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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**

5 TOUCHSCREEN GESTURES LLC,

6 Plaintiff,

7 v.

8 GOOGLE INC.,

9 Defendant.

CASE NO. 3:13-cv-02478-WHA

~~PROPOSED~~ **ORDER OF PARTIAL
DISMISSAL OF CLAIMS**

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11 WHEREAS, on July 19, 2013, plaintiff Touchscreen Gestures LLC (“Touchscreen”)
12 filed an amended complaint (“Amended Complaint,” Doc. #41) alleging, among other things,
13 that Google Inc. infringed, and was infringing, U.S. Patent No. 7,180,506 (“the ’506 patent”),
14 U.S. Patent No. 7,184,031 (“the ’031 patent”), U.S. Patent No. 7,190,356 (“the ’356 patent”),
15 U.S. Patent No. 8,164,575 (“the ’575 patent”), and U.S. Patent No. 7,274,357 (“the ’357
16 patent”) (collectively, the “Asserted Patents”); and

17 WHEREAS, Touchscreen in its Amended Complaint further identified “examples of
18 Google products that infringe” each of the aforementioned patents, including the “Motorola
19 Atrix and Droid 3 smartphones as well as the Google Nexus 7 tablet”; and

20 WHEREAS, on July 25, 2013, Touchscreen served its Disclosure of Asserted Claims
21 and Infringement Contentions for Defendant Google Inc. and asserted, among other things, that
22 “the Google Chromebook, which allow the identification of a movement of a single tap . . .
23 infringe[s] claims of the ’506 patent;” and

24 WHEREAS, in its infringement contentions, Touchscreen further contended that
25 Google infringes the asserted claims “contributorily, and or by inducement” and “that it is
26 nonetheless a direct infringer under the theory of joint infringement in that it instructs, directs
27 and requires its customers to perform any steps it does not itself perform, or because any
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1 component alleged missing from any apparatus claim is supplied by its customers at Google's
2 instruction and control;" and

3 WHEREAS, Defendants Google Inc. ("Google") denied those allegations in its answer
4 and asserted related affirmative defenses and counterclaims; and

5 WHEREAS, Google has raised objections with Touchscreen regarding the sufficiency
6 of its infringement contentions and other disclosures; and

7 WHEREAS, the parties wish to resolve those disputes concerning Touchscreen's claims
8 related to the '031, '575, and '357, '506 patents and the Motorola Atrix smartphone, Droid 3
9 smartphone, and Google Chromebook;

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11 **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

- 12 (1) Touchscreen's claims that Google has infringed, and is infringing, the '031, '575,
13 '357 and '506 patents by Google products that were accused or could have been
14 accused by Plaintiff as of the date of Plaintiff's Amended Complaint (Doc. #41)
15 are **DISMISSED WITH PREJUDICE** and Google's counterclaims seeking
16 declaratory judgment of non-infringement and invalidity of the '031, '575, '357
17 and '506 patents are **DISMISSED WITHOUT PREJUDICE** as moot;
- 18 (2) Touchscreen's claims against Google that the making, use, sale, offering for sale,
19 or importation of Motorola Atrix smartphones, Motorola Droid 3 smartphones,
20 and Google Chromebooks infringe, and have infringed, any of the Asserted
21 Patents are **DISMISSED WITH PREJUDICE**;
- 22 (3) Touchscreen's remaining claim that Google has infringed, and is infringing the
23 '356 patent is limited to allegations of direct infringement by Google's making,
24 use, sale, offering for sale or importation of the Google Nexus 7 tablet;
- 25 (4) Touchscreen's Third Amended Complaint shall be revised to:
- 26 (a) delete paragraphs 6-10 relating to Touchscreen's allegations of infringement
27 of the '506 patent;
- 28 (b) remove the reference to the '506 patent in the Prayer for Relief;

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- (c) remove the reference to the “Google Chromebook” as an accused product in paragraph 18 in Touchscreen’s claim of infringement of the ’356 patent; and
- (d) replace all general references to “infringement” with more specific references to “direct infringement” in paragraphs 13 and 14 and in the Prayer for Relief.

Touchscreen shall file its third amended complaint revised as stated above by **October 21 at Noon**. To this extent, the motion for leave to amend is **Granted**. Defendant Google shall file its answer to the third amended complaint within **seven days** of the date it is filed.

IT IS SO ORDERED.

Date: October 16, 2013.

