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Attorneys for Plaintiff
VDPP LLC,

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

VDPP, LLC,
Plaintiff,
v.
ROKU, INC.
Defendant,

Case No.: 5:23-cv-05303

**PLAINTIFF’S ORIGINAL
COMPLAINT FOR PATENT
INFRINGEMENT**

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

VDPP LLC (“Plaintiff” or “VDPP”) files this Original Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 10,021,380 (“the ’380 patent”) (referred to as the “Patent-in-Suit”) by ROKU, INC. (“Defendant” or “ROKU”).

I. THE PARTIES

1. Plaintiff is a company organized under the laws of Oregon with a principal place of business located in Corvallis, Oregon.

1 2. On information and belief, Defendant is a Corporation organized and existing
2 under the laws of the State of Delaware. On information and belief, Defendant has an
3 established place of business in this District at 1173 Coleman Avenue, San Jose,
4 California 95110 and a mailing address at 1701 Junction Court, Suite 100, San Jose,
5 California 95112. Defendant can be served with process through their registered
6 agent, 1505 Corporation CSC – Lawyers Incorporating Service, 2710 Gateway Oaks
7 Drive, Sacramento, California 95833, at its place of business, or anywhere else it may
8 be found.
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11 **II. JURISDICTION AND VENUE**

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13 3. This Court has original subject-matter jurisdiction over the entire action
14 pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff’s claim arises under an
15 Act of Congress relating to patents, namely, 35 U.S.C. § 271.
16

17 4. This Court has personal jurisdiction over Defendant because: (i) Defendant is
18 present within or has minimum contacts within the State of California and this judicial
19 district; (ii) Defendant has purposefully availed itself of the privileges of conducting
20 business in the State of California and in this judicial district; and (iii) Plaintiff’s cause
21 of action arises directly from Defendant’s business contacts and other activities in the
22 State of California and in this judicial district.
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24

25 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).
26 Defendant has committed acts of infringement and has a regular and established place
27 of business in this District. Further, venue is proper because Defendant conducts
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1 substantial business in this forum, directly or through intermediaries, including: (i) at
2 least a portion of the infringements alleged herein; and (ii) regularly doing or
3 soliciting business, engaging in other persistent courses of conduct and/or deriving
4 substantial revenue from goods and services provided to individuals in California and
5 this District.
6

7 **III. INFRINGEMENT OF THE '380 PATENT**

8
9 6. On July 10, 2018, U.S. Patent No. 10,021,380 (“the ’380 patent”, included as
10 Exhibit A and part of this complaint) entitled “Faster State Transitioning for
11 Continuous Adjustable 3Deeps Filter Spectacles Using Multi-Layered Variable Tint
12 Materials” was duly and legally issued by the U.S. Patent and Trademark Office.
13 Plaintiff owns the ’380 patent by assignment.
14

15 7. The ’380 patent relates to methods and systems for modifying an image.
16

17 8. Defendant maintains, operates, and administers systems, products, and services
18 in the field of automotive manufacture that infringes one or more of claims of the ’380
19 patent, including one or more of claims 1-30, literally or under the doctrine of
20 equivalents. Defendant put the inventions claimed by the ’380 Patent into service (i.e.,
21 used them); but for Defendant’s actions, the claimed-inventions embodiments
22 involving Defendant’s products and services would never have been put into service.
23 Defendant’s acts complained of herein caused those claimed-invention embodiments
24 as a whole to perform, and Defendant’s procurement of monetary and commercial
25 benefit from it.
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1 9. Support for the allegations of infringement may be found in the preliminary
2 exemplary table attached as Exhibit B. These allegations of infringement are
3 preliminary and are therefore subject to change.
4

5 10. Defendant has and continues to induce infringement. Defendant has actively
6 encouraged or instructed others (e.g., its customers and/or the customers of its related
7 companies), and continues to do so, on how to use its products and services (e.g.,
8 systems and methods related to modifying an image) such as to cause infringement of
9 one or more of claims 1-30 of the '380 patent, literally or under the doctrine of
10 equivalents. Moreover, Defendant has known of the '380 patent and the technology
11 underlying it from at least the filing date of the lawsuit.¹ For clarity, direct
12 infringement is previously alleged in this complaint.
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15
16 11. Defendant has and continues to contributorily infringe. Defendant has actively
17 encouraged or instructed others (e.g., its customers and/or the customers of its related
18 companies), and continues to do so, on how to use its products and services (e.g.,
19 systems and methods related to modifying an image) such as to cause infringement of
20 one or more of claims 1-30 of the '380 patent, literally or under the doctrine of
21 equivalents. Moreover, Defendant has known of the '380 patent and the technology
22 underlying it from at least the filing date of the lawsuit.² For clarity, direct
23 infringement is previously alleged in this complaint.
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27 ¹ Plaintiff reserves the right to amend if discovery reveals an earlier date of
28 knowledge.

² Plaintiff reserves the right to amend if discovery reveals an earlier date of

1 12. Defendant has caused and will continue to cause Plaintiff damage by direct and
2 indirect infringement of (including inducing infringement of) the claims of the '380
3 patent.
4

5 **IV. CONDITIONS PRECEDENT**

6

7 13. Plaintiff has never sold a product. Upon information and belief, Plaintiff
8 predecessor-in-interest has never sold a product. Plaintiff is a non-practicing entity,
9 with no products to mark. Plaintiff has pled all statutory requirements to obtain pre-
10 suit damages. Further, all conditions precedent to recovery are met. Under the rule
11 of reason analysis, Plaintiff has taken reasonable steps to ensure marking by any
12 licensee producing a patented article.
13
14

15 14. Plaintiff and its predecessors-in-interest have entered into settlement licenses
16 with several defendant entities, but none of the settlement licenses were to produce a
17 patented article, for or under the Plaintiff's patents. Duties of confidentiality prevent
18 disclosure of settlement licenses and their terms in this pleading but discovery will
19 show that Plaintiff and its predecessors-in-interest have substantially complied with
20 Section 287(a). Furthermore, each of the defendant entities in the settlement licenses
21 did not agree that they were infringing any of Plaintiff's patents, including the Patents-
22 in-Suit, and thus were not entering into the settlement license to produce a patented
23 article for Plaintiff or under its patents. Further, to the extent necessary, Plaintiff will
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 knowledge.

1 limit its claims of infringement to method claims and thereby remove any requirement
2 for marking.

3
4 15. To the extent Defendant identifies an alleged unmarked product produced for
5 Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in discovery to
6 either show that the alleged unmarked product does not practice the Patents-in-suit
7 and that Plaintiff has substantially complied with the marking statute. Defendant has
8 failed to identify any alleged patented article for which Section 287(a) would apply.
9
10 Further, Defendant has failed to allege any defendant entity produce a patented article.

11
12 16. The policy of § 287 serves three related purposes: (1) helping to avoid innocent
13 infringement; (2) encouraging patentees to give public notice that the article is
14 patented; and (3) aiding the public to identify whether an article is patented.

15
16 17. These policy considerations are advanced when parties are allowed to freely
17 settle cases without admitting infringement and thus not require marking. All
18 settlement licenses were to end litigation and thus the policies of §287 are not violated.
19
20 Such a result is further warranted by 35 U.S.C. §286 which allows for the recovery of
21 damages for six years prior to the filing of the complaint.

22
23 18. For each previous settlement license, Plaintiff understood that (1) the
24 settlement license was the end of litigation between the defendant entity and Plaintiff
25 and was not a license where the defendant entity was looking to sell a product under
26 any of Plaintiff's patents; (2) the settlement license was entered into to terminate
27 litigation and prevent future litigation between Plaintiff and defendant entity for
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1 patent infringement; (3) defendant entity did not believe it produced any product that
2 could be considered a patentable article under 35 U.S.C. §287; and, (4) Plaintiff
3 believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for
4 each prior settlement license.
5

6 19. Each settlement license that was entered into between the defendant entity and
7 Plaintiff was negotiated in the face of continued litigation and while Plaintiff believes
8 there was infringement, no defendant entity agreed that it was infringing. Thus, each
9 prior settlement license reflected a desire to end litigation and as such the policies of
10 §287 are not violated.
11

12
13 **V. JURY DEMAND**

14 Plaintiff hereby requests a trial by jury on issues so triable by right.
15

16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief as follows:

- 18 a. enter judgment that Defendant has infringed the claims of the '380 patent;
19
20 b. award Plaintiff damages in an amount sufficient to compensate it for
21 Defendant's infringement of the Patents-in-Suit in an amount no less than a
22 reasonable royalty or lost profits, together with pre-judgment and post-
23 judgment interest and costs under 35 U.S.C. § 284;
24
25 c. award Plaintiff an accounting for acts of infringement not presented at trial and
26 an award by the Court of additional damage for any such acts of infringement;
27
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- 1 d. declare this case to be “exceptional” under 35 U.S.C. § 285 and award Plaintiff
2 its attorneys’ fees, expenses, and costs incurred in this action;
3
4 e. declare Defendant’s infringement to be willful and treble the damages,
5 including attorneys’ fees, expenses, and costs incurred in this action and an
6 increase in the damage award pursuant to 35 U.S.C. § 284;
7
8 f. a decree addressing future infringement that either (i) awards a permanent
9 injunction enjoining Defendant and its agents, servants, employees, affiliates,
10 divisions, and subsidiaries, and those in association with Defendant from
11 infringing the claims of the Patents-in-Suit, or (ii) awards damages for future
12 infringement in lieu of an injunction in an amount consistent with the fact that
13 for future infringement the Defendant will be an adjudicated infringer of a valid
14 patent, and trebles that amount in view of the fact that the future infringement
15 will be willful as a matter of law; and
16
17 g. award Plaintiff such other and further relief as this Court deems just and proper.
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21 Dated: August 16, 2024

Respectfully submitted,

RAMEY LLP

/s/ Susan S.Q. Kalra

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