsewhere in this Agreement are defined in Attachment 1.

1. **解釋及定義。**本合約各條標題僅係為參照便利之目的而訂定，而非用以影響本合約任何條款之意義或解釋。除另有明文者外，本合約所稱「條款」指本合約之條款及該條所有款項。基於本合約解釋及理解之目的，「包含 (including)」、「包含 (include)」、「包含 (includes)」及「例如」等並非限定條件用語，而應視為其

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後均有「但不限於」等語，而「茲此 (hereby)」、「於此 (herein)」、「關於 (hereof)」及「依此 (hereunder)」則指本合約之全部。「第三人單數 (Third Party)」或「第三人複數 (Third Parties)」非指任一當事人或任一當事人之關係企業。除非另有明文規定外，當本合約要求必須有任一當事人之批准或同意時，該當事人有絕對之決定權得給予或拒絕同意，或於其同意附加條件。本合約大寫之用語，倘未於本合約定義之，則依附件 1之定義。

2. **TERM OF AGREEMENT.** This Agreement will begin on the Effective Date and, unless earlier terminated pursuant to the express terms of this Agreement or by written agreement of the Parties, will continue in full force and effect for a period of five (5) years.

2. **本合約有效期間。**本合約自生效日起生效，除非依據本合約明定之條款或雙方書面同意而提前終止者外，於五（5）年內持續有效。

### 3. **CELLULAR MODEM COMPONENT PATENT COMMITMENTS**

#### 3. **通信基頻元件專利承諾**

3.1 **Component Commitment.** If, at any time during the term of this Agreement, Qualcomm enters into a Component-Level Patent Agreement (the “**Third Party Agreement**”), then, within sixty (60) days after the date of such agreement, Qualcomm shall offer to Company an agreement that grants to Company or its Affiliate, as Company so designates, a license or an exhaustive covenant not to Assert, as set forth in the Third Party Agreement, under Qualcomm’s Essential Patent Claims for its Cellular Components that contains terms that are equivalent in all material respects, including with respect to the required payment of any royalties or fees, to the terms of the Third Party Agreement with respect to the activities authorized by Qualcomm to be performed by such Third Party in such Third Party Agreement for Cellular Components (the “**Offered Agreement**”). In order for Company to accept an Offered Agreement that is made available by Qualcomm under this Section 3.1, Company or its Affiliate, as the case may be, must enter into and deliver to Qualcomm such Offered Agreement within ninety (90) days after Qualcomm provides such Offered Agreement to Company.

3.1 **元件承諾。**在本合約有效期間內之任何時間，倘若高通簽訂任何元件層級專利合約（下稱「**第三人合約**」），於該合約簽訂日後六十（60）日內，倘若台灣公司要求，高通應向台灣公司提出一合約要約，就高通之通信元件必要專利請求項，

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給予台灣公司或其關係企業如第三人合約所載之授權或耗盡式不訴訟承諾之契約，該契約應含有同等之所有重要契約條款，包含任何授權金之支付要求、第三人合約中關於高通授權第三人依通訊元件第三人合約得為之行為（下稱「**合約要約**」）。為使台灣公司接受高通依本第 3.1 條所提出之合約要約，台灣公司或其關係企業於個案中應於高通向台灣公司提出該合約要約後九十（90）日內，與高通簽訂並向高通送達該合約要約。

3.2 **Written Certification of Compliance.** During the term of this Agreement and for one (1) year thereafter, Qualcomm will, upon written request by Company, provide to Company, no more frequently than once every twelve (12) consecutive months, a written certification that is signed by an officer of Qualcomm and attests to Qualcomm's then-current compliance with Section 3.1, the accuracy of which will be verified by an independent auditing firm of Qualcomm. Qualcomm will ensure that its personnel who are knowledgeable about the relevant records and business practices are available to such independent auditing firm to enable it to perform its verification of such compliance.

3.2 **書面履行證明。**本合約有效期間內及其後一（1）年，倘若台灣公司以書面要求，高通將提供台灣公司一由高通職員簽署之書面證明，以證稱高通之行為於當時均符合第 3.1 條之規定，而該等書面證明之正確性將由高通之獨立查核事務所確認之，惟台灣公司該等要求於每連續十二（12）個月內不得超過一次。高通將確保前揭獨立查核事務所接觸知悉相關紀錄及商業實務之人員，使該事務所進行高通合規之確認。

3.3 **Contingent Commitment.** During the term of this Agreement, before Asserting any Essential Patent Claim against Company or any of Company's Affiliates for its making, using, selling, offering to sell or importing Cellular Components (each such activity, the "**Asserted-Against Activity**"), Qualcomm will first offer to Company a license under such Essential Patent Claim, on fair, reasonable and non-discriminatory ("**FRAND**") terms and conditions to engage in the Asserted-Against Activity with respect to Cellular Components; provided, however, that the commitment made by Qualcomm under this Section 3.3 does not apply to any Cellular Components that are to be used in any product of Company or any of its Affiliates that is not licensed under any patent license agreement between the Parties.

3.3 **有條件承諾。**於本合約有效期間內，高通以任何必要專利請求項向台灣公司或其任何關係企業之製造、使用、販賣、為販賣之要約或進口通信元件等行為

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（任一行為稱「**被主張行為**」）主張權利前，高通應先就該等必要專利請求項向台灣公司提出符合公平、合理及無歧視（下稱「**FRAND**」）條件之授權要約，而使之得以從事通信元件之被主張行為。惟台灣公司或其任何關係企業之任何產品未取得雙方專利授權合約之授權者，高通依本第 3.3 條所為之承諾不適用於使用於該等產品之任何通信元件。

3.4 **Patent Exhaustion Claim.** If without the support of Qualcomm or its Affiliates, a Third Party alleges or asserts any Patent Exhaustion Claim based on Section 3.1 and/or Section 3.3, upon the allegation or assertion of any such Patent Exhaustion Claim any units of Cellular Components Sold or otherwise made available by Company or any of its Affiliates that are the subject of such Patent Exhaustion Claim shall be excluded at that time from the commitment by Qualcomm in Section 3.1 and/or Section 3.3, as the case may be. The commitment by Qualcomm in Section 3.1 and/or Section 3.3 will be reinstated with respect to such units of Cellular Components Sold or otherwise made available by Company or any of its Affiliates that are the subject of such Patent Exhaustion Claim if such Patent Exhaustion Claim (a) is withdrawn in writing by such Third Party within sixty (60) days after a written request is made by Qualcomm to such Third Party to do so or (b) is adjudicated by a court of competent jurisdiction to be without merit (on grounds other than the exclusion provisions of this Section 3.4). For avoidance of doubt, this Section 3.4 does not apply to any exhaustive patent licenses or other exhaustive patent rights that are granted by Qualcomm to Company with respect to Cellular Components pursuant to the commitment set forth in Section 3.1 or Section 3.3.

3.4 **專利權耗盡主張。**如果沒有高通或其關係企業之支持，第三人以第 3.1 條及/或第 3.3 條提出或聲稱任何專利權耗盡主張，於任何該等專利權耗盡主張提出或聲稱時，被主張適用專利權耗盡之由台灣公司或其任何關係企業所販賣或提供之任一單位通信元件，斯時將不再適用高通依第 3.1 條及/或第 3.3 條（依個案而定）所為之承諾。倘若該等專利權耗盡主張(a)於高通以書面請求該等第三人撤回後六十（60）日內，經第三人以書面撤回者；或(b)經有管轄權之法院判決無理由者（以第 3.4 條所列之除外條款以外之理由判決），針對被主張適用專利權耗盡之由台灣公司或其任何關係企業所販賣或提供之該等單位通信元件，高通依第 3.1 條及/或第 3.3 條所為之承諾將恢復之。為免疑義，本第 3.4 條將不適用於高通依第 3.1 條或第 3.3 條所規定之承諾所授與台灣公司關於通信元件之任何耗盡式專利授權或其他耗盡式專利權。

#### 4. TERMINATION

#### 4. 終止

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#### 4.1 Termination for Cause

##### 4.1 因故終止

4.1.1 By Qualcomm. Qualcomm may terminate this Agreement, by written notice to Company, if Company commits any material breach of any provision of this Agreement; provided, however, that in the case of any such breach that is capable of being cured, Qualcomm will not have a right to terminate this Agreement unless and until Company has failed to cure such breach within thirty (30) days after Qualcomm has given Company written notice thereof.

4.4.1 高通終止。倘若台灣公司重大違反本合約任何條款，高通得以書面通知台灣公司以終止本合約。惟倘若任何該等違反得以治癒者，除非經高通以書面通知台灣公司治癒該等瑕疵後三十（30）日內台灣公司仍未治癒者，高通則無權終止本合約。

4.1.2 By Company. Company may terminate this Agreement, by written notice to Qualcomm, if Qualcomm commits any material breach of any provision of this Agreement; provided, however, that in the case of any such breach that is capable of being cured, Company will not have a right to terminate this Agreement unless and until Qualcomm has failed to cure such material breach within thirty (30) days after receipt by Qualcomm of written notice thereof by Company.

4.4.2 台灣公司終止。倘若高通重大違反本合約任何條款，台灣公司得以書面通知高通以終止本合約。惟倘若任何該等違反得以治癒者，除非經高通收受台灣公司書面通知應治癒該等瑕疵後三十（30）日內高通仍未治癒該等重大瑕疵者，台灣公司則無權終止本合約。

4.2 Suspension based upon Discontinuance of Sale of Cellular Components. If, at any period during the term of this Agreement, Qualcomm and any of its Affiliates are not selling Cellular Components, then, by written notice to Company, Qualcomm may suspend its compliance with this Agreement during such period. For the avoidance of doubt, this Section 4.2 does not apply to any exhaustive patent licenses or other exhaustive patent rights that are granted by Qualcomm to

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Company with respect to Cellular Components pursuant to the commitment set forth in Section 3.1 or Section 3.3.

4.2 **因停止銷售通信元件而暫停**。於本合約有效期間內之任何期間，高通及其任何關係企業停止銷售通信元件者，高通則得以書面通知台灣公司於該期間內暫停遵循本合約。為免疑義，本第 4.2 條將不適用於高通依第 3.1 條或第 3.3 條所規定之承諾所授與台灣公司關於通信元件之任何耗盡式專利授權或其他耗盡式專利權。

4.3 **Termination based on Company Assertion or Allegation**. Qualcomm may terminate this Agreement, by written notice to Company, if (a) Company or any of its Affiliates (i) First Asserts any Essential Patent Claim against Qualcomm or any of its Affiliates, or against any of its respective contractors with respect to any Cellular Components of Qualcomm or any of its Affiliates, or (ii) alleges or asserts any Patent Exhaustion Claim with respect to any of Qualcomm's Essential Patent Claims based on the commitments given by Qualcomm in Section 3.1 or Section 3.3 (each such Assertion, allegation or assertion in the immediately preceding clauses (i) and (ii), a "Company Assertion or Allegation") and (b) Company or its Affiliate, as the case may be, fails to withdraw such Company Assertion or Allegation within sixty (60) days after the receipt by Company of written notice thereof by Qualcomm. For avoidance of doubt, clause (a)(ii) of this Section 4.3 does not apply to any exhaustive patent licenses or other exhaustive patent rights that are granted by Qualcomm to Company with respect to Cellular Components pursuant to the commitment set forth in Section 3.1 or Section 3.3.

4.3 **因台灣公司提出或聲稱而終止**。倘若發生下列情事，高通得以書面通知台灣公司終止本合約：(a)台灣公司或其任何關係企業(i)先以任何必要專利請求項提告高通或其關係企業，或提告高通或其任何關係企業之任何通信元件之任一個別承包商者；或(ii)依高通第 3.1 條或第 3.3 條所為承諾，就任何高通必要專利請求項提出或聲稱任何專利權耗盡主張者（前述第(i)及(ii)款之任一提告、提出或聲稱，以下稱「台灣公司提出或聲稱」）及(b)台灣公司或其關係企業（依個案而定），於台灣公司收受高通書面通知後六十（60）日內，未撤回該等台灣公司提出或聲稱者。為免疑義，本第 4.3 條第(a)(ii)款將不適用於高通依第 3.1 條或第 3.3 條所規定之承諾所授與台灣公司關於通信元件之任何耗盡式專利授權或其他耗盡式專利權。

4.4 **Termination due to Judgment Relating to Patent Exhaustion**. If, it is adjudicated in a judgment that is rendered in a court of competent jurisdiction and to which Company or one of its Affiliates is a party, or to which any direct or indirect customer of Company or any of its Affiliates is a party, that the terms of

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Section 3.1 or Section 3.3 exhaust any of Qualcomm's Essential Patent Claims, or provides any Pass-Through Rights under Qualcomm's Essential Patent Claims to any Third Party, for any Cellular Components made or sold by Company or any of its Affiliates, whether expressly, impliedly, by estoppel, by operation of law or otherwise, then the section that is found to have created patent exhaustion or Pass-Through Rights shall immediately and automatically terminate effective as of the date of such adjudication. For avoidance of doubt, this Section 4.4 does not apply to any exhaustive patent licenses or other exhaustive patent rights that are granted by Qualcomm to Company with respect to Cellular Components pursuant to the commitment in Section 3.1 or Section 3.3.

4.4 **因專利權耗盡之判決而終止**。倘若經有管轄權之法院，於台灣公司或其一關係企業為當事人之案件，或台灣公司或其任何關係企業之任何直接或間接客戶為當事人之案件，針對台灣公司或其任何關係企業製造或銷售之任何通信元件，判決不論依明示、默示、禁反言、法律運作或其他方式，第 3.1 條或第 3.3 條之條款將耗盡任何高通必要專利請求項，或提供任何第三人高通必要專利請求項之任何傳遞權，則該等被認為創設專利權耗盡或傳遞權之條款，應於該等判決之日立即且自動終止之。為免疑義，本第 4.4 條將不適用高通依第 3.1 條或第 3.3 條所規定之承諾所授與台灣公司關於通信元件之任何耗盡式專利授權或其他耗盡式專利權。

4.5 **Termination due to Bankruptcy, Dissolution, or Liquidation**. A Party shall provide written notice to the other Party immediately upon the occurrence of any of the following events (each, an "Event") concerning the first Party or any of its Affiliates: (a) insolvency, bankruptcy, or liquidation or filing of any application therefor, or other commitment of an affirmative act of insolvency; (b) attachment, execution, or seizure of substantially all of the assets or filing of any application therefor; (c) assignment or transfer of that portion of the business to which this Agreement pertains to a trustee for the benefit of creditors; or (d) termination of its business or dissolution. If either Party becomes the subject of an Event, the other Party will have the right to terminate this Agreement with immediate effect by giving written notice of termination to the first Party no earlier than sixty (60) days after the Event occurs (unless such Event ceases within such sixty (60)-day period). If an Affiliate of either Party becomes the subject of an Event, all rights granted to such Affiliate and all of its obligations under or pursuant to this Agreement will automatically terminate upon the expiration of sixty (60) days after such Event occurs (unless such Event ceases within such sixty (60)-day period).

4.5 **破產、解散或清算而終止**。一方當事人或其任何關係企業於發生下列任一情事者（任一稱「情事」），該當事人應立即以書面通知他方當事人：(a)無力清償、

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破產、或清算或提出任何申請或其他確認無力償還之承諾；(b)實質上全部資產遭扣押、執行或沒收或提出任何相關申請；(c)為債權人之利益，將營業之一部轉讓或移轉予本合約之受任人；或(d)其營業終止或解散。倘若任一當事人發生前揭情事，他方當事人有權於該等情事發生六十（60）日後以書面通知其終止本合約，且該等終止得立即生效（惟該等情事於六十（60）日內停止者，不在此限）。倘若任一當事人之關係企業發生前揭情事，該等關係企業依本合約享有之權利及所負之義務將於該等情事發生六十（60）日後自動終止（惟該等情事於六十（60）日內停止者，不在此限）。

4.6 **Surviving Rights and Obligations.** Upon any termination or expiration of this Agreement, the commitments in Section 3 (CELLULAR MODEM COMPONENT PATENT COMMITMENTS) (except for Section 3.2 (Written Certification of Compliance), but in such case only to the extent expressly provided in such section) will terminate. The other provisions in this Agreement that are expressly stated to survive or that, by their nature, would reasonably be expected to continue beyond the expiration or termination of this Agreement (including this Section 4.6 (Surviving Rights and Obligations) and relevant provisions of Section 5 (MISCELLANEOUS) will survive such expiration or termination.

4.6 **權利及義務之存續。**於本合約終止或屆期時，依第 3 條所為之承諾（通信基頻元件專利承諾）（除第 3.2 條（書面履行證明）僅適用於該條所明定之情事外）將終止。本合約其餘條款明示將存續，或依其本質得合理期待將於本合約到期或終止後繼續有效者（包含本第 4.6 條（權利及義務之存續）及第 5 條（其他事項）相關條款）將於本合約屆期或終止後存續。

## 5. MISCELLANEOUS

### 5. 其他事項

#### 5.1 **Assignment.**

#### 5.1 **轉讓**

5.1.1 **No Assignment.** Except as provided in Section 5.1.2, neither Party shall assign this Agreement (or any of its rights or interests under this Agreement) or delegate any of its obligations under this Agreement without the other Party's prior written consent, which consent will not be unreasonably withheld.

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Any attempted assignment of this Agreement or any of the rights or interests of a Party under this Agreement by that Party, or any attempted delegation of any obligations of a Party under this Agreement by that Party, without the other Party's prior written consent will be, at such other Party's option (and in such other Party's discretion), null, void, and ineffective from inception.

5.1.1 **不得轉讓**。除第 5.1.2 條所規定外，非經他方當事人事前書面同意（惟不得不合理地拒絕同意），雙方均不得將本合約（或本合約之權利或利益之任何一部分）或本合約下之之任何義務轉讓予第三人。非經他方當事人事前書面同意，一方當事人意圖讓與本合約或一方當事人在本合約之其他權利或利益者，或其意圖指定他人履行一方當事人在本合約之義務者，另一方得選擇（或依另一方之裁量）其為無效且自始不生效力。

5.1.2 **Permitted Assignment**. Company will be entitled to assign in writing the rights and obligations of this Agreement to a Taiwanese successor to all or substantial portion of Company's component business as a result of and based on the consummation of a transaction (or an integrated series of transactions) involving a spin-off, divestiture, or reorganization of such business by means of (i) a distribution of shares of such business to Company's then-existing shareholders, (ii) an initial public offering of voting securities of any such business, (iii) an internal reorganization that does not involve any Third Party, or (iv) a combination of the immediately preceding clauses (i), (ii) and (iii) above; provided that, in any such case, and as a condition to such assignment:

5.1.2 **許可轉讓**。台灣公司將有權以書面將本合約之權利及義務讓與給因交易完成（或一系列交易的一部分）並以之為根據而繼受台灣公司元件事業的全部或大部分之繼受人，而該交易係依以下方式進行其事業之分割、拆分、或重整：(i)向台灣公司當時的股東發放股份；(ii)以該事業的有投票權證券進行初次公開發行；(iii)不牽涉任何第三方的內部組織重整；或(iv)前述(i)、(ii)及(iii)的綜合情形，此外上述情事必須以下列情事為條件：

(a) the successor must agree as part of such assignment, and on behalf of itself and its Affiliates (as the term "Affiliate" would be applied if such successor were Company), to be bound to all of the terms and conditions of this Agreement to the same extent that Company would have been required to perform any obligations pursuant to this Agreement if such assignment had not taken place; and

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(a) 作為該讓與之部份內容，繼受人必須代表其自身及其關係企業（在台灣公司為繼受人時將使用「關係企業」一詞）同意受本合約條款之拘束，如同在該讓與並未發生時台灣公司依本合約必須履行的義務的程度；及

(b) any rights granted by Qualcomm to any assignee under this Agreement shall not apply with respect to components sold to any Company entity or any successor to any part of Company's cellular product business, if any.

(b) 任何高通依本合約對任何受讓人授予的權利，並不適用於對任何台灣公司實體或繼受台灣公司手機事業任何部分者所銷售的元件。

5.2 **Export Compliance.** Each Party acknowledges and agrees that it will comply with (and will ensure that each of its Affiliates complies with) all applicable United States and foreign export control and economic sanctions laws and regulations in exercising any rights or performing any obligations under this Agreement, and that it will not take any action that causes any other Party to violate any such laws.

5.2 **出口法規遵循。**各該當事人認知並同意，於其行使本合約任何權利或履行任何義務時，其將遵循（並確保其關係企業遵循）美國及外國出口管制以及經濟制裁法律及規定，且不會採取任何導致任何一方違反該等法規之行為。

5.3 **Severability.** If any provision in this Agreement is held to be invalid or unenforceable in whole or in part (the "Invalid Provision"), the remaining portions of such provision (if any) and the other provisions in this Agreement will remain in effect and the Invalid Provision will remain in effect to the maximum extent allowed by law. If requested by either Party within ninety (90) days after a final decision (i.e., a decision that is not or cannot be appealed) holding the Invalid Provision invalid or unenforceable, the Parties shall promptly negotiate a replacement for the Invalid Provision that provides, to the maximum extent possible, substantially the same rights, benefits, and obligations to each Party as did the Invalid Provision. If the Parties are unable to agree on a replacement provision within one hundred eighty (180) days after such final decision and if the Invalid Provision is reasonably considered to be an essential element of this Agreement by a Party that did not challenge the validity or enforceability of such provision in the course of the proceeding that led to such final decision, then such Party may, at any time after such one hundred eighty (180)-day period and before the one-year

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anniversary of such final decision, terminate this Agreement effective immediately upon written notice to the other Party. Notwithstanding the foregoing, the Parties agree that if any or all of Section 3.1 or Section 3.3 is found to be an Invalid Provision and the Parties do not reach agreement on a replacement for such section in accordance with the preceding terms, then the section found to be Invalid Provision shall terminate and the remainder of the Agreement will survive.

5.3 **可分性**。若本合約任何條款之全部或一部經認定為無效或不具執行力（下稱「無效約款」），該無效約款之其餘部分（如有）及本合約其他約定將繼續有效，且該無效約款將在法律許可之最大限度內繼續發生效力。如任一方在認定該無效約款為無效或不具執行力的終局判決（意即不能上訴的判決）後九十（90）日內提出要求，雙方應立即協商替代該無效約款的替代條款，以在最大可能的範圍內，對各當事人提供與無效約款實質相同之權利、利益以及義務。如雙方在終局判決一百八十（180）日內無法就替代條款達成合意，且一方當事人合理認為無效約款為本合約必要要素者且在獲致該終局判決的程序中未爭執該條款有效性及執行力，則該當事人在此一百八十（180）日期間之後、該終局判決滿一年之前，得隨時終止本合約，且在給予他方書面通知時，立即發生終止之效力。儘管有以上約定，當事人同意，如果第 3.1 條或第 3.3 條之一部或全部遭認定為無效約款，且雙方無法依據前述約款，就該部分之替代條款達成合意者，則經認定為無效約款的部分應行終止，惟本合約其他部分仍繼續有效。

5.4 **Non-Waiver**. No waiver of the terms and conditions of this Agreement, or the failure of either Party strictly to enforce any such term or condition on one or more occasions, will be construed as a waiver of the same or of any other term or condition of this Agreement on any other occasion. A waiver of any right or remedy under this Agreement will be binding on a Party only if it is expressly stated in a written document that (i) specifically refers to this Agreement and expressly states such Party's intent to waive one or more rights or remedies under this Agreement, and (ii) is signed by an authorized representative of such Party (which in the case of Qualcomm, will be only (a) the CEO or President of Qualcomm, or (b) the President, General Manager or other authorized representative of the Qualcomm Technology Licensing Division of Qualcomm).

5.4 **不拋棄權利**。本合約任何條款之免除，或任一方有一次或數次未能嚴格執行任何條款，在任何其他情況下，均不構成免除此等條款或本合約的其他條款。本合約權利或救濟之放棄，僅在書面明示陳述如下情事者，始對一方發生拘束力：(i) 明確指涉本合約，且明白陳述該當事人免除一項或數項本合約權利或救濟之意圖；且(ii) 由該方授權代表簽署（在高通的情形，只會是(a)高通 CEO 或總裁，或者(b)高通技術授權部門的總裁、總經理或其他授權代表）。

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5.5 **Notices and Other Communications.** All notices, requests, demands, consents, agreements, reports, certificates, and other communications required or permitted to be given, or otherwise intended to have legal effect, under this Agreement (a “**Notice**”) must be provided in writing and in English and must be sent to the Party to whom it is to be given as provided in this Section 5.5. Each Party may change its address for receipt of Notices by providing notice of the new address to the other Party in accordance with this Section, and each Party shall change its address if such address is no longer used by such Party. If a Notice that is provided by Qualcomm to Company hereunder applies to activities performed by any of Company’s Affiliates, such Notice will be deemed to also be provided by Qualcomm to Company’s Affiliates on the same date that such Notice is provided by Qualcomm to Company, and Company shall promptly provide copies of all such notices to its applicable Affiliates.

5.5 **通知以及其他聯繫**。本合約所規定或允許發出的通知、請求、要求、同意、約定、報告、證書以及其他聯繫方式抑或有使其發生法律效力意思者（下稱「**通知**」），必須以英文書面形式為之，且必須發送給依據第 5.5 條約定之應收受之對象。各該當事人得依本條約定向他方通知新住址，以更改其收受通知之住址，且各該當事人不再使用該住址時，該當事人應更改其住址。如高通發給台灣公司的通知對於台灣公司關係企業所進行的活動有所適用，則視為高通在其給予台灣公司通知之日，已給予台灣公司關係企業此一通知，且台灣公司應立即對其有適用的關係企業提供此一通知之複本。

(a) **Notices to Qualcomm.** All Notices to Qualcomm must be sent by facsimile or by courier service (e.g., DHL, FedEx), and if sent by facsimile, a copy must be sent by courier service. Each such Notice must be properly addressed as follows (in which case such Notice will be deemed to have been duly given on the date of receipt of such Notice by Qualcomm):

(a) **給高通的通知**。所有給高通的通知必須以傳真或快遞服務（例如 DHL、FedEx）寄送，且如以傳真發送，必須再以快遞寄送 1 份複本。各該通知必須妥當地填具收件人如下（在此情形，通知在高通收到通知之日視為已合法送達。）：

QUALCOMM Incorporated  
5775 Morehouse Drive  
San Diego, California 92121-1714  
Facsimile No.: (858) 658-2500

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Attention: President, Qualcomm Technology Licensing Division

with copies sent to:

Division Counsel, Qualcomm Technology Licensing Division  
General Manager, Qualcomm Technology Licensing Division

Qualcomm Incorporated  
5775 Morehouse Drive  
San Diego, California 92121-1714

傳真號碼：(585) 638-2500

收件人：President, Qualcomm Technology Licensing Division

副本寄至：

Division Counsel, Qualcomm Technology Licensing Division  
General Manager, Qualcomm Technology Licensing Division

(b) **Notices to Company.** All Notices to Company must be sent by facsimile or electronic mail or by courier service (e.g., DHL, FedEx), and if sent by facsimile or electronic mail, a copy must be sent by courier service. Each such Notice must be properly addressed as follows (in which case such Notice will be deemed to have been duly given on the date of receipt of such Notice by Company):

(b) **給台灣公司的通知。**所有給台灣公司的通知必須以傳真或快遞服務（例如 DHL、FedEx）寄送，且如以傳真或電子郵件發送，必須再以快遞寄送 1 份複本。各該通知必須妥當填具收件人如下（在此情形，通知在台灣公司收到通知之日視為已合法送達。）：

[Company Name]  
[Address]  
Attention: \_\_\_\_\_

[台灣公司名稱]  
[地址]  
收件人：\_\_\_\_\_

5.6 **Publication of Agreement.** Each Party shall keep this Agreement and its provisions confidential, and shall not disclose this Agreement or any of its provisions to any third party without first obtaining the written consent of the other

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Party. Notwithstanding the foregoing: (a) Qualcomm may, without notice to Company, disclose this Agreement or any of its provisions as may be required by a valid order or request of a Governmental Authority conducting an investigation of Qualcomm or its Affiliates; (b) without limiting clause (a) of this Section 5.6, each Party may disclose this Agreement or any of its provisions as may be required by a valid order or request of a court or other Governmental Authority (but only to the extent of and for the purposes of such order or request), provided, however, that the disclosing Party shall first notify the other Party in writing of the demand, order, or request and, if so requested by the other Party, permit and cooperate with the other Party in seeking an appropriate protective order or an equivalent mechanism for protecting the Agreement; and (c) each Party may disclose this Agreement or any of its provisions to its financial, legal and accounting advisors as reasonably necessary for the performance of their functions. The confidentiality obligations in this Section 5.6 do not apply to the existence of this Agreement or the fact that Qualcomm and Company have executed this Agreement, but do apply to the other terms and conditions of this Agreement.

5.6 **契約之公開**。各方當事人應保持本合約及其條款之機密性，且不可於未先獲他方當事人書面同意的情況下，將此契約或其之任何條款揭露給任意第三人。儘管有前述規定：(a)當對於高通或其關係企業進行調查之政府機關提出合法之命令或要求時，高通可以在不通知台灣公司之情況下，揭露本合約或其任何條款；(b)不限制本第 5.6 條第(a)款之情況，當法院或其他政府機關以合法之命令或請求進行要求時，各方當事人可揭露本合約或本合約任何條款（但僅及於符合或為了此類命令或請求目的之範圍）；然而，前提是，揭露方應首先以書面通知另一方，寫明該要求、命令或請求，並且若另一方有請求，應允許另一方且與另一方合作來尋求適當之保護令或保護該契約之相當機制；以及(c)各方當事人可以將本合約或本合約任何條款揭露給其之財務、法律與會計顧問，對於執行他們的工作為合理必須時。於本第 5.6 條之機密義務並未適用於本合約之存在、或高通與台灣公司已簽署本合約之事實，但及於本合約之其他條款或條件。

5.7 **Applicable Law**. This Agreement is made and entered into in the State of California and will be governed by and construed and enforced in accordance with the laws of the State of California, determined without regard to conflict of laws principles.

5.7 **準據法**。本合約係於加州制定，且將受加州法律管轄以及依加州法律解釋與執行，依此決定，無須考慮法律原則之衝突。

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5.8 **Dispute Resolution.** It is the intent of the Parties to use reasonable efforts to resolve expeditiously on a mutually acceptable negotiated basis any dispute, claim or controversy which may arise between the Parties with respect to the matters covered under this Agreement (each, a “Dispute”). In the event of any Dispute between the Parties arising under or relating to this Agreement, upon the written request of either Party, the executive officers of each Party that are responsible for the matters arising under or relating to this Agreement that are the subject of the Dispute will promptly confer to discuss such Dispute and attempt in good faith to resolve it. If the Parties are unable to resolve any such Dispute within ninety (90) days after a Party notifies the other Party in writing that it desires to confer to discuss such Dispute in accordance with this Section 5.8, then either Party may file an action with respect to such Dispute against the other Party in compliance with the terms of Section 5.9.

5.8 **爭端解決。**雙方當事人有意以合理努力，以雙方均接受之協商基礎，迅速解決雙方因本合約涵蓋事項所生之任何爭端、主張或衝突（任一稱「爭端」）。倘若雙方因本合約致生爭端者，經任一方之書面請求，任一當事人負責本合約事項所生爭端之專員應立即協商討論該等爭端，並致力以誠信原則解決之。倘若一方當事人依本第 5.8 條以書面通知他方當事人其欲協商討論該爭端之九十（90）日內，雙方無從解決該爭端者，任一方當事人得依第 5.9 條之規定，就該爭端對他方當事人提起訴訟。

5.9 **Venue.** The Parties agree that the exclusive forum to resolve any disputes relating this Agreement shall be the U.S. District Court of Delaware. If that Court is without jurisdiction to resolve the dispute, the Parties agree that the exclusive forum to resolve any disputes relating to this Agreement shall be the Superior Court of Delaware. Each Party agrees that, for any dispute relating to this Agreement, it is subject to the jurisdiction of the U.S. District Court of Delaware and, if that Court is without jurisdiction to resolve the dispute, then the Superior Court of Delaware. Each Party further agrees that it will not object to any such forum on the grounds of improper venue, *forum non conveniens* or any similar doctrine.

5.9 **管轄。**雙方當事人同意，任何本合約相關爭端解決由美國德拉瓦州聯邦地方法院為專屬管轄法院。倘若該法院欠缺管轄權解決該爭端者，雙方同意由德拉瓦州地方法院專屬管轄任何本合約之相關爭端之解決。任一當事人同意，任何本合約之相關爭端之解決，應由美國德拉瓦州聯邦地方法院所管轄，且倘若該法院欠缺該爭端解決之管轄權者，則應由德拉瓦州地方法院管轄。任一當事人並同意，其將不會以審判地不合適、不便利法庭原則或任何其他類似原則為理由反對本條約定之任何管轄法院。

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5.10 **Limitation of Liability.** EXCEPT FOR ANY BREACHES BY A PARTY OF SECTION 5.6, NEITHER PARTY WILL BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES FOR ANY INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT LOSSES OR DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, OR ANY ACTIVITIES PERFORMED UNDER THIS AGREEMENT, WHETHER BASED ON AN ACTION FOR BREACH OF CONTRACT OR TORT, OR ANY OTHER THEORY OF LIABILITY.

5.10 **責任限制。**除任一當事人違反第 5.6 條者外，不論基於違反契約、侵權行為或其他責任理論進行請求，任一當事人均不對他方當事人或任何其關係企業負擔本合約或因履行本合約之任何行為所生或有關之任何附帶性、衍生性或其他間接損失或損害賠償。

5.11 **Negation of Representations and Warranties.** Nothing in this Agreement will be construed as (a) a grant by Qualcomm or any of its Affiliates of any Pass-Through Rights under any Essential Patent Claims, (b) a requirement or obligation to file any Patent application, to secure any Patent, or to maintain any Patent in force, (c) a warranty or representation as to the validity or scope of any Patent, copyright, or other intellectual property right, (d) a warranty or representation that any manufacture, sale, lease, use, or importation will be free from infringement of Patents, copyrights, or other intellectual property rights, (e) an agreement to bring or prosecute actions or suits against any Third Parties for infringement, (f) any admission by Qualcomm or Company regarding the scope of Qualcomm's FRAND obligations, (g) an obligation to furnish any technical documentation or manufacturing assistance, (h) conferring any right to use (in advertising, publicity, or otherwise) any name, trade name, or trademark, or any contraction, abbreviation, or simulation thereof, or (i) an admission by Company or Qualcomm that it or any of its Affiliates is, or has ever been, in violation of any contractual, statutory, or other legal obligation. It will be the sole responsibility of Company to determine whether it needs licenses or other rights under patents or other intellectual property of Third Parties.

5.11 **拒絕擔保及保證。**本合約之任何條款不應解釋為(a)高通或其任何關係企業給予任何必要專利請求項之任何傳遞權、(b)提出任何專利申請、確保任何專利或維護任何專利權效力之要求或義務、(c)就任何專利、著作權或其他智慧財產權之有效性及範圍之擔保或保證、(d)任何製造、販賣、出租、使用或進口不侵害專利、著作權或其他智慧財產權之擔保或保證、(e)對於第三人提起侵權之行動或訴訟之協議、(f)高通或台灣公司就高通 FRAND 義務之範圍之任何承認、(g)提供任何技術性文件或生產協助之義務、(h) 授予任何（於廣告、宣傳或其他方式）使用名稱、商號、或商標或任何

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簡寫、縮寫或任何類似文字之權利、或(i)台灣公司或高通承認其或任何其關係企業違反或曾違反任何契約、法定或其他法律義務。台灣公司是否需要第三人之專利或其他智慧財產之授權或其他權利，應由台灣公司自行判斷之。

5.12 **Entire Agreement.** This Agreement was prepared and executed in the English language; no translation of this Agreement into any other language will be binding on either Party or will have any effect on the meaning or interpretation of the Agreement. The terms and conditions in this Agreement supersede and replace all prior and contemporaneous communications or understandings (whether oral or written, and whether direct or indirect) between the Parties solely with respect to the subject matter of this Agreement, and constitute the entire agreement of the Parties solely with respect to such subject matter. This Agreement can be modified or amended only by a written document that (a) specifically refers to this Agreement and expressly states the Parties' intention to amend or modify it and (b) is signed by (i) an authorized representative of Company and (ii) the CEO or President, or an authorized representative of the Qualcomm Technology Licensing Division, of Qualcomm. For the avoidance of doubt, the Parties acknowledge and agree that a communication, whether made electronically or otherwise, containing only the typed name and/or signature block of a Party, and made without the handwritten signature of an authorized representative of a Party within a signature block in such a communication, will not be deemed to be a written document "signed" by a Party for purposes of the immediately preceding sentence.

5.12 **完整契約。** 本合約係以英文備置並簽署。本合約翻譯為其他任何語言對於任一方均無拘束力，亦不對本合約之意義或解釋產生任何效力。本合約所訂條款取代並替換雙方當事人間關於本合約事項所為之所有先前及同時之協商或理解（且不論係以口頭、書面及直接或間接之方式為之）。本合約僅得以書面文件依下列方式修改或增補：(a)具體指明本合約並明示雙方當事人修改或增補本合約之意圖、及(b)由(i)台灣公司授權代表及(ii)高通之高通技術授權部門執行長、總裁或其他授權代表簽署者。為免疑義，雙方當事人承認並同意，不論以電子或其他形式為之，僅載有印刷名稱及/或任一當事人之簽名區塊，而無任一當事人授權代表於該協商中簽名區塊內為手寫簽名者，基於前揭條文之目的，將不視為該當事人「簽署」該書面文件。

5.13 **Acknowledgement of Adequate Consideration.** Notwithstanding anything to the contrary in this Agreement, each Party acknowledges that it has received adequate consideration, including the Parties continuing business relationship, from the other Party for this Agreement.

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5.13 **適當對價之承認**。儘管本合約有任何相反的約定，任一當事人承認其已自他方當事人取得本合約之適當對價，包含雙方當事人將持續商業關係。

5.14 **Independent Contractors**. The relationship between Qualcomm and Company is that of independent contractors. Qualcomm and Company are not joint ventures, partners, principal and agent, master and servant, or employer and employee, and Qualcomm and Company have no relationship other than as independent contracting parties.

5.14 **獨立簽約者**。高通及台灣公司之關係為獨立簽約者之關係。高通及台灣公司並非合資、合夥、本人及代理人、主僕或雇主及雇員，且高通及台灣公司除獨立簽約當事人外，其間並無其他關係。

5.15 **No Rule of Strict Construction**. Regardless of which Party may have drafted this Agreement, or any provision hereof, no rule of strict construction will be applied against either Party. Each Party represents and warrants that it has had an opportunity to be represented by competent legal counsel in negotiating and executing this Agreement.

5.15 **不適用嚴格解釋原則**。不論本合約或其任何條款之草擬者為何方當事人，嚴格解釋原則不應適用於任一當事人。任一當事人聲明並保證，其於協商及簽署本合約時已有機會由可勝任之律師代理之。

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed through their duly authorized representatives on the execution dates set forth below, with this Agreement being effective as of the Effective Date. This Agreement may be signed in counterparts.

茲此，雙方由其授權代表於下列簽署日簽署本合約，本合約並於生效日生效。而本合約得簽署一式數份。

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**QUALCOMM Incorporated**

**[Company Name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Execution Date: \_\_\_\_\_

Execution Date: \_\_\_\_\_

**美商高通公司**

**[台灣公司]**

簽名： \_\_\_\_\_

簽名： \_\_\_\_\_

印刷名： \_\_\_\_\_

印刷名： \_\_\_\_\_

職稱： \_\_\_\_\_

職稱： \_\_\_\_\_

簽署日： \_\_\_\_\_

簽署日： \_\_\_\_\_

**Attachment 1**  
**Certain Definitions**

**附件 1**  
**特定定義**

“3GPP” means the 3<sup>rd</sup> Generation Partnership Project of the European Telecommunications Standards Institute (ETSI).

「3GPP」指歐洲電信標準協會（the European Telecommunications Standards Institute, “ETSI”）第3代合作夥伴計劃。

“Affiliate” means (1) as to Qualcomm, any present or future Subsidiary of Qualcomm, but only for so long as the Subsidiary remains a Subsidiary of Qualcomm, and (2) as to any other Entity (including Company), any present or future Parent of such Entity and any present or future Subsidiary of such Entity or its Parent, but only for so long as the Parent remains the Parent of such Entity and the Subsidiary remains a Subsidiary of such Entity or its Parent. Notwithstanding the foregoing, in the event of any Change in Control of a Party, the term “Affiliate” when used in this Agreement in reference to such Party will, notwithstanding anything to the contrary this Agreement, be deemed to be amended immediately prior to the Change in Control affecting such Party to include only those entities that are or will become Subsidiaries of such Party.

「關係企業」指 (1) 對高通而言，任何現在或未來的高通子公司，但僅限於繼續屬於高通子公司的子公司；以及 (2) 對於其他任何實體（包括台灣公司），任何現在或未來該實體的母公司以及該實體現在或未來的子公司或其母公司，但僅限於繼續屬於該實體的母公司的母公司，以及繼續屬於該實體子公司的子公司或其母公司。儘管有上述規定，在一方有經營權變動時，無論本合約是否有相反的約定，本合約有關該方「關係企業」之一詞，將視為在經營權變動影響該方之前已立即修改，而僅涵蓋所有現在或將來將成為該方子公司的實體。

“Assert,” “Asserted,” “Asserting,” and “Assertion” mean to commence or prosecute patent infringement Litigation.

「提告」、「已提告」、「正在提告」或「告訴程序」指提起或進行專利侵權訴訟。

“CDMA” means code division multiple access.

「CDMA」指分碼多工存取。

“CDMA Standard” means any wireless air interface standard that implements CDMA and is adopted as an industry standard by the Telecommunications Industry Association (TIA), the European Telecommunication Standards Institute (ETSI), Japan’s Association of Radio Industries and Businesses (ARIB), or any other recognized international standards body, including the CDMA2000 family of standards (e.g., CDMA2000 1xRTT, 1xEV-DO, 1xEV-DO Rev. A, 1xEV-DO Rev. B), the WCDMA family of standards (e.g., UMTS, HSDPA, HSUPA, HSPA+), and TD-CDMA, but excluding the TD-SCDMA Standard.

「CDMA 標準」指任何實施 CDMA，且經電信行業協會（Telecommunication Industry Association, “TIA”）、ETSI、日本無線電產業會（Japan’s Association of Radio Industries and Businesses, “ARIB”）或任何其他經認可的國際標準組織採用為產業標準的空中無線介面，包括 CDMA2000 系列標準（例如 CDMA2000 1xRTT、1xEV-DO、1xEV-DO Rev. A、1xEV-DO Rev. B）、WCDMA 系列標準（例如 UMTS、HSDPA、HSUPA、HSPA+）以及 TD-CDMA，但不包括 TD-SCDMA 標準。

“Cellular Components” mean any wireless wide area network modem components that incorporate modem capabilities implementing one or more of the Covered Standards.

「無線元件」指任何含有可實施一個或數個「範圍內標準」的無線廣域網路數據元件。

“Change in Control” of an Entity means the occurrence of any of the following:

任一實體的「經營權變動」指發生下述任何情事者：

(a) a merger, consolidation, share exchange, tender offer, exchange offer, or similar transaction involving such Entity or any Subsidiary of such Entity after the completion of which the shareholders of such Entity immediately prior to the completion of such merger, consolidation, share exchange, tender offer, exchange offer, or similar transaction beneficially own (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the “**United States Exchange Act**”), or comparable successor rules), directly or indirectly, outstanding voting securities representing less than fifty percent (50%) of the combined voting power of either the surviving Entity in such merger, consolidation, share exchange, tender offer, exchange offer, or similar transaction or the Parent of the surviving Entity; or

(a) 在涉及該實體或該實體任何子公司的併購、合併、股權交換、收購、換股收購、或其他類似交易完成後，該實體在此等併購、合併、股權交換、收購、換股收購、或其他類似交易完成前的股東，就此等併購、合併、股權交換、收購、換股收購、或其他類似交易的存續實體或該存續實體的母公司，直接或間接實質持有（依據美國 1934 年證券交易法（「**美國證交法**」）第 13d-3 或其後修改或接續相當的法規所定義）的已發行有投票權證券所代表的合併有投票權低於百分之五十(50%)者。

(b) an acquisition by any Person or “group” (within the meaning of section 13(d) or 14(d) of the United States Exchange Act or any comparable successor provisions), other than any employee benefit plan or related trust sponsored or maintained by such Entity or an Affiliate of such Entity, and other than in a merger, consolidation, share exchange, tender offer, exchange offer, or similar transaction of the type referred to in clause “(a)” of this definition, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the United States Exchange Act, or comparable successor rules) of outstanding voting securities of such Entity representing at least fifty percent (50%) of the combined voting power of such Entity (in a single transaction or series of related transactions).

(b) 除了員工福利計畫、或該實體或其關係企業所成立或維持的相關信託、或本定義第(a)條款下併購、合併、股權交換、收購、換股收購、或其他類似交易中該實體已發行有投票權證券所代表的合併有投票權低於百分之五十(50%)的實質控股權（依據「**美國證交法**」第 13d-3 或其後修改或接續相當的法規所定義）以外，由任何人或「**集團**」（依**美國證交法**第 13(d)或 14(d)或任何接續相當的法規定義）所進行的併購。

“**Component-Level Patent Agreement**” means any written agreement entered into by Qualcomm with a Third Party that is a Cellular Component supplier under which Qualcomm expressly grants a license or exhaustive covenant not to Assert under Qualcomm’s Essential Patent Claims to that Third Party to sell Cellular Components for use and incorporation into complete cellular handset devices that perform wireless communications in accordance with a Covered Standard (an “**Authorized Sale Right**”). For clarity, a Component-Level Patent Agreement may contain, in addition to the grant by Qualcomm of an Authorized Sale Right to such Third Party, the grant by Qualcomm of a license or exhaustive covenant not to Assert under Qualcomm’s Essential Patent Claims to such Third Party to make, use, and import Cellular Components.

「**元件層級專利合約**」指任何由高通與作為無線元件供應商的第三方所簽訂的書面合約，其中約定高通就高通的必要專利請求項，向銷售供使用或合併於依「**範圍內標準**」實施無線通訊的完整無線手持裝置之無線元件的第三方，明示授權，或耗盡性不提告承諾（「**核准銷售權**」）。為清楚起見，除高通授予該第三人的核准銷售權外，元件層級專利合約得包含高通公司就高通必要專利請求項授予該第三人製造、使用以及進口無線元件給予授權或為耗盡性不提告承諾。

“**Covered Standard**” means a CDMA Standard or an LTE 4G Standard.

「**範圍內標準**」指 CDMA 標準或 LTE 4G 標準。

“**Entity**” means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, cooperative, foundation, society, political party, union, company (including any limited liability company or joint stock company), firm, or other enterprise, association, organization, or entity.

「**實體**」指任何公司（包括非營利公司）、一般合夥、有限合夥、有限責任合夥、合資經營企業、遺產信託、信託、合作基金會、社會、政治組織、聯盟、公司（包括任何有限責任公司或股份有限公司）、行號或其他企業、協會、組織或實體。

“**Essential**” means, with respect to a patent claim in relation to a Wireless Wide-Area Network Standard, that it is not possible on technical (where “technical” does not

include and is not otherwise construed to mean “commercial”) grounds to implement the air interface specifications of such Wireless Wide-Area Network Standard without practicing such claim.

「必要」指，對任何無線廣域網路標準專利請求項而言，在技術上（「技術」並不包含「商業」的涵義）不可能在不實施該等請求項的情況下，實施該廣域無線網路標準的空中介面規格。

“**Essential Patent Claims**” means the patent claims in an issued Patent that are Essential to a Covered Standard.

「必要專利請求項」指對範圍內標準為必要之已核准專利的專利請求項。

“**First Assert**” means a patent infringement Litigation is commenced (or caused to be commenced) by Company or any of its Affiliates with respect to any Essential Patent Claim against (i) Qualcomm or any of its Affiliates, or (ii) any contractor to Qualcomm or any of its Affiliates in relation to any Cellular Components that have been (or are to be) manufactured by such contractor and sold to Qualcomm or any of its Affiliates; and, in the case of the applicable preceding clause (i), or (ii), at a time when neither Qualcomm nor any of its Affiliates has first commenced or caused to be first commenced a patent infringement Litigation against Company or any of its Affiliates with respect to any Essential Patent Claim in relation to its Cellular Components.

「初次提告」指台灣公司或其關係企業就有關任何標準專利請求項對 (i) 高通或其關係企業、或(ii) 任何高通或其關係企業的承包商就與該等承包商已經或未來製造並銷售予高通或其關係企業的任何無線元件請求項，所提起（或促使提起）的專利侵權訴訟，且前述(i)、或(ii)情形，係在高通及其關係企業不曾就其有關無線元件的必要專利請求項，對台灣公司或其關係企業提出專利侵權訴訟或促成該訴訟狀態的時間點。

“**Governmental Authority**” means any: (a) nation, principality, state, commonwealth, province, territory, county, municipality, district, or other governmental jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any

governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body, or Entity and any court or other tribunal); (d) multi-national governmental organization or body; or (e) Entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military, or taxing authority.

「政府機關」指：(a) 國家、公國、州政府、邦、省、領土、鄉鎮、市、區或任何其他政府管轄領域；(b) 聯邦、州、地方、市、外國或其他政府；(c) 政府或任何擬政府機關（包括任何政府、議會、聯席會、組織、公務員、官員、代表、組織、單位、機構、或實體以及任何法院或其他法庭）；(d) 多國政府組織或機構；或 (e) 行使或有權行使任何執行、立法、司法、行政、管理、警衛、軍事、課稅權限的實體或機構。

“**Litigation**” means any procedure for the resolution of a controversy in any jurisdiction in the world, whether created by a claim, a counterclaim, or otherwise, in the broadest sense, in whatever form, administrative, judicial, arbitral, or otherwise, and the filing of a complaint with any Governmental Authority (including any proceeding in the United States International Trade Commission).

「訴訟」指在世界上任何管轄領域的任何爭端解決程序，不論是否係因請求、反訴或任何其他方式，廣義而言，以任何形式，行政、司法、仲裁或任何其他形式、或是向政府機關提出請求（包括任何在美國國際貿易委員會的任何程序）所發生者。

“**LTE**” means Long Term Evolution.

「**LTE**」指長期演進技術。

“**LTE 4G Standard**” means (1) the commercially available LTE wireless wide area network air interface standard adopted and maintained by 3GPP but only up to and including 3GPP Release 14 (including LTE-FDD, LTE-TDD, and LTE-Advanced up to and including 3GPP Release 14); and (2) the specifications developed by the LTE-U Forum that support LTE operation in the 5 GHz UNII-1 and UNII-3 bands as

Supplemental Downlink (SDL) carriers, in conjunction with an LTE deployment in licensed bands.

「LTE 4G 標準」指(1)經 3GPP 所採納及維護商業上可行之 LTE 無線廣域網路空中介面標準，惟僅包含至 3GPP 第 14 版以內之版本（包含 LTE-FDD、LTE-TDD 及 LTE-Advanced 至及包含 3GPP 第 14 版）；及(2)由 LTE-U 論壇開發以支援 LTE 於 5 GHz UNII-1 及 UNII-3 頻段運作之規格，如補充下行鏈路（SDL）載波與 LTE 於執照頻段布建之規格。

“Parent” of an Entity means any Person (or group of related or affiliated Persons) that owns or controls, directly or indirectly, (i) more than fifty percent (50%) of the voting power held by the shares or other securities of such Entity entitled to vote for election of directors (or other managing authority) of such Entity, or (ii) if such Entity does not have outstanding shares or securities, more than fifty percent (50%) of the equity interests in such Entity, but only for so long as such ownership or control referenced in clause (i) or (ii) above exists.

事業之「母公司」指(i)任何人（或相關人或關係人之集團）直接或間接、擁有或控制逾百分之五十（50%）該事業之股票或其他證券所代表之投票權，得以選任該事業之董事（或其他經營單位）者；或(ii)倘若該事業未發行在外流通之股票或證券，任何人（或相關人或關係人之集團）直接或間接、擁有或控制取得逾百分之五十（50%）該事業之股權者。上述第(i)或(ii)款所述之擁有或控制僅須存在其一即為已足。

“Party” individually means Qualcomm or Company, and “Parties” collectively means Qualcomm and Company.

「當事人」個別指高通或台灣公司；「雙方」指高通及台灣公司之合稱。

“Pass-Through Rights” means, with respect to any patents or patent claims for which license or other rights are granted to sell a product under such patents or patent claims, the right or ability of the grantee receiving such license or other rights to pass onto a customer of that grantee any explicit license, implied license, or patent exhaustion rights which the customer would receive as a matter of law or otherwise under such

patents or patent claims based on the authorized sale of that product to such customer from the grantee that has received or obtained such license or other rights.

「**傳遞權**」指關於任何專利或專利請求項給予授權或授予其他權利以銷售該等專利或專利請求項所涵蓋之產品，取得該等授權或其他權利之受讓人得傳遞予其客戶任何明示授權、默示授權或專利權耗盡之權利或能力；即基於收受或取得前揭授權或其他權利之受讓人合法銷售產品予該客戶時，該客戶得依法或其他方式取得該專利或專利請求項所生之權利或能力。

“**Patent**” means any patent (including any utility model, but excluding any design patent).

「**專利**」指任何專利（包含任何新型專利，惟排除任何設計專利）。

“**Patent Exhaustion Claim**” means any claim or defense alleged or asserted in Litigation that a commitment in Section 3.1 or Section 3.3 of this Agreement exhausts any of Qualcomm’s Essential Patent Claims or creates any Pass-Through Rights with respect to any of Qualcomm’s Essential Patent Claims as a result of or through the sale, delivery or provision to any Third Party of one or more Cellular Components of Company or any of its Affiliates.

「**專利權耗盡主張**」指於訴訟中所提出或聲稱之任何主張或抗辯，主張因銷售、送達或提供予任何第三人一件或多件台灣公司或其任何關係企業之通信元件，依本合約第 3.1 條或第 3.3 條承諾，將耗盡任何高通必要專利請求項或創設任何高通必要專利請求項之傳遞權。

“**Person**” means any individual, Entity, or Governmental Authority.

「**人**」指任何自然人、事業或政府機構。

“**Sale,**” “**Sell,**” and “**Selling,**” and “**Sold**” mean put into use, sold, leased, or otherwise transferred, and a Sale will be deemed to have occurred upon first use, shipment, or invoicing, whichever occurs first.

「銷售（名詞）」、「銷售（動詞）」、「銷售（動名詞）」及「銷售（過去式）」指使用、銷售、出租或以其他方式移轉。於第一次使用、運送或開立發票時，以最先發生者為準，視為已發生銷售。

“**Subsidiary**” of a Person means any Entity (i) in which the majority (more than fifty percent (50%)) of the voting power held by the shares or other securities entitled to vote for election of directors (or other managing authority) is now or hereafter owned or controlled by such Person, either directly or indirectly, or (ii) that does not have outstanding shares or securities but the majority (more than fifty percent (50%)) of the equity interests in which is now or hereafter owned or controlled by such Person, either directly or indirectly, but only for so long as such ownership or control referenced in clause (i) or (ii) above exists.

任何人之「子公司」指(i)任何事業之多數（逾百分之五十（50%））股票或其他證券得以選任該事業之董事（或其他經營單位）之投票權，目前或嗣後由該人直接或間接所擁有或控制者；或(ii)倘若該事業未發行在外流通之股票或證券，該人目前或嗣後直接或間接擁有或控制該事業多數（逾百分之五十（50%））股權者。上述第(i)或(ii)款所述之擁有或控制僅須存在其一即為已足。

“**TD-SCDMA Standard**” means the third generation direct sequence, single carrier TDD-CDMA air interface standard that (i) has been adopted as an industry standard by the China Communications Standards Association (CCSA), and (ii) has a spreading bandwidth of approximately 1.6 MHz. For clarity, the term “**TD-SCDMA Standard**” does not include TD-CDMA.

「**TD-SCDMA 標準**」指第三代直接序列單載波之 TDD-CDMA 空中介面標準，且該標準(i)已經中國通信標準化協會（CCSA）採納為產業標準；及(ii)支援約 1.6MHz 之展頻技術。為免疑義，「**TD-SCDMA 標準**」定義不包含 TD-CDMA。

“**Wireless Wide-Area Network Standard**” means any wide area wireless air interface standard, including GSM, CDMA, TD-SCDMA, Universal Mobile Telecommunications System (UMTS), Wideband Code Division Multiple Access (WCDMA), HSPA, HSDPA, HSUPA, HSPA+, WiMAX, WiBro, IEEE 802.16 (including 802.16e and 802.16m), IEEE

802.20, UMB (formerly known as 1xEV-DO Rev. C), LTE (including any FDD mode and any TDD mode of LTE), and LTE-Advanced, in each case whether adopted as an industry standard by TTA, ETSI, IEEE, ARIB, or another recognized international standards body or industry consortium such as 3GPP, 3GPP2 or Next Generation Mobile Network (NGMN) consortium, or deployed as a de facto standard by a wireless operator.

「無線廣域網路標準」指任何廣域無線空中介面標準，包括 GSM、CDMA、TD-SCDMA、通用行動通訊系統（UMTS）、寬頻分碼多工存取（WCDMA）、HSPA、HSDPA、HSUPA、HSPA+、WiMAX、WiBro、IEEE 802.16（包含 802.16e 及 802.16m）、IEEE 802.20、UMB（前身為 1xEV-DO Rev.C）、LTE（包含任何 FDD 模式及任何 LTE 之 TDD 模式）、及 LTE-Advanced；渠等並於個案中經 TTA、ETSI、IEEE、ARIB、或如 3GPP、3GPP2、或新世代行動網路（NGMN）聯盟等其他公認之國際標準機構或產業聯盟採納為產業標準，或經無線營運商布建為事實上標準。

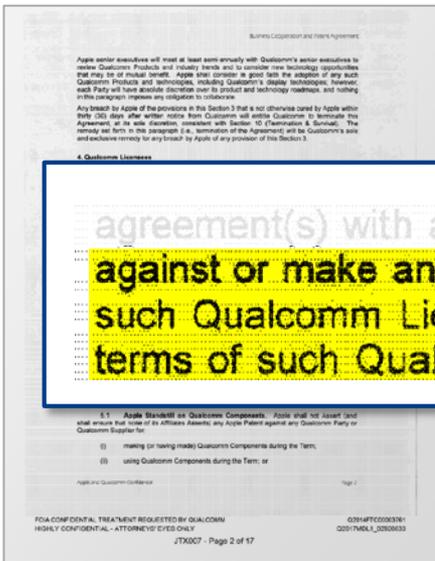
# **Exhibit F**



**Opening Statement**  
**April 16, 2019**

Case No. 3:17-cv-0108-GPC-MDD (S.D. Cal.)

# Apple Breached BCPA Section 4



JTX007 at '6633

# In August 2017, Foxconn Admitted Its SULA Is Valid



WHEREAS, QUALCOMM Incorporated, a Delaware corporation ("QUALCOMM"), and LICENSEE are parties to **Subscriber Unit License Agreement** dated as of October 18, 2005 (as amended, the "**License Agreement**"), **which constitutes a valid, binding, and enforceable agreement between QUALCOMM and LICENSEE;**

DTX10662 at '8296



WHEREAS, QUALCOMM Incorporated, a Delaware corporation ("QUALCOMM"), and LICENSEE are parties to **Subscriber Unit License Agreement** dated as of October 18, 2005 (as amended, the "**License Agreement**"), **which constitutes a valid, binding, and enforceable agreement between QUALCOMM and LICENSEE;**

DTX10688 at '8675



WHEREAS, QUALCOMM Incorporated, a Delaware corporation ("QUALCOMM"), and LICENSEE are parties to **Subscriber Unit License Agreement** dated as of October 18, 2005 (as amended, the "**License Agreement**"), **which constitutes a valid, binding, and enforceable agreement between QUALCOMM and LICENSEE;**

DTX10689 at '8678

# Apple Made the CMs Stop Paying

Case 5:17-cv-00220-LFK Document 1506-8 Filed 06/16/19 Page 5 of 31

DTX01470

Sent: Thursday, April 27, 2017 9:55 AM

To: David Abello <dabello@qualcomm.com>; Steve Miller <smiller@qualcomm.com>; Don Rosenberg <drosenberg@qualcomm.com>; George Davis <gdavis@qualcomm.com>; Cristiano Aron <caron@qualcomm.com>; Neil Martin <nmartin@qualcomm.com>; Fabian Gend <fgend@qualcomm.com>; Amy Owen <amyo@qualcomm.com>; David Garfione <dgarfio@qualcomm.com>; Den Nivak <dennivak@qualcomm.com>; Christine Tinkler <ctinkler@qualcomm.com>; Mark Snyder <msnyder@qualcomm.com>; John Scott <jscott@qualcomm.com>; David Zukerman <dzukerman@qualcomm.com>; Erin Pelek <eperlek@qualcomm.com>; Amy Bergeson <abergeson@qualcomm.com>; Clare Conley <cconley@qualcomm.com>; John Han <jhan@qualcomm.com>

Subject: FW: QTL royalties

Privileged and confidential

**REDACTED FOR PRIVILEGE**

From: Yunbi Chen <yachen@qualcomm.com>

Sent: Thursday, April 27, 2017 9:45 AM

To: Alex Rogers <arogers@qualcomm.com>; John Han <jhan@qualcomm.com>; David Garfione <dgarfio@qualcomm.com>; Fabian Gend <fgend@qualcomm.com>; John Scott <jscott@qualcomm.com>; Di Vivan Wen <dvw@qualcomm.com>; Grace Tai <gtai@qualcomm.com>; Akshay Samim <asamim@qualcomm.com>

Subject: FW: QTL royalties

FW

**Our customer has recently formally requested compal to stop the royalty payment to qualcomm**

I am writing you the early heads-up in considering of QTL royalty reporting and payment issue recently.

We were informed by our shared key client, who are also under major legal action with qualcomm mutually.

**Our customer has recently formally requested compal to stop the royalty payment to qualcomm** that associated to their business until legal action is completed. We may have to take some action about this to revise the Q1 report.

This is for your early notice, let me know if you need quick conversation about this.

Thanks,

Shawn

Shawn Tien

Sr. Director of Marketing and Product Mgmt

Product Innovation

Smart Device Business Group

Compal

Office: +86-2-8751-6228 ext 13575

Address: 385 Yangguang Str, Nansu, Taipei

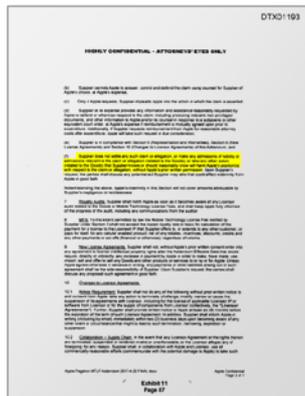
-----  
This message may contain information which is private, privileged or confidential of Compal Electronics, Inc. If you are not the intended recipient of this message, please notify the sender and destroy/delete the message. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information, by persons or entities other than the intended recipient is prohibited.  
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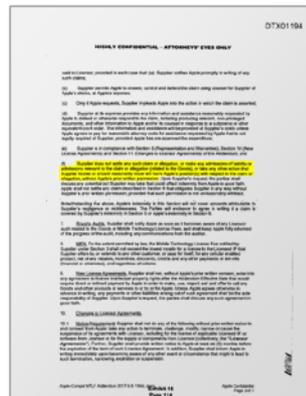
QNDAL04121769

DTX01470 at '1769

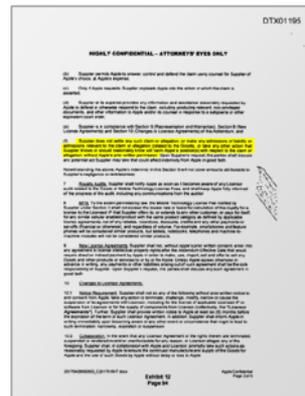
# Apple Controls What the CMs Say and Do



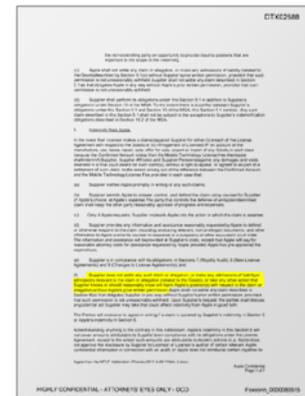
DTX01193 at 4



DTX01194 at 4

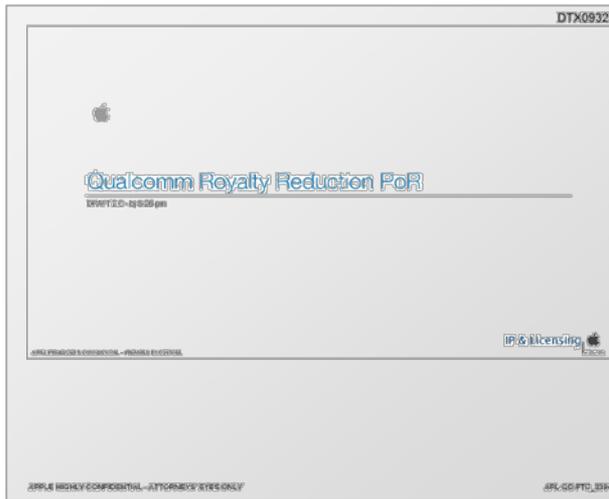


DTX01195 at 4



DTX02588 at 4

“(f) [CM] does not settle any such claim or allegation, or make any admissions of liability or admissions relevant to the claim or allegation (related to the Goods), or take any other action that [CM] knows or should reasonably know will harm Apple's position(s) with respect to the claim or allegation, without Apple's prior written permission.”



DTX09321 at '6741

DTX09321

Goal:

Reduce Apple's Net Royalty to Qualcomm

Apple Proprietary & Confidential 2 6/26/16

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APL-QC-FTC\_33946741

This is a slide from a presentation. It has a white background with a blue border. At the top right, it says "DTX09321". In the center, the word "Goal:" is in a yellow box, followed by "Reduce Apple's Net Royalty to Qualcomm" in a larger blue font. At the bottom, there is a footer with "Apple Proprietary & Confidential", the number "2", and the date "6/26/16". At the very bottom, it says "APPLE HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" and "APL-QC-FTC\_33946741".

# Apple Wants To “Devalue SEPs”

Case 5:17-cv-00220-LHK Document 1506-8 Filed 06/13/19 Page 8 of 35



## Reshaping FRAND - Licensing, Litigation & Competition Law

Devalue  
SEPs

- Base = derived from smallest priceable component (i.e., baseband)
- Rate = no higher than adjusted pro-rata share of SEPs
- Control for quality, over-declaration & royalty stacking
- Build favorable, arms-length “comp” licenses

DTX09313 at '1936

# Apple Was “Creating Evidence” for This Lawsuit

Case 5:17-cv-01221-LHK Document 150-57 Filed 06/18/19 Page 9 of 12



 **Licensing Library** : Creating Evidence & Savings

DTX09352 at '7502



**We can leverage our purchasing power**

DTX09352 at '7483



**Supplier IP | capturing IP value with purchase power**

DTX09352 at '7484



**We selectively filter** this pipeline to identify the most desirable deals

Evaluating risk, cost and **use as evidence ... as a comparable** in disputes with others

DTX09352 at '7487

# What Apple Says About Nokia's Patents

Case 5:17-cv-00220-MLK Document 1506-8 Filed 09/13/19 Page 10 of 30

## Apple Inc.

### Technical Accounting Memo

Corporate Accounting and External Reporting

Date: December 21, 2009 TAM ID: 10-XX

To: Technical Accounting Files cc: Ernst & Young

From: J. Berkaw

Subject: **iPhone Patent Accrual – Fiscal 2010**

DTX00431 at '0559

### Nokia

Nokia has a large number of patents that are self-reported as related to 2G or 3G standards. However, Apple does not believe that Nokia's portfolio is of uniformly and consistently high quality. Many of the patents, even as purportedly related to the standard, are on miniscule details and are not of fundamental value as technology (as distinct from the value of the standard itself, which is not Nokia's to charge for). Additionally, Nokia is a net payor to large IPR owners with whom Apple already has established value. For example, Apple is licensed to Qualcomm patents under agreements that result in net royalty payments of \$7.50 per unit. Apple entered into this arrangement based on Qualcomm's established and relatively transparent actual monetary collection for patent licenses. Qualcomm is widely considered the owner of the strongest patent portfolio for essential and relevant patents for wireless standards. Qualcomm has successfully negotiated billions of dollars per year in licensing. Additionally, Qualcomm negotiated a significant lump-sum payment from Nokia and a per unit payment. Consequently, Apple concludes **Nokia's patent portfolio is significantly weaker than Qualcomm's**. Similarly, we believe Nokia has paid Ericsson, again reflecting a relatively weaker position than another company against whom Apple has a direct comparable. Additionally, Nokia is also believed to have infringed on Apple's IP, thereby leading to the conclusion that there is a higher likelihood of some kind of cross licensing arrangement between the two parties. Other factors considered include the companies' prior negotiations. At one point in 2008, Apple and Nokia had advanced

**Nokia's patent portfolio is significantly weaker than Qualcomm's.**

demanded as an additional term licenses to a certain number of Apple patents whose identity was to be determined unilaterally by Nokia at any time in the future. This was unacceptable to Apple. At the time of the offer, the portion of the offer attributable to previously sold units (i.e., not the forward looking aspect of the proposed arrangement) amounted to approximately \$1.00/unit. Given the overall quantity and quality of patents held by Nokia, Nokia's licensing history, Nokia's lack of transparency on actual prior cash receipts for licenses, as well as the Company's previous negotiations, the Company believes Nokia to be a high threat and believes that the cost of a patent license to all of Nokia's patents alleged by Nokia to be essential (numbering well over 300 patent families) is both probable and estimable. Of course, the value of any single patent would be – at best – only a proportional fraction of that amount, and only if it was actually infringed and of substantial value compared to the alternative ways that the standard could have addressed the same issue.

DTX00431 at '0564

DTX02334

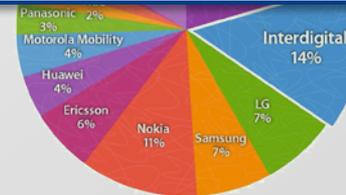
## Who is InterDigital?

- Based in United States
- Non-practicing, patent assertion entity (NPE/PAE)
- Licenses and develops wireless tech for use in digital cellular and wireless products/networks

4G/LTE Share  
(declared essential)

Makes minimal contributions to standard

- 13,000+ *self-declared* as essential to 4G/LTE
- Participates in standards development
- **Makes minimal contributions to standard**
- And yet... claims its *self-declarations* account for 14% of all assets essential to 4G/LTE
- Actively litigates - seeking to enforce injunctions as leverage for royalty revenue



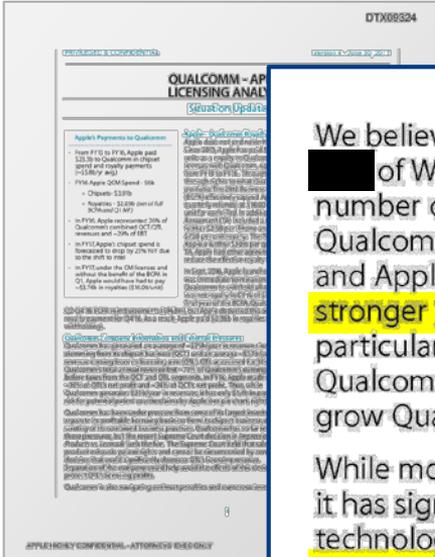
Source: Apple Analysis, ETSI IPR database, April 2013

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IP & Licensing | Law, Government, & Security 4

APL-QC-FTC\_37115356

# What Apple Says About Qualcomm's Patents



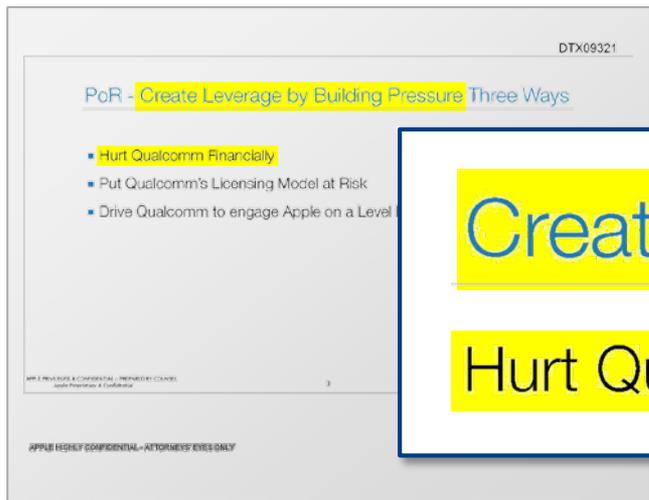
We believe that Qualcomm also controls an estimated [REDACTED] of Wi-Fi SEPs and a significant (and growing) number of audio/video SEPs. The table (right) compares Qualcomm's portfolio to Huawei, Nokia, Ericsson, IDCC and Apple. Compared to others, Qualcomm holds a stronger position in each of these categories, and particularly with respect to cellular and Wi-Fi SEPs. Qualcomm's acquisition of NXP also has the potential to grow Qualcomm's already unique patent share in NFC.

While more than 50% of Qualcomm's current portfolio is directed to communications and silicon engineering, it has significant holdings in other areas, including many areas relevant to Apple. These include home-grown technologies as well as some key acquired portfolios, such as the HP Palm portfolio. Compared to other licensors, Qualcomm has more significant holdings in key areas such as media processing, non-cellular communications and hardware. Likewise, using patent citation analysis as a measure of thorough prosecution within the US PTO, Qualcomm patents (SEPs and non-SEPs both) on average score higher compared to the other, largely non-US based licensors.

Patents	QCOM	NOK	HUAW	ERIC	IDCC	APPLE
100% ACTIVE ASSETS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cellular SEPs	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
WI-FI SEPs	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
AV SEPs	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Resolved ETSI Data as of 1/20/18 - Includes active and inactive assets, but each asset is counted only once even if relevant to multiple standards.

# Apple Wanted To “Hurt Qualcomm Financially”



Create Leverage by Building Pressure

Hurt Qualcomm Financially

DTX09321 at '6742

# Apple Needed Wistron's Support To Stop Royalty Payments to Qualcomm

Case 5:17-cv-00420-LHK Document 1506-8 Filed 06/18/19 Page 14 of 32

DTX01350

## SOW Terms Commun

### Attachment 3 – Mobile Technology Licen

9. Apple may notify Supplier that Apple will not pay Supplier any amount attributable to mobile technology license fees at any time, and after the date of any such notification, any mobile technology license fees that Supplier pays are the sole responsibility of Supplier.

- According to the con call with Allie legal, section is to keep the flexibility for the future to stop license fee payment upon the notification.
- Wistron will be facing further consequences (mainly Qualcomm) if we stop payment to Qualcomm. Breach the agreement we had with Qualcomm.
- ✓ Upon termination of the license agreement for all royalties and other payments termination.
- ✓ If Wistron refuses to pay the royalties due plus the interest in the court or arbitration or that the royalties due plus the interest plus dispute costs.
- ✓ Wistron may not be able to continue to Allie under above condition.

3

Confidential, Waiver

9. Apple may notify Supplier that Apple will not pay Supplier any amount attributable to mobile technology license fees at any time, and after the date of any such notification, any mobile technology license fees that Supplier pays are the sole responsibility of Supplier.

\*\*\*

“[Apple] needs [Wistron's] support to stop license fee payment upon [receiving] notification from Apple. . . . [Wistron] will be facing below consequences by any mobile technology Licensor (mainly Qualcomm) if we stop payment upon [Apple's] notification: . . . Breach the agreement we had with [Qualcomm] which may result in agreement termination. . . . If [Wistron] refuses to pay the royalties due, [Qualcomm] will enforce the license agreement in . . . court . . . and we may have to pay all of the royalties due plus . . . interest[], and the legal fees . . . .”

# Apple Knew Its Plan Was Tortious Interference



DTX09321 at '6746

# Apple Switched to Intel To Exert “Commercial Pressure”

Case 5:17-cv-00220-LHK Document 505-3 Filed 06/13/19 Page 16 of 32

DTX09317

QCM | Future Scenarios

- **CM stops paying royalties to Qualcomm**
  - Independently or triggered by Apple
- **Apple sues Qualcomm**
  - Apple sues [REDACTED] antitrust violation or patent infringe
- **Other considerations**
  - Commercial pressure against Qualcomm in selected markets; condition non-c

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21

APL\_QD\_FTO\_24211876

Commercial pressure against Qualcomm (switching to Intel

DTX09317 at '1876

DTX09317

## OCM | Options and Recommendations (2/2)

- Consider non-payment of royalties by CMs, entirely or just for selected regions and patents (WCDMA)

- Beneficial to wait to provoke a patent fight until after the end of 2016, when the BCPA and TA expire.

- If CM stops payment, then (1) OCM will arbitrate against CM for the royalties owed, and (2) OCM may sue Apple for patent infringement. Apple's ability to defend itself/counter-sue would be

- **Consider non-payment of royalties by CMs, entirely or just for selected regions and patents (WCDMA)**

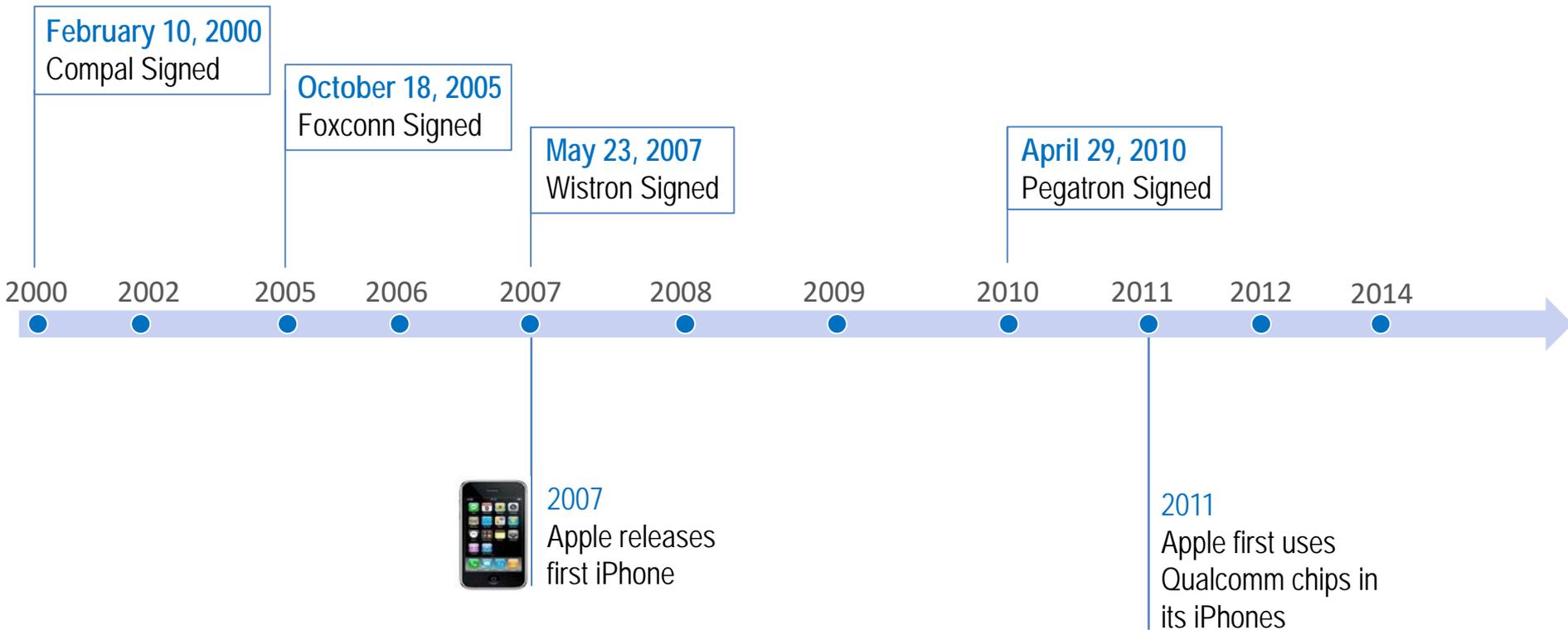
- Beneficial to wait to provoke a patent fight until after the end of 2016, when the BCPA and TA expire.

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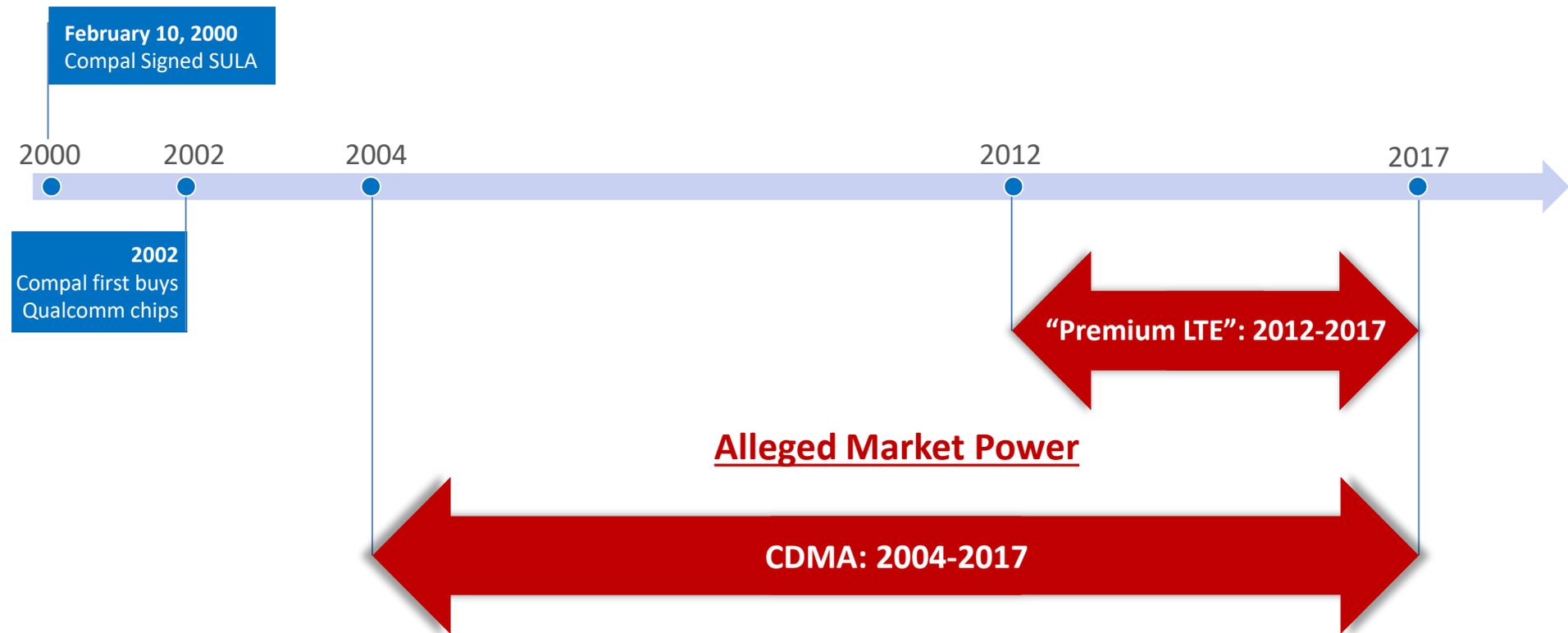
APL\_QC\_PTC\_2121834

DTX09317 at '1884



# Compal SULA, First Chip Purchase from Qualcomm, and Market Power Allegations

Case 5:17-cv-00220-LHK Document 1506-8 Filed 06/18/19 Page 19 of 32



# Apple Admitted Qualcomm Has the “Strongest Patent Portfolio”

Apple Inc.

## Technical Accounting Memo

Corporate Accounting and External Reporting

Date: December 21, 2009

TAM ID: 10-XX

To: Technical Accounting Files

cc: Ernst & Young

From: J. Berkaw

Subject: iPhone Patent Accrual – Fiscal 2010

DTX00431

DTX00431 at '0559

collection for patent licenses. Qualcomm is widely considered the owner of the strongest patent portfolio for essential and relevant patents for wireless standards. Qualcomm has successfully

DTX00431 at '0564

advised and substantial, and compared to the amount with the 10 standard could not address the same issue.

Moreover, the strength of Motorola's patent pool is considered somewhat on par with Nokia. Though smaller in number, Motorola has more successfully enforced actual cash payments from third parties for its patents licenses. Motorola also has an established record of engaging in patents to establish value without regard to the actual technological value. Additionally, the Company believes the current financial difficulties of Motorola will cause its strategy related to asserting patents to include one or more aggressive tactics without regard to the underlying value of the patents. As such, the Company currently believes that Motorola is a high threat and believes that an increase of potential liability is both reasonable and probable.

Moreover, there is no current ongoing license discussions with the following licensors who are not among the Patent Pool membership: (i) IPsec currently using Nokia and HTC and (ii) Philips. Also, Lucent, LG, AT&T, Hitachi, MOTO, involved in QTI, ETC involved in QTI, Philips.

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APL-QC-ATL-0678064



April 26, 2016

“[T]he LTE rollout with India just really began this year, and so we’ll begin to see some really good networks coming on in India. That will unleash the power and capability of the iPhone in a way that an older network, a 2.5G or even some 3G networks, would not do.”

- *Tim Cook, Chief Executive Officer, Apple, Inc.*, DTX01146 at 12

# Apple Says Qualcomm Is the Best

Case 5:17-cv-00170-LHK Document 1506-8 Filed 06/18/19 Page 22 of 62

DTX00088

Subject: Re: Low power LTE discussion with Karo

From: "Johny Srouji" <srouji@apple.com>

Received(Date): Mon, 02 Mar 2015 23:21:03 +0000

To: "Marlon Sauer" <msauer\_sau@apple.com>

Cc: "Tim Miller" <tmiller@apple.com>; "Anna Schuler"

<anna\_schul@apple.com>; "Tim Slevins" <tslevins@apple.com>

Date: Mon, 02 Mar 2015 23:21:03 +0000

**From: "Johny Srouji" <srouji@apple.com>**

**Received(Date): Mon, 02 Mar 2015 23:21:03 +0000**

\* \* \*

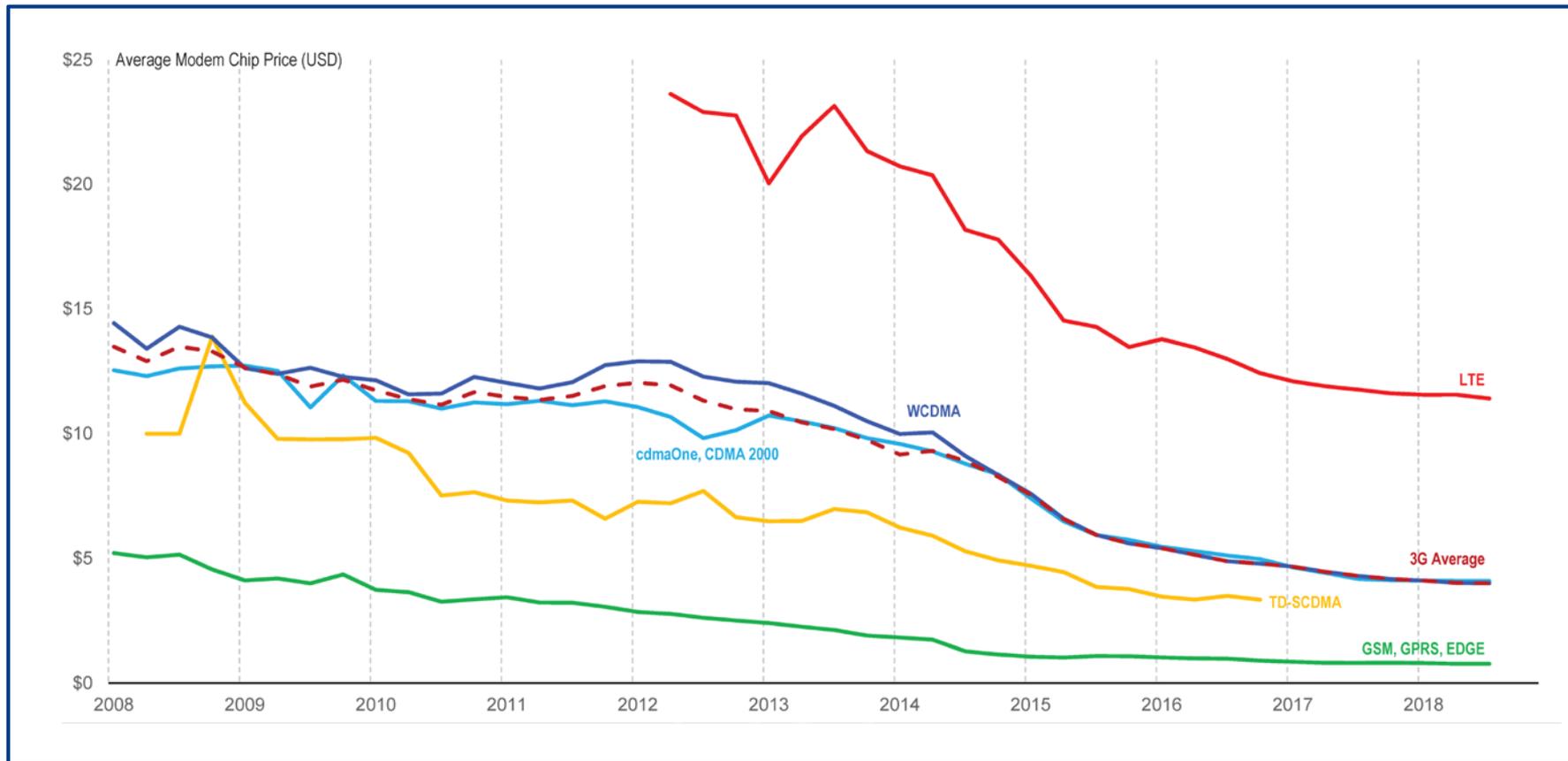
**a) iPhone cellular: we've been using QCOM, and engineering wise, they have been the best.**

Apple Confidential - ATTORNEYS EYES ONLY

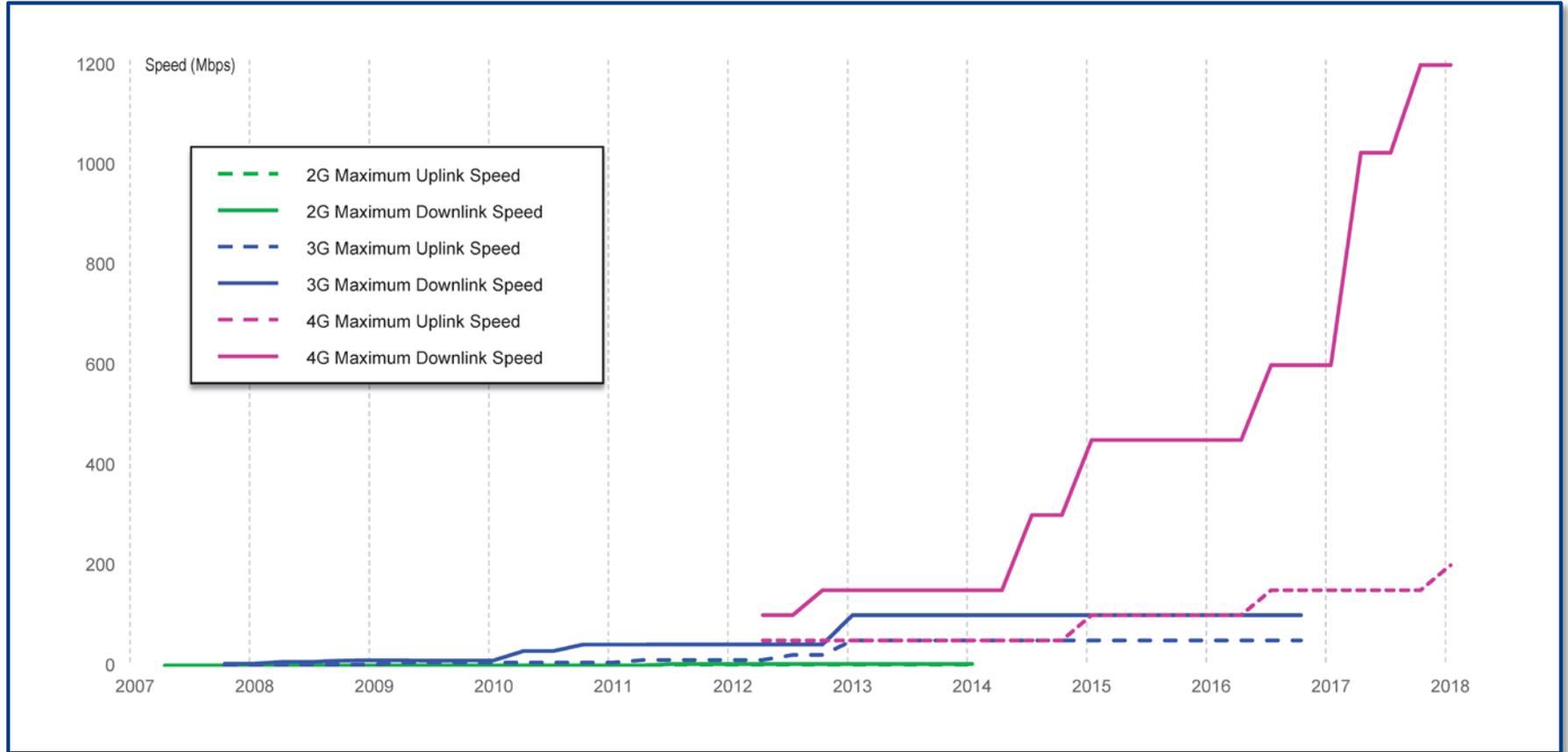
APPLE/FC/0213854

DTX00088 '4854

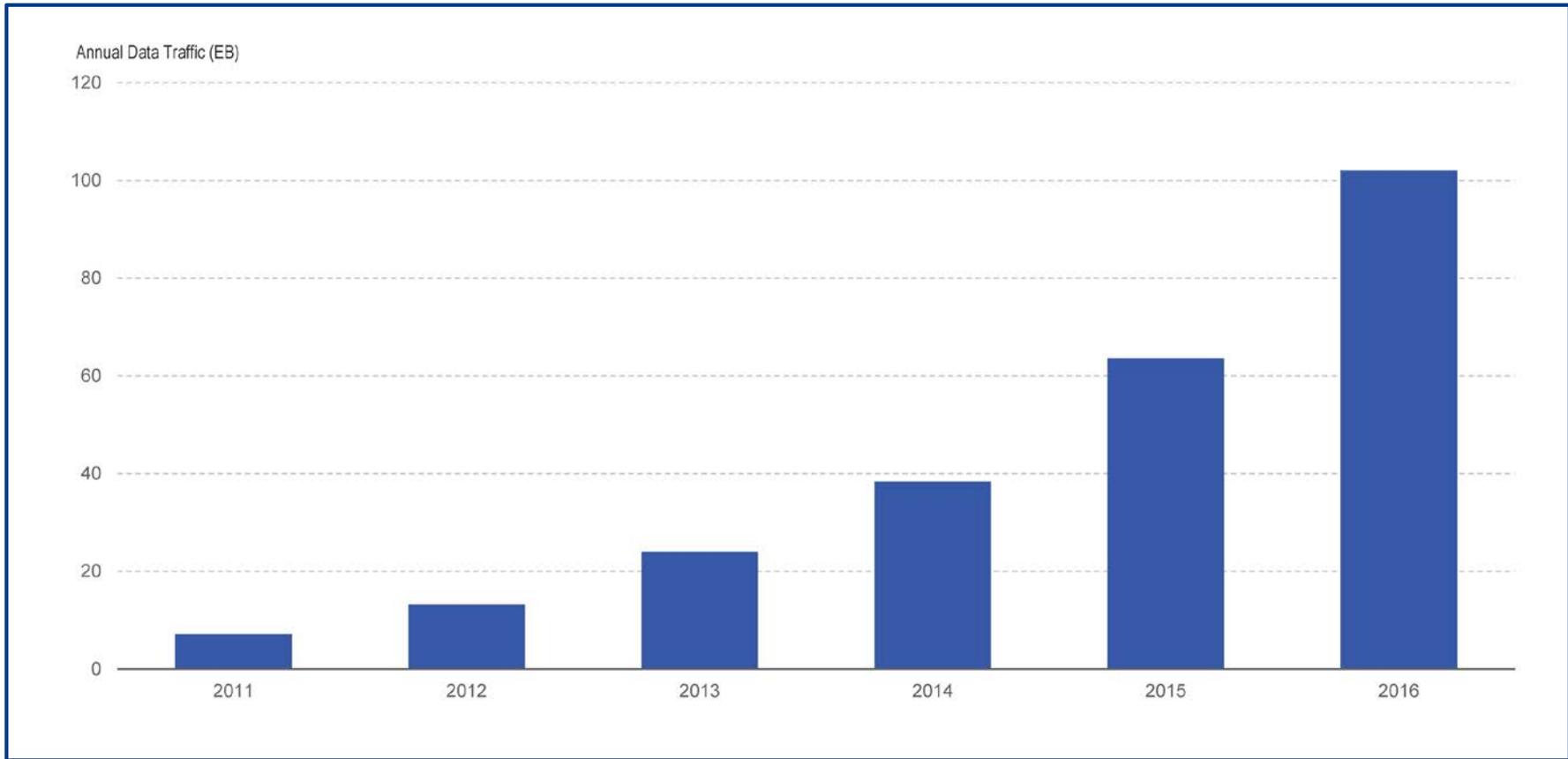
# Average Modem Chip Price by Standard



# Mobile Device Downlink and Uplink Speeds

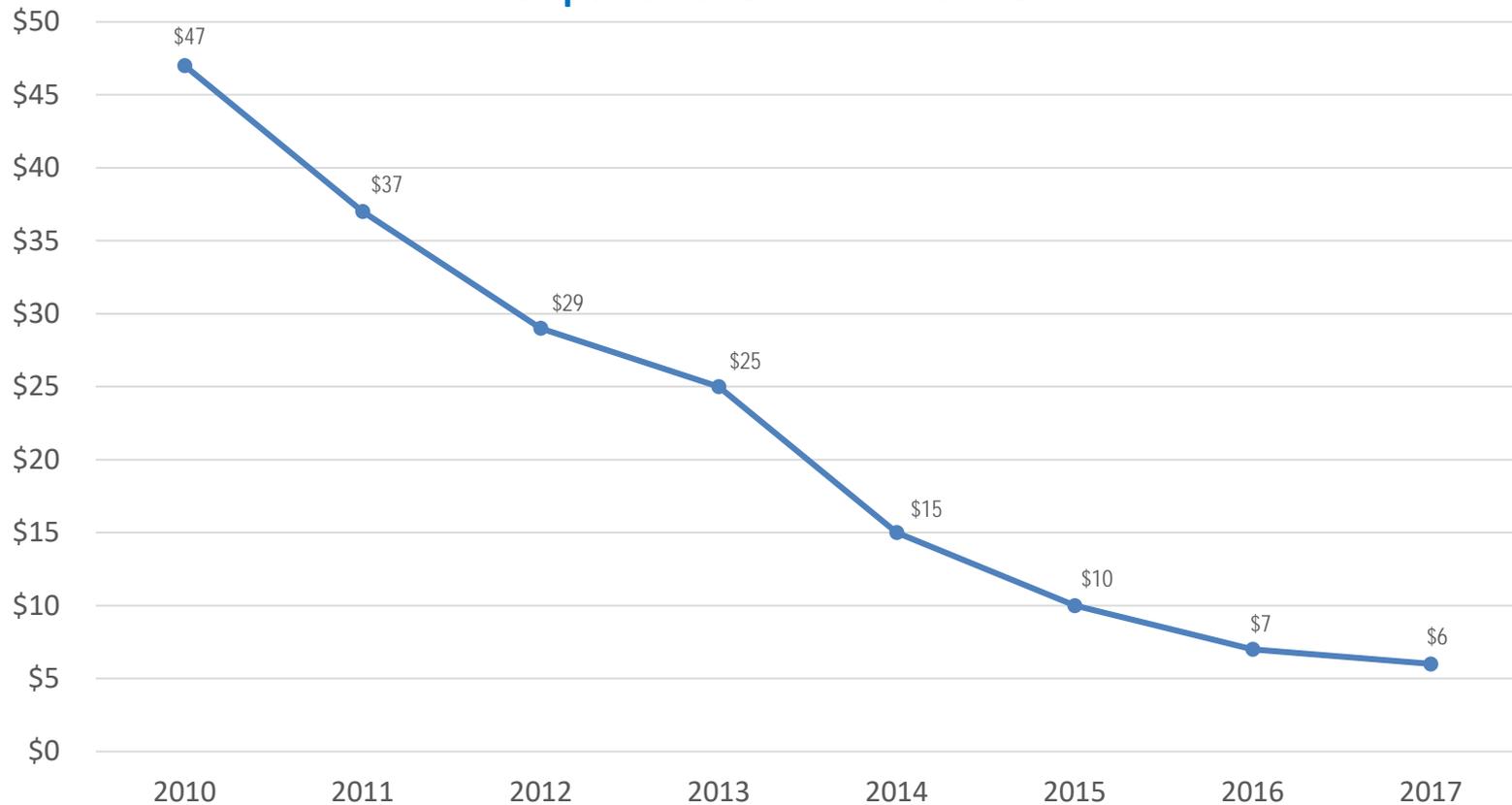


# Total Annual Mobile Data Traffic

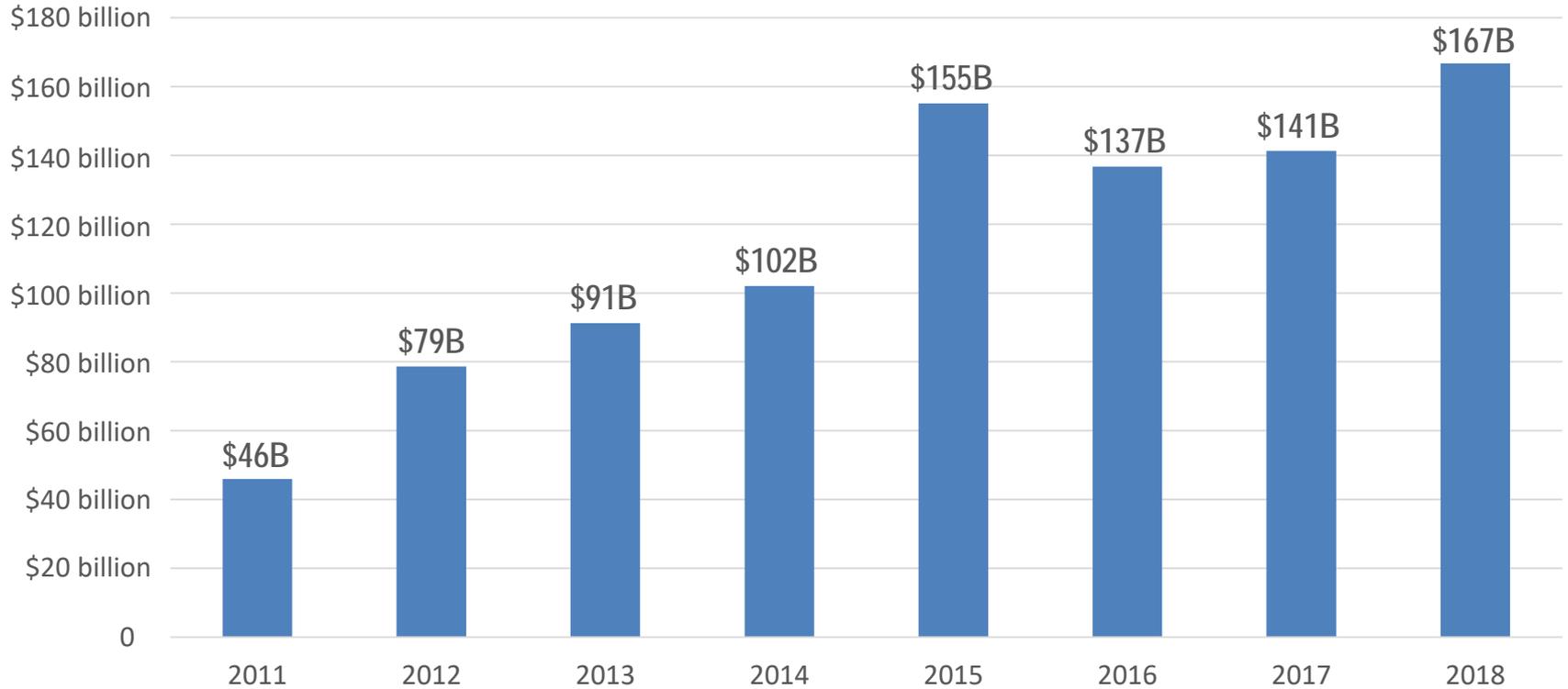


# The Cost of Data Is Decreasing

## Price per GB of Cellular Data in U.S.

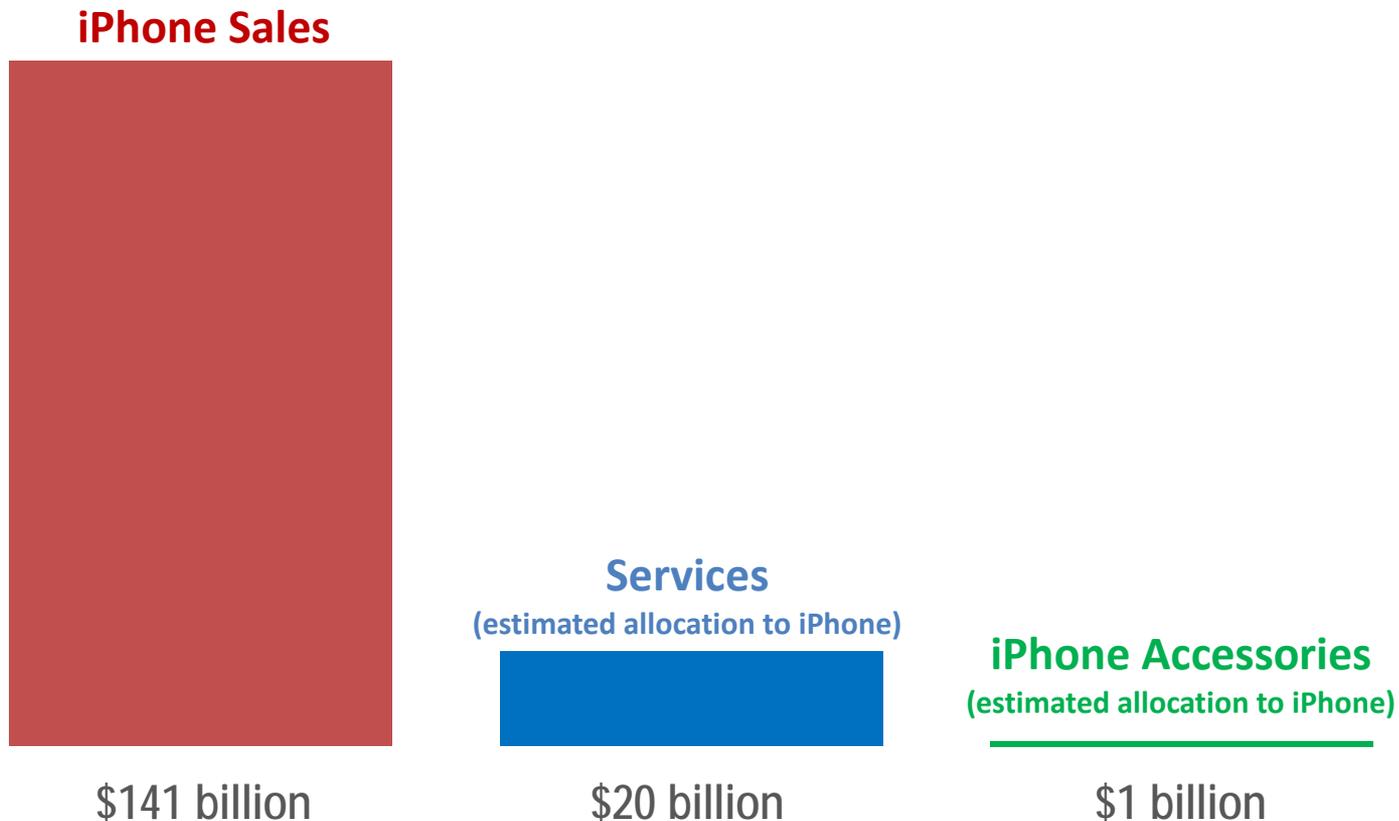


# iPhone Net Sales Since FY 2011

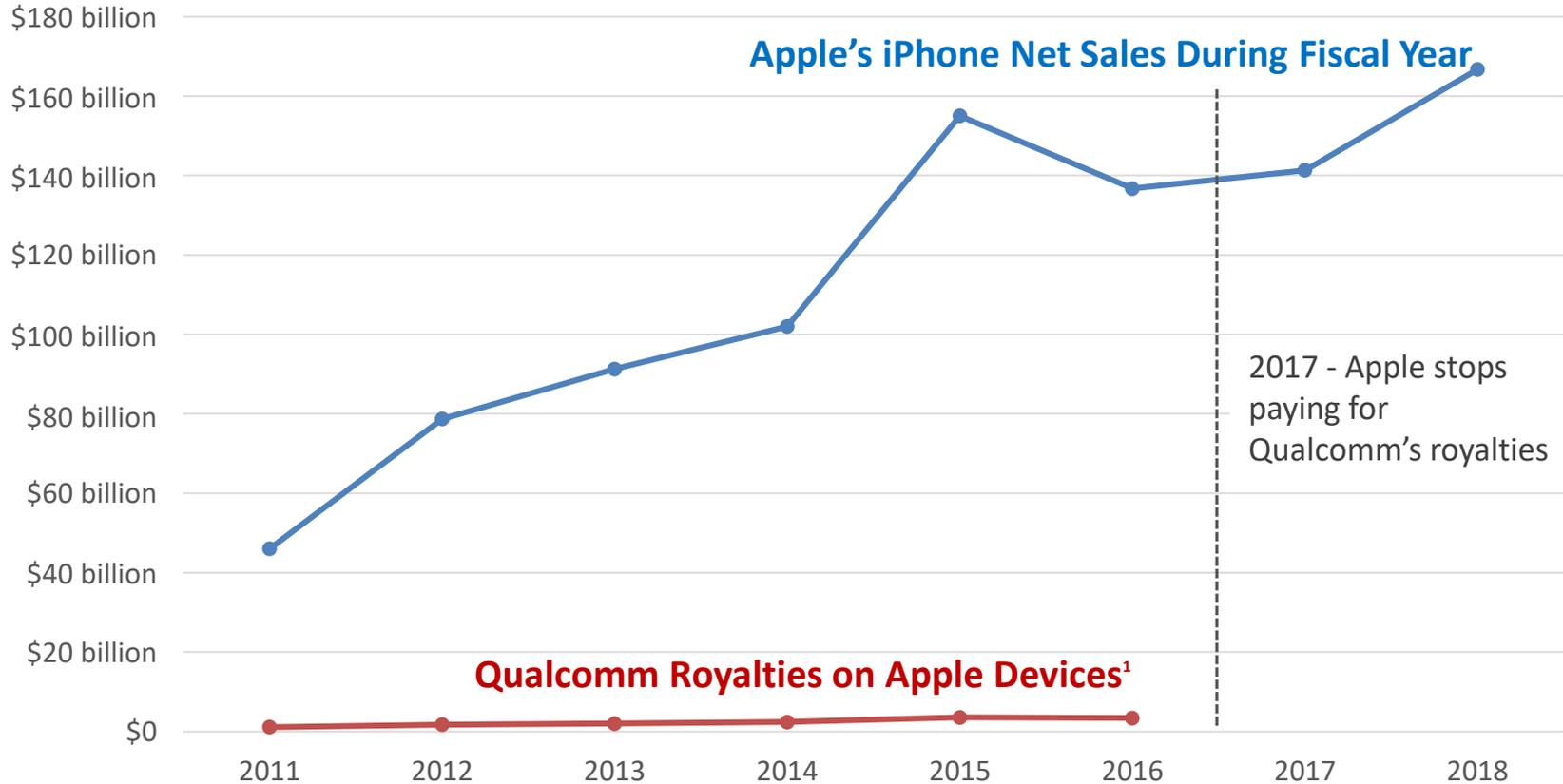


# iPhone "Ecosystem" Revenue for FY 2017

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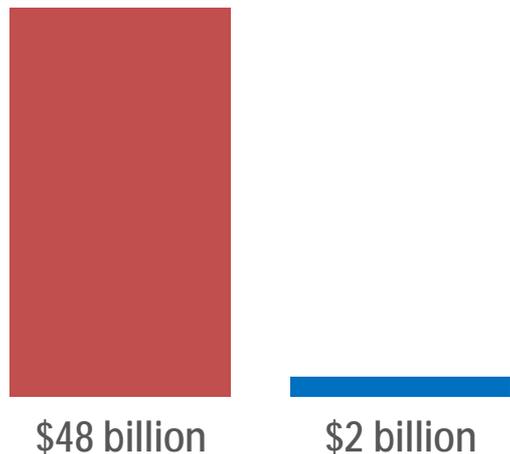


# iPhone Revenue vs. Royalty Revenue

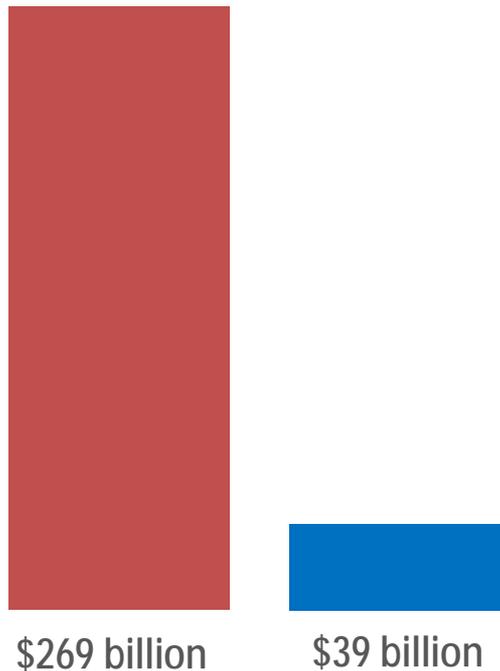


# Apple Dwarfs Qualcomm (FY 2017)

**Apple net income vs.  
Qualcomm net income**



**Apple total cash vs.  
Qualcomm total cash**

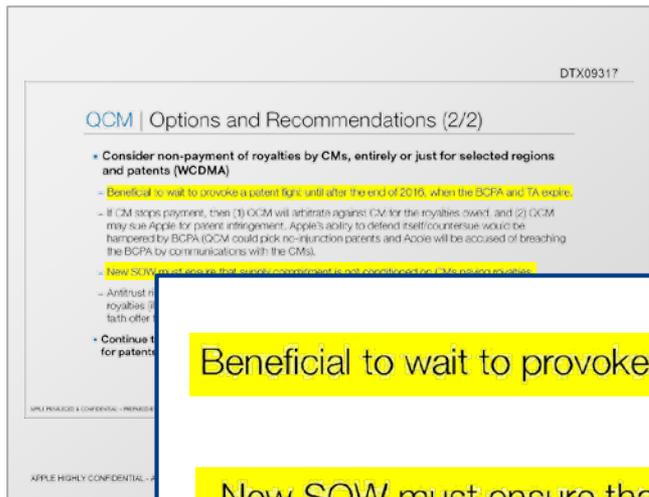


**Apple net sales vs.  
Qualcomm net sales**



# Apple Locked in Chip Supply Before Striking

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Beneficial to wait to provoke a patent fight until after the end of 2016, when the BCPA and TA expire.

\* \* \*

New SOW must ensure that supply commitment is not conditioned on CMs paying royalties.

DTX09317 at '1884

