

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
3 Including Professional Corporations
4 STEPHEN S. KORNICZKY, Cal. Bar No. 135532
5 MARTIN R. BADER, Cal. Bar No. 222865
6 MATTHEW W. HOLDER, Cal. Bar No. 217619
7 12275 El Camino Real, Suite 200
8 San Diego, California 92130
9 Telephone: 858.720.8900
10 Facsimile: 858.509.3691
11 E mail skorniczky@sheppardmullin.com
12 mbader@sheppardmullin.com
13 mholder@sheppardmullin.com

14 MICHAEL W. SCARBOROUGH, Cal. Bar No. 203524
15 MONA SOLOUKI, Cal. Bar No. 215145
16 Four Embarcadero Center, 17th Floor
17 San Francisco, California 94111
18 Telephone: 415.434.9100
19 Facsimile: 415.434.3947
20 E mail mscarborough@sheppardmullin.com
21 msolouki@sheppardmullin.com

22 Attorneys for Plaintiff
23 Continental Automotive Systems, Inc.

24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA

26 CONTINENTAL AUTOMOTIVE
27 SYSTEMS, INC., a Delaware
28 corporation,

Plaintiff,

v.

AVANCI, LLC, a Delaware
corporation. AVANCI PLATFORM

Case No. 19-cv-2520

**COMPLAINT FOR BREACH OF
FRAND COMMITMENTS AND
VIOLATIONS OF ANTITRUST
AND UNFAIR COMPETITION
LAWS:**

(1) Breach of Contract;

1 INTERNATIONAL LIMITED, an Irish
2 company, NOKIA CORPORATION, a
3 Finnish corporation, NOKIA OF
4 AMERICA CORPORATION, a
5 Delaware corporation, NOKIA
6 SOLUTIONS AND NETWORKS US
7 LLC, a Delaware corporation, NOKIA
8 SOLUTIONS AND NETWORKS OY,
9 a Finnish corporation, NOKIA
10 TECHNOLOGIES OY, a Finnish
11 corporation, CONVERSANT
12 WIRELESS LICENSING SARL, a
13 Luxembourg corporation, OPTIS UP
14 HOLDINGS LLC, a Delaware
15 corporation, OPTIS CELLULAR
16 TECHNOLOGY, LLC, a Delaware
17 corporation, OPTIS WIRELESS
18 TECHNOLOGY, LLC, a Delaware
19 corporation,

Defendants.

- (2) Promissory Estoppel;
- (3) Declaratory Judgment;
- (4) Violation of Section 1 of the Sherman Act—Concerted Action Unreasonably Restraining Trade
- (5) Violation of Section 2 of the Sherman Act—Unlawful Monopolization;
- (6) Violation of Section 2 of the Sherman Act—Conspiracy to Monopolize;
- (7) Violations of the California Unfair Competition Law, Business and Professions Code Section 17200 et seq.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff Continental Automotive Systems, Inc. (“Continental” or “Plaintiff”)
2 alleges the following facts and claims against Defendants Avanci, LLC, Avanci
3 Platform International Limited (collectively, “Avanci”), Nokia Corporation (“Nokia
4 Corp.”), Nokia of America Corporation (“Nokia America”), Nokia Solutions and
5 Networks US LLC (“Nokia Solutions”), Nokia Solutions and Networks Oy (“Nokia
6 Solutions Oy”), Nokia Technologies Oy (“Nokia Technologies Oy”) (Nokia Corp.,
7 Nokia America, Nokia Solutions, Nokia Solutions Oy, and Nokia Technologies Oy
8 collectively referred to herein as “Nokia”), Conversant Wireless Licensing SARL
9 (“Conversant SARL”), Optis UP Holdings, LLC (“Optis UP”), Optis Cellular
10 Technology, LLC (“Optis Cellular”), Optis Wireless Technology, LLC (“Optis
11 Wireless”) (Optis UP, Optis Cellular, and Optis Wireless collectively referred to
12 herein as “PanOptis”) (collectively, “Defendants”) (Nokia, Conversant, and
13 PanOptis collectively referred to herein as “Defendant Licensors”).

14 **INTRODUCTION**

15 1. Continental, a leading provider of cutting-edge automotive
16 components, including gateway products and telematics control units (“TCUs”),
17 brings this lawsuit because of Defendants’ concerted refusal to license their alleged
18 standard essential patents (“SEPs”) relevant to the 2G, 3G, and 4G cellular standards
19 to Continental and its suppliers on fair, reasonable, and non-discriminatory
20 (“FRAND”) terms and conditions.¹ Continental is a willing licensee, and seeks to
21 pay a FRAND royalty rate for a license to the SEPs owned or controlled by
22 Defendants. Accordingly, Continental seeks a declaration of its rights and
23 Defendants’ breaches of contract and other violations of law, as well as the
24 determination and imposition of the FRAND terms and conditions for a license to
25 the SEPs owned or controlled by Defendants.

26 2. In today’s society, many products in addition to mobile phones,
27

28 ¹ For purposes of this Complaint, FRAND will also mean and refer to reasonable and non-discriminatory (“FRAND”) terms and conditions

1 including cars, also include cellular connectivity. For example, cars use cellular
2 connectivity for emergency communications, among others. A car can provide such
3 connectivity primarily through a telecommunications chipset, known as a baseband
4 processor, which is the core electronic component that allows it to transmit and
5 receive information to and from a cellular communications network. The baseband
6 processor is typically incorporated within a network access device (“NAD”), which
7 is itself often a sub-system of the TCU. The TCU includes additional functionality
8 and components beyond cellular communication, including, by way of example,
9 GPS, interface software, and control functions. The car into which the TCU (and
10 thus the NAD and baseband processor) is incorporated obviously includes many
11 functionalities having nothing to do with cellular connectivity, which is at best
12 tangential to the main functionality of a car.

13 3. Enabling cellular connectivity requires the use of widely adopted
14 cellular standards, such as the second generation (“2G”), third generation (“3G”),
15 and/or fourth generation (“4G”) cellular standards adopted by various standard-
16 setting organizations (“SSOs”), such as ETSI, ATIS, TTA, ARIB, CCSA and others
17 (addressed in more detail beginning at paragraph 64). Continental is a Tier 1
18 supplier of TCUs to various automotive original equipment manufacturers
19 (“OEMs”), *i.e.*, vehicle manufacturers. Continental sources its NADs primarily
20 from Tier 2 suppliers, who in turn source the necessary baseband processor chipsets
21 that enable cellular connectivity from companies that manufacture such chipsets
22 (*e.g.*, Qualcomm, Intel, or MediaTek, sometimes referred to as Tier 3 suppliers).

23 4. Defendant Licensors claim to own patents that have been declared
24 essential to the cellular standards that are implemented in the components and/or
25 subsystems supplied by Tier 1, Tier 2, and Tier 3 suppliers, including
26 Continental. Avanci is a self-proclaimed “licensing platform” purporting to offer
27 “one-stop” access to essential patents necessary for cellular connectivity. On
28 information and belief, Avanci claims to license the majority of the total SEPs

1 necessary for implementing the 2G, 3G, and 4G cellular standards, although Avanci
2 does not disclose the actual percentage. Avanci purportedly does not own any
3 patents directly, but rather acts on behalf of Defendant Licensors and other owners
4 of SEPs (collectively “Avanci Members”) as their licensing agent for the alleged
5 SEPs, and controls the licensing of those SEPs.

6 5. On information and belief, all of the SEPs at issue are the subject of
7 express and voluntary promises made either directly by Defendant Licensors, or
8 their predecessors-in-interest, to the relevant SSOs pursuant to those SSOs’
9 Intellectual Property Rights (“IPR”) Policies. Such IPR Policies all require
10 Defendants to license the alleged SEPs to any user of the standard that requests a
11 license, and do so on FRAND terms and conditions. The SSOs relied on such
12 FRAND commitments when they purportedly incorporated Defendant Licensors’
13 proprietary technology into their standards.

14 6. The relevant SSOs require FRAND commitments in recognition of the
15 dangers inherent in collective standard-setting activities which eliminate competitive
16 technological alternatives that otherwise would have existed in the market. Once
17 standardized, a technology is “locked in” and must be practiced by all who wish to
18 produce standard-compliant products. Such lock-in gives SEP owners the market
19 power to exclude companies from practicing the standard, and to raise the cost of
20 practicing the standards by charging supra-competitive royalties in excess of the *ex*
21 *ante* value of such technology when it still competed with alternatives. This
22 phenomenon is often referred to as “hold-up.” Such market power does not derive
23 from the original patenting of the SEPs at issue, but results directly from collective
24 action. In order to ameliorate the risks posed by the existence of this market power,
25 and as a trade-off for having its proprietary technology included in the standards,
26 which in turn enables the SEP owner to license a much greater volume of products
27 than would be the case if the technology was not used in the standards, the SEP
28 owner is required to make the FRAND licensing commitment.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.