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11
12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT
 14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 15

16 U-BLOX AG, U-BLOX SAN DIEGO,
 17 INC., AND U-BLOX AMERICA,
 18 INC.,

19 Plaintiffs,

20 v.

21 SISVEL INTERNATIONAL S.A.,
 22 SISVEL US, INC., and 3G Licensing
 23 S.A.

24 Defendants.
25
26
27
28

Case No. '20CV0494 AJB NLS

COMPLAINT FOR:

- (1) Breach Of Contract;**
- (2) Declaratory Judgment;**
- (3) Antitrust Monopolization In Violation Of Section 2 Of The Sherman Act and Unlawful Asset Acquisition in violation of Section 7 of the Clayton Act;**
- (4) Declaratory Judgment of Unenforceability of U.S. Patent No. 7,433,698; and**
- (5) Declaratory Judgment of Unenforceability of U.S. Patent No. 8,364,196.**

1 Plaintiffs u-blox AG, u-blox San Diego, Inc., and u-blox America, Inc.
2 (collectively, “u-blox” or “Plaintiffs”), by and through the undersigned counsel, file
3 this Complaint against Sisvel International S.A., Sisvel US, Inc., and 3G Licensing
4 S.A. (“3G Licensing”) (collectively, “Sisvel” or “Defendants”) as follows.

5 **INTRODUCTION**

6 1. u-blox, a leading fabless semiconductor provider of embedded
7 positioning and wireless communication products, brings this lawsuit against Sisvel
8 because of Sisvel’s refusal and failure to license its alleged standard essential
9 patents (“SEPs”) on fair, reasonable, and non-discriminatory (also known as
10 “FRAND”) terms and conditions, and to prevent and restrain Sisvel’s
11 anticompetitive conduct and other violations of the law.

12 2. Sisvel acquired ownership and/or the right to grant non-exclusive
13 licenses to a number of patents it asserts are essential to the second generation
14 (“2G”), third generation (“3G”), and/or fourth generation (“4G”) cellular technology
15 standards established by the European Telecommunications Standards Institute
16 (“ETSI”), a standard setting organization (“SSO”). However, Sisvel did not
17 develop, create and/or promote the cellular technology it asserts is covered by its
18 alleged standard essential patents (“SEPs”). Sisvel’s SEPs were previously owned
19 by other entities including, for example, Nokia, Research in Motion, Mitsubishi,
20 Orange, and KPN (the “transferors” or “prior owners”). In acquiring these alleged
21 SEPs, Sisvel intentionally sought to accumulate and aggregate them into a portfolio
22 with a dominant position in the market for licensing them, and improperly seek
23 unreasonable royalty rates.

24 3. As explained herein, Sisvel and the prior owners of Sisvel’s alleged
25 SEPs are and/or were members of ETSI and, thus, the SEPs related to 2G, 3G, and
26 4G that Sisvel has the right to license are subject to ETSI’s Intellectual Property
27 Rights (“IPRs”) Policy. The ETSI IPR Policy requires its members to disclose any
28 intellectual property rights (“IPR”) that entity has in technology related to a standard

1 under consideration, and requires the entity to agree to an irrevocable obligation to
2 be prepared to offer licenses on a FRAND basis.

3 4. Sisvel and/or the prior owners have submitted a number of declarations
4 to ETSI identifying hundreds of patents as potentially essential to the 2G, 3G, and/or
5 4G cellular standards, and agreeing to the FRAND commitment. As ETSI members
6 proposing technology in the standardization process, ETSI relied on such FRAND
7 commitments to lock-in the technology into the standard.

8 5. Consistent with the intent of ETSI's IPR Policy, and relying on the
9 assurances of FRAND commitments by SEP holders, such as Sisvel and/or prior
10 owners, u-blox has invested substantial resources in developing and marketing
11 cellular modules that are compatible with the 2G, 3G, and/or 4G standards
12 worldwide, including in the United States and California.

13 6. However, now that this lock-in has occurred and alternative
14 technologies have been excluded from the standards, it has become clear that Sisvel
15 never intended to license its alleged SEPs on FRAND terms and conditions.

16 7. u-blox is a ready and willing licensee to Sisvel's alleged SEPs, but
17 Sisvel's license related conduct plainly violates its FRAND commitments, including
18 but not limited to:

- 19 • Demanding royalty rates that are far in excess of the fair and
20 reasonable value of Sisvel's SEPs;
- 21 • Upon information and belief discriminating against u-blox and
22 violating ETSI guidelines by demanding u-blox pay higher
23 royalty rates than other implementers;
- 24 • Demanding u-blox pay royalties for alleged SEPs covering
25 portions of the standard not implemented by certain u-blox
26 products;
- 27 • Demanding u-blox pay royalties for alleged SEPs that the prior
28 owners failed to timely disclose prior to the standard being
adopted; and
- Demanding royalty rates that do not account for the expiration of
Sisvel's alleged SEPs over the course of the license.

1 8. In addition, in a blatant attempt to coerce u-blox to enter into a license
2 that is not on FRAND terms, Sisvel has engaged in a course of conduct to damage
3 u-blox's relationships with its customers and, ultimately, to damage u-blox.
4 Specifically, in 2017, ignoring u-blox's request for a FRAND license, Sisvel
5 targeted u-blox's customers and downstream manufacturers, including Xirgo
6 Technologies, LLC ("Xirgo"), by sending demand letters and suing Xirgo in district
7 court.

8 9. Upon information and belief, Sisvel was well aware of the fact that: (i)
9 u-blox entered into relationships with its customers in reliance on Sisvel's and the
10 prior owners' commitment to offer a license to the alleged SEPs on FRAND terms,
11 and (ii) u-blox's customers and their downstream manufacturers relied on u-blox to
12 obtain a license from SEP holders such that they may design their products and
13 incorporate u-blox's technology into their products.

14 10. Sisvel has demanded greatly inflated patent royalties that are based off
15 the final end product, rather than the smallest saleable unit that practices the alleged
16 SEPs—the u-blox components. These inflated royalties Sisvel seeks, going back
17 years, far exceed the profit margin of the u-blox components, even though pricing
18 decisions had been made years ago, and the prior owners could have sought a
19 license from u-blox years ago.

20 11. In response to Sisvel's unreasonable royalty rate demands, u-blox
21 provided Sisvel with a counter-offer, along with a detailed explanation of how that
22 counter-offer is FRAND, and reiterated that it was willing to negotiate a FRAND
23 license with Sisvel.

24 12. Unfortunately, however, Sisvel refused to negotiate in good faith with
25 u-blox for a FRAND license. Among other things, Sisvel appears intent to pressure
26 u-blox into a license that is not FRAND by interfering with u-blox's important
27 customer relationships.

28 13. As a result of the foregoing, u-blox has no choice but to turn to the

1 Court to establish FRAND terms and conditions, including a royalty rate, for a
2 license to Sisvel’s alleged SEPs, and to enjoin Sisvel from engaging in
3 anticompetitive conduct, including, but not limited to, demanding non-FRAND rates
4 from implementers, and seeking royalties for technology that was adopted into the
5 standards well before Sisvel and/or the prior owners properly disclosed their IPRs to
6 ETSI and its members—thereby rendering the alleged SEPs unenforceable.

7 **THE PARTIES**

8 **A. u-blox**

9 14. Plaintiff u-blox AG is a corporation organized and existing under the
10 laws of Switzerland, having its principal place of business in Zürcherstrasse 68,
11 8800 Thalwil, Switzerland.

12 15. Plaintiff u-blox San Diego, Inc. is a wholly-owned subsidiary of u-blox
13 AG. u-blox San Diego, Inc. is a corporation organized and existing under the laws
14 of Delaware, having its principal place of business at 12626 High Bluff Drive #200,
15 San Diego, California 92130.

16 16. Plaintiff u-blox America, Inc. is a wholly-owned subsidiary of u-blox
17 AG. u-blox America, Inc. is a corporation organized and existing under the laws of
18 Delaware, having its principal place of business at 1902 Campus Commons Drive
19 Suite 310, Reston, Virginia 20191.

20 17. u-blox delivers leading wireless technology to reliably locate and
21 connect people and devices. u-blox is a leading developer of global positioning
22 technology, including products and services based on Global Navigation Satellite
23 Systems (GNSS), including GPS and GALILEO, for the automotive, mobile
24 communications, and infrastructure markets. u-blox began offering wireless
25 products and services in 2009.

26 18. In 2011, u-blox acquired Fusion Wireless, a San Diego, California
27 based provider of CDMA wireless modules for consumer and machine-to-machine
28 (M2M) applications in North America. As u-blox’s Chief Executive Officer

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