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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 COOPERATIVE
12 ENTERTAINMENT, INC.,
13 Plaintiff,
14 v.
15 JFROG, INC.
16 Defendant.

Case No.: 5:24-cv-06791

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

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

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

20 Cooperative Entertainment, Inc. (“Plaintiff” or “Cooperative”) files this
21 Original Complaint and demand for jury trial seeking relief from patent infringement
22 of the claims of US Patent No. 9,432,452 (the ’452 patent (referred to as the “Patent-
23 in-Suit”) by JFrog, Inc. (“Defendant” or “JFrog”).
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1 **I. THE PARTIES**

2 1. Plaintiff, Cooperative, is a company organized under the laws of North
3 Carolina with a principal place of business located in Raleigh, North Carolina.

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5 2. On information and belief, Defendant is a corporation organized and existing
6 under the laws of the State of California, with a regular and established place of
7 business located at 270 E Caribbean Dr. Sunnyvale, CA, 94089. On information and
8 belief, Defendant sells and offers to sell products and services throughout California,
9 including in this judicial district, and introduces products and services that perform
10 infringing methods or processes into the stream of commerce knowing that they
11 would be sold in California and this judicial district. Defendant can be served with
12 process through their registered agent, 1505 Corporation CSC – Lawyers
13 Incorporating Service, 2710 Gateway Oaks Drive, Sacramento, CA, 95833, at its
14 place of business, or anywhere else it may be found.

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16 **II. JURISDICTION AND VENUE**

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

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

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4 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).
5 Defendant has committed acts of infringement and has a regular and established place
6 of business in this District. Further, venue is proper because Defendant conducts
7 substantial business in this forum, directly or through intermediaries, including: (i) at
8 least a portion of the infringements alleged herein; and (ii) regularly doing or
9 soliciting business, engaging in other persistent courses of conduct and/or deriving
10 substantial revenue from goods and services provided to individuals in California and
11 this District.
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14 **III. Infringement of the ’452 Patent**

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16 6. On August 30, 2016, U.S. Patent No. 9,432,452 (“the ’452 patent”, included as
17 Exhibit A and part of this complaint) entitled “Systems and Methods for Dynamic
18 Networked Peer-to-Peer Content Distribution” was duly and legally issued by the
19 U.S. Patent and Trademark Office. Plaintiff owns the ’452 patent by assignment.
20

21 7. The Claims of the ’452 patent are directed towards peer-to-peer dynamic
22 networks for file distribution between peers receiving the same content, wherein
23 nodes are outside controlled networks and/or content distribution networks in which
24 large data files are distributed or shared across and among the peer nodes.
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27 8. Defendant maintains, operates, and administers systems, products, and services
28 in the field of content segmentation that infringes one or more of claims of the ’452

1 patent, including one or more of claims 1-15, literally or under the doctrine of
2 equivalents. Defendant put the inventions claimed by the '452 Patent into service (i.e.,
3 used them); but for Defendant's actions, the claimed-inventions embodiments
4 involving Defendant's products and services would never have been put into service.
5 Defendant's acts complained of herein caused those claimed-invention embodiments
6 as a whole to perform, and Defendant's procurement of monetary and commercial
7 benefit from it.
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10 9. Support for the allegations of infringement may be found in the preliminary
11 exemplary table attached as Exhibit B. These allegations of infringement are
12 preliminary and are therefore subject to change.
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14 10. Defendant has and continues to induce infringement. Defendant has actively
15 encouraged or instructed others (e.g., its customers and/or the customers of its related
16 companies), and continues to do so, on how to use its products and services (e.g.,
17 systems and methods related to modifying an image) such as to cause infringement of
18 one or more of claims 1-15 of the '452 patent, literally or under the doctrine of
19 equivalents. Moreover, Defendant has known of the '452 patent and the technology
20 underlying it from at least the filing date of the lawsuit.¹ For clarity, direct
21 infringement is previously alleged in this complaint.
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27 _____
28 ¹ Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

1 11. Defendant has and continues to contributorily infringe. Defendant has actively
2 encouraged or instructed others (e.g., its customers and/or the customers of its related
3 companies), and continues to do so, on how to use its products and services (e.g.,
4 systems and methods related to modifying an image) such as to cause infringement of
5 one or more of claims 1-15 of the '452 patent, literally or under the doctrine of
6 equivalents. Moreover, Defendant has known of the '452 patent and the technology
7 underlying it from at least the filing date of the lawsuit.² For clarity, direct
8 infringement is previously alleged in this complaint.
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12 12. Defendant has caused and will continue to cause Plaintiff damage by direct and
13 indirect infringement of (including inducing infringement of) the claims of the '452
14 patent.
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16 **IV. CONDITIONS PRECEDENT**

17 13. Plaintiff has never sold a product. Upon information and belief, Plaintiff
18 predecessor-in-interest has never sold a product. Plaintiff is a non-practicing entity,
19 with no products to mark. Plaintiff has pled all statutory requirements to obtain pre-
20 suit damages. Further, all conditions precedent to recovery are met. Under the rule
21 of reason analysis, Plaintiff has taken reasonable steps to ensure marking by any
22 licensee producing a patented article.
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28 ² Plaintiff reserves the right to amend if discovery reveals an earlier date of
knowledge.

1 14.Plaintiff and its predecessors-in-interest have entered into settlement licenses
2 with several defendant entities, but none of the settlement licenses were to produce a
3 patented article, for or under the Plaintiff's patents. Duties of confidentiality prevent
4 disclosure of settlement licenses and their terms in this pleading but discovery will
5 show that Plaintiff and its predecessors-in-interest have substantially complied with
6 Section 287(a). Furthermore, each of the defendant entities in the settlement licenses
7 did not agree that they were infringing any of Plaintiff's patents, including the Patent-
8 in-Suit, and thus were not entering into the settlement license to produce a patented
9 article for Plaintiff or under its patents. Further, to the extent necessary, Plaintiff will
10 limit its claims of infringement to method claims and thereby remove any requirement
11 for marking.

12 15.To the extent Defendant identifies an alleged unmarked product produced for
13 Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in discovery to
14 either show that the alleged unmarked product does not practice the Patent-in-suit and
15 that Plaintiff has substantially complied with the marking statute. Defendant has
16 failed to identify any alleged patented article for which Section 287(a) would apply.
17 Further, Defendant has failed to allege any defendant entity produce a patented article.

18 16.The policy of § 287 serves three related purposes: (1) helping to avoid innocent
19 infringement; (2) encouraging patentees to give public notice that the article is
20 patented; and (3) aiding the public to identify whether an article is patented.
21 These policy considerations are advanced when parties are allowed to freely settle
22

1 cases without admitting infringement and thus not require marking. All settlement
2 licenses were to end litigation and thus the policies of §287 are not violated. Such a
3 result is further warranted by 35 U.S.C. §286 which allows for the recovery of
4 damages for six years prior to the filing of the complaint.
5

6 17. For each previous settlement license, Plaintiff understood that (1) the
7 settlement license was the end of litigation between the defendant entity and Plaintiff
8 and was not a license where the defendant entity was looking to sell a product under
9 any of Plaintiff's patents; (2) the settlement license was entered into to terminate
10 litigation and prevent future litigation between Plaintiff and defendant entity for
11 patent infringement; (3) defendant entity did not believe it produced any product that
12 could be considered a patentable article under 35 U.S.C. §287; and, (4) Plaintiff
13 believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for
14 each prior settlement license.
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19 18. Each settlement license that was entered into between the defendant entity and
20 Plaintiff was negotiated in the face of continued litigation and while Plaintiff believes
21 there was infringement, no defendant entity agreed that it was infringing. Thus, each
22 prior settlement license reflected a desire to end litigation and as such the policies of
23 § 287 are not violated.
24

25 **V. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for relief as follows:
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- 1 a. enter judgment that Defendant has infringed the claims of the '452 patent;
- 2
- 3 b. award Plaintiff damages in an amount sufficient to compensate it for
- 4 Defendant's infringement of the Patent-in-Suit in an amount no less than a
- 5 reasonable royalty or lost profits, together with pre-judgment and post-
- 6 judgment interest and costs under 35 U.S.C.
- 7 § 284;
- 8
- 9 c. award Plaintiff an accounting for acts of infringement not presented at trial
- 10 and an award by the Court of additional damage for any such acts of
- 11 infringement;
- 12
- 13 d. declare this case to be "exceptional" under 35 U.S.C. § 285 and award
- 14 Plaintiff its attorneys' fees, expenses, and costs incurred in this action;
- 15
- 16 e. provided discovery reveals that Defendant knew (1) knew of the patent-in-
- 17 suit prior to the filing date of the lawsuit; (2) after acquiring that knowledge,
- 18 it infringed the patent; and (3) in doing so, it knew, or should have known,
- 19 that its conduct amounted to infringement of the patent, declare Defendants'
- 20 infringement to be willful and treble the damages, including attorneys' fees,
- 21 expenses, and costs incurred in this action and an increase in the damage
- 22 award pursuant to 35 U.S.C. § 284;
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- 26 f. a decree addressing future infringement that either (if) awards a permanent
- 27 injunction enjoining Defendant and its agents, servants, employees, affiliates,
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divisions, and subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an amount consistent with the fact that for future infringement the Defendant will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law; and

g. award Plaintiff such other and further relief as this Court deems just and proper.

Dated: September 27, 2024

Respectfully submitted,

RAMEY LLP

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DEMAND FOR JURY TRIAL

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

Dated: September 27, 2024

Respectfully submitted,

RAMEY LLP

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