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 KYOCERA COMMUNICATIONS, INC.

10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

13 KYOCERA COMMUNICATIONS, INC.,

14 Plaintiff,

15 v.

16 EASTMAN KODAK COMPANY,

17 Defendant.

Case No. '12CV0057 WQHRBB

**COMPLAINT FOR
 DECLARATORY JUDGMENT**

DEMAND FOR JURY TRIAL

19
 20 Plaintiff Kyocera Communications, Inc. ("KCI"), for its Complaint for Declaratory
 21 Judgment against Defendant Eastman Kodak Company ("Kodak"), alleges as follows:

22 **NATURE OF THE ACTION**

23 1. KCI brings this action pursuant to 28 U.S.C. §§ 2201 and 2202 and seeks a
 24 judicial declaration that U.S. Patent Nos. 5,493,335 ("the '335 patent") and 6,292,218 ("the '218
 25 patent") are invalid and not infringed by KCI's cellular phones which also incorporate digital
 26 camera technology. A copy of the '335 patent is attached hereto as Exhibit A. A copy of the
 27 '218 patent is attached hereto as Exhibit B.

1 **PARTIES**

2 2. Plaintiff KCI is a corporation organized and existing under the laws of Delaware,
3 with its principal place of business at 9520 Town Center Drive, San Diego, California 92121.
4 KCI is the sales, marketing and service headquarters for Kyocera-branded products and
5 accessories in the United States.

6 3. KCI is a wholly owned subsidiary of Kyocera Corporation (“KCJ”), a Japanese
7 corporation with its principal office at 6 Takeda Tobadono-cho, Fushimi-ku, Kyoto-shi 612-8501,
8 Japan. For over fifty years KCJ has been an innovator in ceramic components for electronics, as
9 well as an innovator and a leader for over a decade in discovering, patenting, and implementing
10 new technology for computer printers, multifunction products (MFPs) and other diverse
11 technologies such as telecommunications equipment.

12 4. On information and belief, Defendant Kodak is a corporation existing under the
13 laws of New Jersey with its principal place of business at 343 State Street, Rochester, New York
14 14650.

15 **JURISDICTION AND VENUE**

16 5. This Court has subject matter jurisdiction over KCI’s claims under the patent laws
17 of the United States, 35 U.S.C. § 1 *et seq.* and under the Declaratory Judgment Act 28 U.S.C. §
18 2201 *et seq.* This Court has subject matter jurisdiction over KCI’s claims pursuant to at least 28
19 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

20 6. The Court has personal jurisdiction over Defendant Kodak. This Court has
21 jurisdiction over Kodak at least because Kodak has continuous and systematic business contacts
22 in California. On information and belief, Kodak researches and designs inkjet printers, MFPs,
23 and printer supplies in the Southern District of California. Kodak’s business activities in
24 California also include marketing, selling, and providing consumer support for its products. On
25 information and belief, Kodak’s employees or agents also travel to and conduct Kodak’s business
26 in California.

27 7. Venue is proper in this district pursuant to at least 28 U.S.C. § 1391.
28

1 **THE CONTROVERSY RELATING TO THE '335 AND '218 PATENTS**

2 8. On information and belief, Kodak is the assignee, with purported enforcement
3 rights, of the '335 and '218 patents.

4 9. On or about November 10, 1999, KCJ, KCI's parent company, received a letter
5 from Kodak's licensing agent. That letter asserted that Kyocera products likely infringed various
6 Kodak patents, including the '335 patent. A follow-up letter from Kodak's licensing agent to
7 KCJ dated December 1, 1999, further emphasized KCJ's alleged "need for a license under the
8 Kodak digital camera patent portfolio."

9 10. Between November 1999 and August 2002, KCJ and Kodak's licensing agent held
10 multiple meetings to negotiate a patent license agreement. Kodak's licensing agent repeatedly
11 asserted that various Kyocera products infringed both the '335 and '218 patents. For example, on
12 September 13, 2001, Kodak's licensing agent provided KCJ infringement reports claiming that
13 two of KCJ's products infringed the '335 patent. On January 15, 2002, Kodak's licensing agent
14 identified specific claims of the '218 patent it believed certain Kyocera products infringed.

15 11. KCJ and Kodak entered into a Patent License Agreement on August 21, 2002 (the
16 "PLA"). The PLA has an effective date of April 1, 2002, and is in force for 10 years. The PLA is
17 applicable to KCJ and all of its subsidiaries, including KCI.

18 12. KCJ entered into the PLA to avoid litigation. The terms of the PLA specifically
19 state that KCJ does not acknowledge the validity or admit that any of its products infringe any of
20 the licensed Kodak patents.

21 13. Since the PLA has been in effect, Kodak and its licensing agent have continually
22 asserted that the '335 and '218 patents are relevant to Kyocera products. Letters sent by Kodak's
23 licensing agent on November 3, 2005, and January 13, 2006, for example, specifically state that
24 the '218 patent is relevant to Kyocera mobile camera phones. At a February 2, 2006, meeting,
25 Kodak's licensing agent again told KCJ that both the '335 and '218 patents were relevant to
26 Kyocera products which incorporate digital camera technology.

27 14. The PLA will expire on March 31, 2012.

1 15. Since 2010, KCI and Kodak have engaged in discussions regarding the need for
2 Kyocera to enter into a patent license agreement after expiration of the current PLA in March
3 2012. Those discussions have been unsuccessful.

4 16. Kodak has engaged in serial litigation against manufacturers and sellers of mobile
5 phones who do not have current patent license agreements with Kodak. Kodak has, for example
6 filed suits alleging infringement of the '335 or the '218 patents against at least Sony Corp., Apple
7 Inc., Research in Motion Ltd., Samsung Ltd., LG Electronics; and Matsushita Electric Industrial
8 Company.¹

9 17. KCI markets and sells Kyocera products in the United States, including wireless
10 phone devices incorporating digital camera technology.

11 18. KCI does not infringe, induce infringement of, or contribute to the infringement of
12 any valid claim of the '335 or '218 patents because, when properly interpreted, such claims do
13 not describe or encompass—either literally or by equivalents—any product made, used, offered
14 for sale, or sold by KCI; nor any product that KCI induces others to make, use, or sell; nor any
15 product to which KCI contributes to making, using, or selling.

16 19. Furthermore, the claims of each of the '335 and '218 patents are invalid for failing
17 to comply with the requirements of the Patent Laws of the United States, particularly with regard
18 to one or more of the requirements specified in Sections 101, 102, 103, and/or 112 of Title 35 of
19 the United States Code.

20 20. An actual, substantial and continuing justiciable controversy exists between KCI
21 and Kodak regarding the validity of the '335 and '218 patents and/or alleged infringement thereof
22 by KCI. Kodak has asserted that Kyocera products using digital camera technology are covered
23 by the '335 and '218 patents and require that Kyocera enter into a new license agreement as to
24 those patents after the PLA expires on March 31, 2012. KCI, however, maintains that it can
25

26 ¹ For Sony Corp., see Case No. 6:04-CV-06095 (W.D.N.Y.). For Apple Inc. and RIM,
27 see Inv. No. 337-TA-703 (ITC). For Samsung Ltd. and LG Electronics, see Inv. No. 337-TA-663
28 (ITC). For Matsushita, see Case. No. 6:07-CV-00352 (E.D. Tex.).

1 market and sell Kyocera products incorporating digital camera technology in the United States
2 after March 31, 2012 without entering into a new license to the '335 and '218 patents.

3 **CLAIM ONE**
4 **(Declaratory Judgment of Invalidity of the '335 patent)**

5 21. KCI incorporates by reference all allegations set forth in Paragraphs 1 through 20
6 of its Complaint as if set forth fully herein.

7 22. One or more claims of the '335 patent are invalid for failing to comply with the
8 requirements of the Patent Laws of the United States, particularly with regard to one or more of
9 the requirements specified in Sections 101, 102, 103, and/or 112 of Title 35 of the United States
10 Code.

11 23. KCI is entitled to a judicial determination that one or more claims of the '335
12 patent are invalid for failing to comply with the requirements of the Patent Laws of the United
13 States.

14 **CLAIM TWO**
15 **(Declaratory Judgment of Non-Infringement of the '335 patent)**

16 24. KCI incorporates by reference all allegations set forth in Paragraphs 1 through 23
17 of its Complaint as if set forth fully herein.

18 25. KCI has not infringed, induced infringement of, or contributed to the infringement
19 of any valid claim of the '335 patent because when properly interpreted such claims do not
20 describe or encompass, either literally or by equivalents, any product made, used, offered for sale,
21 or sold by KCI; nor any product that KCI induces others to make, use, or sell; nor any product to
22 which KCI contributes to making, using, or selling.

23 26. KCI is entitled to a judicial determination that KCI has not infringed, induced
24 infringement of, or contributed to infringement of, any valid claim of the '335 patent under any
25 infringement theory.

26 ///

27 ///

28 ///

1 (ii) Judgment that no valid claim of the '335 patent is infringed by KCI under any
2 infringement theory;

3 (iii) Judgment that one or more claims of the '218 patent are invalid under one or more
4 of the statutory provisions of Title 35 of the United States Code;

5 (iv) Judgment that no valid claim of the '218 patent is infringed by KCI under any
6 infringement theory;

7 (v) An award to KCI of its costs;

8 (vi) Judgment that this is an exceptional case and an award to KCI of its reasonable
9 attorneys' fees under 35 U.S.C. § 285 and/or the inherent discretion of the Court; and
10

11 (vii) Such further relief as this Court may deem just, equitable and appropriate.
12

13 Dated: January 9, 2012

MORRISON & FOERSTER LLP

14
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KYOCERA COMMUNICATIONS, INC.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

M. Andrew Woodmansee (CA SBN 201780)
E. Dale Buxton II (CA SBN 222580)
Christian G. Andreu-von Euw (CA SBN 265360)
Pamela McElroy (CA SBN 26535)
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DEFENDANTS

EASTMAN KODAK COMPANY **'12CV0057 WQHRBB**

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 2201 and 2202

Brief description of cause:

Declaratory Judgment action regarding US patents -- US 5,493,335 and US 6,292,218

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$**
- CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

January 9 2012

SIGNATURE OF ATTORNEY OF RECORD

/s/ M. Andrew Woodmanse

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.