C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action Division)
S U P E R I O R C O U R T

No.: **500-06-000896-171**

RICKY TENZER, [redacted]

Plaintiff

v.

QUALCOMM INCORPORATED, a legal person having a place of business at 105, Commerce Valley Drive West, Suite 100, Markham, province of Ontario, L3T 7W3;

Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 *C.C.P.*)

TO THE HONOURABLE CHANTAL CORRIVEAU OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE REPRESENTATIVE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:

I. INTRODUCTION

1. Cell phones and other mobile devices like tablets and cellular-enabled watches rely on modem chips in order to transmit voice calls and data over cellular networks operated by companies like Rogers, Bell, Telus, and Vidéotron. These chips, and the underlying technologies they implement, play an integral role in our modern telecommunications ecosystem.

2. Without universal technical standards, it would not be possible to ensure compatibility between different kinds of telecommunications equipment, networks, and systems worldwide. As a result, the technical requirements for the underlying technology used in mobile phones and tablets are governed and determined by various international standard-setting organizations. When patented technology is included in a technical standard adopted by

one of these international bodies, the company that holds the relevant patents is effectively granted a monopoly position in relation to the technologies that implement the standard. As a result, and in addition to their general legal duties under statutory and private law, these companies have special obligations to license their intellectual property rights on fair, reasonable, and non-discriminatory terms.

3. In this case, the defendant developed many of the technologies underlying modern cellular systems. These innovations were incorporated as essential components of the international standards that govern the manufacture, sale, and use of the mobile chips used in smartphones and other cellular devices. Since these patents are necessary to practice particular mobile standards, other industry actors—including both equipment manufacturers and direct competitors—had no choice but to adopt them.

4. The defendant has also been a dominant market actor in creating and selling modem chips used in mobile phones and other cellular-enabled devices that implement these technologies.

5. The defendant abused its dominant position in the modem chip market by failing to license its standard essential patents on fair, reasonable, and non-discriminatory terms and by engaging in other wrongful, unlawful, and abusive business practices. These practices artificially increased the cost of licensing the defendant's technology and of purchasing its hardware. These abusive overcharges were ultimately passed on to the members of this class action, who include all end purchasers of mobile devices in Quebec.

6. The defendant's wrongful practices constitute extracontractual faults under the *Civil Code of Québec* toward these end purchasers, who have been forced to pay inflated prices for the purchase of cellular devices, including mobile phones and tablets, and who have borne the costs of the defendant's wrongful conduct.

7. As a result, this class action seeks fair compensation for all end purchasers of cellular devices in Quebec equivalent to the damages suffered as a result of the defendant's abuse of its dominant position in the modem chip market and its wrongful business practices, including its failure to license its technology on fair, reasonable, and non-discriminatory terms.

II. THE AUTHORIZATION JUDGMENT

8. On April 30, 2019, the plaintiff was authorized to institute the present class action and was designated representative for the class described as follows:

> Toutes les personnes qui ont acheté au Québec non pour la revente commerciale, depuis le 11 décembre 2014, un appareil qui permet une communication cellulaire et dont le processeur de bandes de base a été fabriqué par Qualcomm lncorporated ou pour lequel des redevances ont été payées à Qualcomm lncorporated.
>
> [Translated] All persons who have purchased, in Quebec, except for commercial resale, since December 11, 2014, a device that allows for cellular communication and which uses a baseband processor manufactured by Qualcomm Incorporated or for which royalties were paid to Qualcomm Incorporated.

9. The questions the Court authorized for determination on a collective basis are as follows:

a. Did Qualcomm violate its commitments to grant licences on fair, reasonable and non-discriminatory ("FRAND") terms?

b. Did Qualcomm violate its duty to act in good faith under the *Civil Code of Quebec*?

c. Does the violation of its FRAND commitments engage Qualcomm's civil liability towards the class members?

d. Did Qualcomm abuse its dominant position?

e. Did the class members suffer prejudice?

f. Can the claims be subject to collective recovery?

g. If so, what is the amount of compensatory damages to which each class member is entitled?

[Translated]

III. THE DEFENDANT

10. The defendant, Qualcomm lncorporated, is the parent company of a group of companies that operate primarily in the field of telecommunications technologies.

11. Qualcomm describes itself as a global leader in the development and commercialization of foundational technologies for the wireless communications industry. The company boasts that its inventions have helped power the growth in smartphones, as is seen by Qualcomm's annual reports for fiscal years from 1996 to 2020, filed jointly as **Exhibits P-1-1996 to P-1-2020**.

12. Qualcomm's business is divided into multiple segments, including Qualcomm Technology Licensing ("**QTL**"), which is the intellectual property arm of Qualcomm, and Qualcomm CDMA Technologies ("**QCT**"), which develops hardware and software for mobile devices and other kinds of telecommunications equipment and consumer electronics.[1] QTL is operated by Qualcomm Incorporated directly, while QCT is operated by Qualcomm Technologies Inc., which is a wholly owned subsidiary of Qualcomm Incorporated.

13. For the purposes of this class action, Qualcomm's activities can be grouped into two main categories. On one hand, Qualcomm develops, holds, and licenses numerous key patented technologies. Many of these patents are designated as standard essential patents ("**SEPs**"), and as a result are necessary for the manufacture, sale, and use of modem chips that comply with the most important global cellular communication standards.

14. On the other hand, Qualcomm is also the world's largest supplier of the modem chips (sometimes called "baseband processors") used in the manufacture and development of cellular devices. Modem chips are a type of semiconductor device that allow cellular devices to access cellular networks and transmit voice and data.

15. Qualcomm outsources the manufacture of the chips it designs to various semiconductor foundries. It then sells those chips to original equipment manufacturers ("**OEMs**") such as Apple, Blackberry, Samsung, Motorola, LG Electronics, Google, and others, as well as to device contract manufacturers ("**DCMs**") which are companies like Celestica, Compal, Foxconn and Pegatron, that purchase components like modem chips to assemble finished devices on behalf of OEMs.

16. In this manner, Qualcomm's intellectual property and modem chips find their way into phones, tablets, laptops, watches, and other cellular-enabled devices. These completed devices are then sold throughout the distribution

[1] A list of acronyms most frequently used in this procedure in annexed hereto.

chain to wireless service providers, retailers, and other intermediaries for ultimate use by consumers and other end purchasers.

IV. THE REPRESENTATIVE PLAINTIFF

17. The representative plaintiff, Ricky Tenzer, purchased a Google Nexus 6P mobile phone in January 2016, as it appears from the Nexus 6P purchase invoice, **Exhibit P-2A**. He also purchased a Pixel 2 XL mobile phone in December 2017, as it appears from the Pixel 2 XL purchase invoice, **Exhibit P-2B**. Both of these devices implement intellectual property owned by Qualcomm and contain chips made by Qualcomm.

V. THE FACTS

A. Cellular Communications and Standard-Setting Organizations

18. The modem chip is what makes it possible for a mobile device to connect to wireless networks and transmit information on networks run by service providers such as Rogers, Bell, Telus or Vidéotron.

19. For cellular communications to function, the modem chips integrated in various cellular devices must be compatible with one another and with the network on which they operate.

20. International non-governmental organizations called standard-setting organizations ("**SSOs**") determine technical standards that ensure compatibility and interoperability between different devices, systems, and telecommunications infrastructure. This kind of collaboration between competitors is intended to limit the proliferation of competing standards, promotes stability and quality of service, and increase innovation, all to the benefit of users and consumers as well as industry participants.

21. The SSOs in the field of cellular communications are based in different countries, although their decisions and policies have a global impact. They include notably:

    a. The European Telecommunications Standards Institute ("**ETSI**");

    b. The International Telecommunications Union ("**ITU**");

c. The Institute of Electrical and Electronics Engineers Standards Association ("**IEEE-SA**");

d. The Alliance for Telecommunications Industry Solutions ("**ATIS**");

e. The Telecommunications Industry Association ("**TIA**").

22. Most designers and manufacturers of modem chips and devices are members of these organizations. Qualcomm in particular is a member of each of these organizations, as well as of various other organizations in the telecommunications industry, as shown by these organization's members lists, filed together as **Exhibit P-3**.

23. Through expert deliberation and various internal processes, SSOs set technical standards for each generation of cellular communication technology. In order to comply with a particular standard, a given device will have to implement all the key technologies on which the standard is based. Many of those technologies are patented.

24. The law grants patent holders a legal monopoly over the innovative technologies described in their patents for a specific period of time. Patent holders therefore have the right to require payment in exchange for a license to use their technology or to prevent others from using it altogether. The importance or market power that a patent holder can derive from a given patent will normally depend on factors like the nature of the technology and the availability of substitute technologies.

25. When a patented technology is included or proposed to be included in a technical standard adopted by an SSO, the patent holder can declare its patent essential to this standard, i.e. a standard-essential patent ("**SEP**").

26. The declaration of a patent as a SEP carries benefits for the patent holder, because manufacturers who wish to make their products compatible with that standard must practice the patented technology, which they must license from the SEP holder. In other words, when a patent is deemed an essential or unavoidable part of a standard, the patent holder gains a monopoly power in relation to that standard.

27. Universal standards make it possible for manufacturers of devices and components, as well as other companies involved, to invest resources in technological development with the assurance that their devices will be compatible across cellular networks and with other cellular devices.

28. On the other hand, there is always a risk that industry actors will become locked into a standard: the cost of investing in the development of standard-specific components, devices and infrastructure can make the cost of adapting to new technologies significant.

29. There is also the risk inherent in granting patent holders a monopoly over implementation of a standard. When a particular technology is deemed an essential patent, all companies who want to implement that standard have no other choice but to obtain a license for these SEPs and to accept the conditions that a SEP holder may impose.

30. The adoption of universal standards therefore increases the potential for unfair, abusive, unreasonable and discriminatory behaviour by companies that hold SEPs. Such behaviour occurs when, for example, a SEP owner leverages its monopoly power to force licensees to pay excessive royalties (often referred to as “patent holdup”), imposes unreasonable conditions, or denies access to its SEPs on a discriminatory basis.

31. In order to prevent the adverse consequences that can arise from the adoption of SEPs, SSOs require SEP holders to expressly undertake to comply with certain policies. Most importantly, before the SSOs will consider incorporating a company’s intellectual property into a standard and before a patent is deemed essential, the company must agree to grant licenses to that intellectual property according to fair, reasonable, and non-discriminatory (“**FRAND**”) terms. These obligations are contractually binding.

32. However, FRAND terms are more than a simple contract between an SEP holder, SSOs and their other members. When an SEP holder subscribes to FRAND terms, the ultimate beneficiaries are those who actually make use of the standard in question—including device manufacturers, their customers, consumers and end purchasers, like the class members in this case.

33. As an overarching rule, FRAND obligations require SEP holders to grant patent licenses to any party that may request a license under terms that are fair, reasonable, and non-discriminatory. The IEEE-SA, ITU, ETSI, ATIS and TIA impose these obligations on SEP holders in the modem chipset industry through their intellectual property rights policies, namely:

    a. According to clause 6 of the IEEE-SA *Standards Board Bylaws*, a patent holder intending to assert an essential patent claim is required to submit a letter of assurance that it would make available a license for its SEPs

to an unrestricted number of applicants on a worldwide basis, without compensation or under reasonable rates, with other reasonable terms and conditions that are demonstrably free of any unfair discrimination, as it appears in the IEEE-SA *Standards Board Bylaws*, **Exhibit P-4A**;

b. Under the ETSI *Rules of Procedure*, Annex 6, a patent holder intending to assert an essential patent claim is required to provide an irrevocable undertaking in writing that it was prepared to grant irrevocable licenses on FRAND terms and conditions, as it appears in the ETSI *Rules of Procedure*, **Exhibit P-4B**;

c. Under the ITU *Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC*, a patent holder intending to assert an essential patent claim is required to provide an undertaking in writing that it will grant a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions, as it appears in the ITU *Guidelines for implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC*, **Exhibit P-4C**;

d. Under the ATIS *Operating Procedures for ATIS Forums and Committees*, Appendix A, a patent holder intending to assert an essential patent claim must provide an irrevocable assurance that a license to such essential patent claim will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination, as it appears in the ATIS *Operating Procedures for ATIS Forums and Committees*, **Exhibit P-4D**; and

e. Under TIA *Intellectual Property Rights Policy*, a patent holder intending to assert an essential patent claim must provide an irrevocable undertaking affirming its willingness to grant licenses to all applicants under terms and conditions that are reasonable and non-discriminatory, as it appears in the TIA *Intellectual Property Rights Policy,* **Exhibit P-4E**.

34. As a member of the IEEE-SA, ETSI, ITU, ATIS and TIA during the period covered by this class action, Qualcomm made a commitment that these conditions would govern the licensing of its essential patents and the manufacture, sale, and use of its modem chips. In making these commitments, Qualcomm was able to gain significant market power that it would not otherwise have had.

35. Participants in these standard-setting processes—including other modem chip manufacturers and OEMs—relied on those representations when they agreed to incorporate Qualcomm's technology into these industry standards.

B. Evolution of Cellular Communications

36. The evolution of technologies used in cellular devices is generally described in generational terms, which group comparable technologies together. Each new generation ("**G**") implies significant technological advances.

37. The first generation ("**1G**") of standard was established in the 1980s. 1G was followed by the second generation ("**2G**") in 1991.

38. The second generation of standards was comprised of multiple cellular technologies, among which were:

    a. CdmaOne which is a Code Division Multiple Access ("**CDMA**") method that was developed by Qualcomm, and;

    b. its main rival, the Global System for Mobile Communications ("**GSM**") technology which is a form of Time Division Multiple Access ("**TDMA**").

39. The third generation ("**3G**") technologies notably increased speed and capacity of data transfer were introduced in 1998, more widely so in early 2000s.

40. Several standards were adopted in 3G which are mainly differentiated by their choice of radio interface technology, including:

    a. CDMA2000 which is a backward compatible successor to CdmaOne, and;

    b. the Universal Mobile Telecommunications Service ("**UMTS**") technology based on Wideband CDMA radio technology ("**WCDMA**").

41. The fourth generation ("**4G**") was established in 2008 and uses the Long Term Evolution of UMTS ("**LTE**") standard.

42. The LTE standard does not use technologies based on the CDMA standard. Although, it is an Orthogonal Frequency Division Multiple Access ("**OFDMA**") technology for which Qualcomm had a leading role in the development and commercialization, as is explained by Qualcomm's annual reports for fiscal years from 2013 to 2019 (**P-1-2013 to P-1-2020**).

43. The fifth generation ("**5G**") of cellular communications was defined in 2018 and has debuted commercially in 2019, as is seen by Qualcomm's 2019 annual report (**P-1-2019**).

44. Most cellular devices sold in 2020 are still 4G. 5G only represents 1.5% of the global mobile subscriptions market so far, and the LTE standard still represents 60.4% of the market, as appears in the Global Mobile Suppliers Association's September 2020 report entitled: "LTE & 5G Subscribers", **Exhibit P-5**.

C. Qualcomm's Dominant Position in the Cellular Communications Industry

45. Qualcomm has been a pioneer in cellular telecommunications since the 1980s, beginning with the development of Code Division Multiple Access ("**CDMA**") technology.

46. The CDMA technology first developed by Qualcomm was adopted as a 2G industry standard in July 1993 and became known as CdmaOne, as explained in Qualcomm's 1996 to 1999 annual reports (**P-1-1996** to **P-1-1999**).

47. Qualcomm's CdmaOne technology was mainly deployed in the American continents whereas the competing 2G technology GSM, was extensively utilized in Europe and much of Asia. In 1997, Qualcomm's CDMA technology was commercially deployed or in the process of being deployed in more than 30 countries, a number which rose to 50 in 2001, as seen in Qualcomm's annual reports for fiscal years from 1997 to 2001 (**P-1-1997** to **P-1-2001**).

48. Qualcomm's dominant position was concretised in the third generation as it holds SEPs and manufactures many technologies both included in this generation:

    a. The fundamental technologies used in CdmaOne are the basis for all 3G standards based on CDMA technology, including CDMA2000 and WCDMA. In fact, most technologies developed and patented by Qualcomm are fundamental and critical to the proper operation and functioning of all commercial CDMA systems seeing that it has pioneered the technology and thereafter made seminal contributions to its development, as it appears from a paper published by Qualcomm in October 2006, entitled "Commonalities between CDMA2000 and WCDMA Technologies", filed as **Exhibit P-6**;

b. As explained by Qualcomm, the ITU adopted a 3G standard encompassing six operating radio interfaces, each of which incorporates its intellectual property, as is stated in Qualcomm's annual reports for fiscal years from 2010 to 2012 (**P-1-2010** to **P -1-2012**).

49. Qualcomm also holds a large portfolio of patents related to LTE technologies, such as the OFDMA technologies, and which have been adopted in the fourth generation, as it appears from Qualcomm's "LTE/WiMax Patent Licensing Statement" dated December 2008, filed as **Exhibit P-7**.

50. Although 4G was established in 2008, most LTE devices relied on 3G for voice services until 2018, as is explained by Qualcomm in annual reports for fiscal years 2013 to 2018 (**P-1-2013** to **P-1-2018**).

51. Additionally, many 4G-based cellular devices still implement CDMA technology to be backward-compatible with CDMA-based technologies still in use today. Qualcomm supplies multimode CDMA-LTE chipsets that are backward-compatible with CDMA, as it appears from a paper published by Qualcomm in May 2009 entitled "LTE – An Optimized OFDMA Solution for Wider Bandwidth Spectrum", filed as **Exhibit P-8**, and did so almost exclusively until 2015. As such, Qualcomm enjoyed almost 100% of this market share until 2015.

52. Qualcomm is also the largest manufacturer of premium (high end) LTE modem chips. The arrival of LTE has therefore not significantly impacted Qualcomm's control over the modem chips market or its licensing business.

53. Qualcomm has controlled and continues to control the market for the CDMA technology, by initially selling more than 90% of modem chips in CDMA compatible devices and continuing to control more than 80% of the baseband processor market.

54. Qualcomm's control over the CDMA market is the result of its activities as both a supplier of modem chips and because it holds SEPs for this technology.

55. Virtually any company seeking to develop, manufacture or sell devices using the CDMA or the LTE standards, whether it be modem chipsets, telephones or infrastructure equipment, has to obtain a license from Qualcomm, as indicated in Qualcomm's annual reports for fiscal years from 2007 to 2019 (**P-1-2007** to **P-1-2020**).

56. Almost all participants in the cellular communications industry have signed patent license agreements with Qualcomm. In Qualcomm's 2016 annual report (**P-1-2016**), it states that their "patent portfolio is the most widely and massively licensed in the industry, with over 330 licenses."

57. Qualcomm owns patents that are essential to the implementation of all major cellular standards, including 2G CDMA, 3G CDMA, UMTS, and LTE. Essentially, modern cellular devices today are unable to connect to a network without a royalty being paid to Qualcomm.

D. Qualcomm Abused its Dominant Position and Engaged in Illegal and Unfair Business Practices

58. Prior to and throughout the class period, Qualcomm exercised unparalleled power and dominated the global markets for SEP licensing, 2G CDMA and 3G CDMA capable modem chips, and premium LTE modem chips. It wielded that power in bad faith, in an anti-competitive manner, and in violation of its FRAND obligations, as detailed below.

a. Qualcomm imposed non-FRAND terms and rates for its licenses

59. First, rather than licensing its technologies individually and on a "patent-by-patent" basis, Qualcomm adopted a bad faith strategy of licensing "patent portfolios", which include SEPs, non-SEPs and unnecessary patents or patents that are unrelated to cellular technologies, like multimedia and camera technologies.

60. Qualcomm's "portfolio basis" licensing policy has the double effect of forcing OEMs to purchase licenses they do not need, and of precluding them from replacing these non-essential patents with competitors' technologies unless they are willing and able to pay for both. This practice artificially inflates the price paid by OEMs by requiring them to pay for useless patents.

61. Second, and more generally, Qualcomm's royalty rates are significantly higher than others in the industry.

62. This is in part because licensees have been forced to pay royalties on SEPs that are determined on the basis of the retail price of the end product which ultimately incorporates the licensed technology (e.g., the retail price of a smartphone handset), rather than on the actual quality or value of the patented technology. This practice is explained by Qualcomm's own annual reports for fiscal years from 1996 to 2016 (**P-1-1996** to **P-1-2016**).

63. Forcing chipset buyers to accept license agreements that require a percentage on the selling prices of the end product is not a fair or reasonable basis to calculate royalties for an SEP that covers only one component of a complex device. The selling price of a cellular device is based on a variety of technologies and components that are not manufactured or patented by Qualcomm, and for which Qualcomm can claim no right. This pricing strategy had the effect of arbitrarily driving up royalty rates for OEMs in proportion to the ultimate retail value of handsets and other devices.

64. Both these practices have artificially increased the price of Qualcomm's licenses, and have in turn inflated the price paid by end purchasers.

b. **Qualcomm refused to offer FRAND licenses to its competitors**

65. Since 2008, Qualcomm has systematically refused to offer licenses for its SEPs to competing chip manufacturers and other intermediaries by enforcing an "OEM-level only" licensing policy, violating its obligation to license on non-discriminatory terms.

66. Instead, it generally offers these companies only patent non-assert agreements or similar agreements on highly unfavourable terms, including the condition that the chip manufacturer promises to only sell chips to OEMs that have also purchased Qualcomm licenses.

67. This tactic forced Qualcomm's competitors to reveal the details of their sales agreements with their customers and to sell their processors only to a list of customers selected and authorized by Qualcomm. This had the effect of restricting competition in the marketplace.

68. Qualcomm also charged higher royalties on modem chips sold by competitors as compared to those sold by Qualcomm. If Qualcomm had not violated its obligation to license on a non-discriminatory basis by refusing to license its SEPs to competitors, its market power would have been constrained by greater price competition , OEMs would have paid lower prices for modem chips and royalties, and end purchasers would have paid less for their devices.

c. Qualcomm withheld modem chips from OEMs unless they agreed to contract on non-FRAND terms and for non-FRAND rates

69. Qualcomm abused its market power by threatening not to sell, withholding access, or refusing to deliver its modem chips to OEMs unless they agreed to purchase its licenses on a variety of non-FRAND terms, including those described above. This practice has been referred to as the “no license, no chip” policy, and allowed Qualcomm to pressure OEMs into accepting non-FRAND terms under threat of serious financial, contractual, and reputational consequences if cut off from supply.

70. If Qualcomm had not breached its obligation to contract on fair and reasonable terms by threatening OEMs’ chip supply, those companies would have been able to negotiate fairer and more balanced agreements, which would have resulted in lower prices for modem chips and royalties. Instead, Qualcomm forced OEMs to accept a number of non-FRAND terms that artificially increased the price they were charged.

71. Additionally, Qualcomm’s practice of refusing to sell its modem chips to OEMs unless they also purchase a separate license to Qualcomm’s patent portfolios—a practice which is unique in the industry to Qualcomm—also allowed Qualcomm to collect royalties on products which would otherwise not be subject to the payment of royalties due to patent exhaustion.

72. This further allowed Qualcomm to artificially tie the value of its licenses to the retail price of the end product, rather than on the actual quality or value of the patented technology.

73. By engaging in these forms of abusive practices, Qualcomm artificially increased royalty rates, which caused end purchasers to pay inflated prices.

d. Qualcomm forced OEMs to enter into contracts with abusive terms that undermined the possibility of competition

74. Qualcomm’s practice of exercising its market power to threaten the chip supply of OEMs also allowed it to force these companies to accept abusive contractual terms that solidified Qualcomm’s market dominance and undermined competition.

75. In particular, Qualcomm required several OEMs to enter into licensing agreements that included commitments that the OEM would use Qualcomm

modem chips exclusively or near-exclusively in exchange for a partial royalty rebate, with substantial penalties for non-compliance. For example, since 2007, Apple has entered into agreements to deal exclusively with Qualcomm in exchange for a reduction in royalties. Samsung has also entered into a similar exclusivity agreement with Qualcomm.

76. In practice, these agreements unfairly undermined competition by preventing competing chip suppliers (or potential competitors) from marketing their products to key global customers, allowing Qualcomm to maintain a position of market dominance and allowing it to charge supra-competitive amounts.

77. Similarly, Qualcomm took steps to eliminate competitors and competing standards in which it had a lesser share of SEPs, most notably by conditioning partial SEP royalty relief on Apple on an agreement not to market devices that were compatible with the WiMAX standard.

78. Qualcomm also restricted the rights of OEMs to bargain, negotiate, and seek compensation in relation to wrongful conduct by forcing them to agree to non-litigation and non-cooperation clauses. The company's strategy of forcing OEMs to adopt contractual provisions that precluded them from protecting and vindicating their rights vis-à-vis Qualcomm had the practical effect of rendering Qualcomm's FRAND obligations unenforceable, and helped to maintain a status quo in which Qualcomm could continue to abuse its dominant market position.

79. Finally, Qualcomm forced licensees to provide a royalty-free cross-license for their intellectual property to Qualcomm and its modem chip customers. These agreements harmed competition, and gave Qualcomm an advantage not available to its competitors as a result of its abusive conduct.

80. In sum, Qualcomm's abusive tactics undermined competition and allowed the defendant to maintain its market dominance—as well as its ability to overcharge for its licences and chips. These overcharges were eventually passed through to class members as a result.

E. Qualcomm's Liability

81. Qualcomm has an extracontractual responsibility under the *Civil Code of Québec* toward all class members.

82. Qualcomm's practices are contrary to the standards of conduct incumbent upon it. In particular:

    a. Qualcomm abused its dominant market position in a manner that constitutes an anticompetitive act under Article 78 of the *Competition Act,* R.S.C. 1985, c. C-34;

    b. Qualcomm breached its contractual obligations to license its SEPs under FRAND terms;

    c. Qualcomm acted in bad faith by adopting unfair, anti-competitive, and abusive business strategies and tactics.

F. Damages

83. Throughout the class period, Qualcomm possessed global market power in the markets for SEP licensing, 2G CDMA and 3G CDMA capable modem chips, and premium LTE modem chips. Qualcomm obtained and maintained this power through anti-competitive behaviour, abusive business practices and the violation of its FRAND obligations.

84. Qualcomm's wrongful conduct caused OEMs to overpay for both royalties and modem chips, and caused clients of competing chip manufacturers to pay excessive amounts for royalties. These artificially inflated amounts were higher than they would have been but for Qualcomm's fault and constituted wrongful overcharges. Qualcomm also adopted abusive, bad faith, and non-FRAND strategies to suppress competition in general, allowing it to continue to charge higher prices than it would have been able to, but for these wrongful business practices.

85. ODMs, OEMs, wireless service providers, retailers and other resellers throughout the distribution chain for mobile devices operate in a highly competitive market and as a result, did not absorb these sums. Instead, they passed along some or all of these excessive amounts to consumers and other end purchasers of cellular-enabled devices.

86. The cost of the modem chip and the intellectual property present in a given mobile device represent a non-negligible share of the total cost of a mobile device like a phone. This cost is passed on to end purchasers in the final price of a device.

87. As a direct result of Qualcomm's fault, members of the class, who are all end purchasers of mobile devices in Quebec, paid artificially inflated prices for their cellular enabled devices. These prices were greater than what they should have paid, but for Qualcomm's misconduct.

88. The damages caused to the members of the class were all suffered in Quebec, as the contracts for the purchase of their cellular devices were concluded in Quebec.

89. For these reasons, class members seek compensation in the form of damages equivalent to the amount they were overcharged as a result of Qualcomm's faults, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Quebec*.

90. These amounts can be determined on a class-wide basis and are capable of collective recovery.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Plaintiff's action on behalf of all class members;

CONDEMN the Defendant to pay each class member an amount to be determined in order to compensate them for the amount they overpaid for their cellular device with interest at the legal rate and the additional indemnity provided for by law in accordance with article 1619 of the *Civil Code of Quebec,* from the date of service of the *Demande pour autorisation d'exercer une action collective et pour être représentant;*

ORDER the collective recovery of the class members' claims;

RECONVENE the parties before the Court in the 45 days following the date on which this judgment will become final, in order to fix the mechanism for the distribution of the amounts recovered collectively;

THE WHOLE with costs, including all expert fees, notice fees, and expenses of the administrator, if any.

Montreal, January 29, 2021

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SUMMONS

(Articles 145 and following, C.C.P.)

Take notice that the plaintiff has filed this originating application in the office of the Superior Court in the judicial district of Montréal.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1 Notre-Dame St. E. Montréal, H2Y 1B6, within 15 days of service of the application or, if you have no domicile, residence or establishment in Quebec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must indicate your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask

for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the plaintiff intends to use the following exhibits:

EXHIBIT P-1: Qualcomm’s annual reports for fiscal years 1996 to 2020, *bundled;*

EXHIBIT P-2: Purchase invoices:

EXHIBIT P-2A: Nexus 6P purchase invoice;

EXHIBIT P-2B: Pixel 2 XL purchase invoice;

EXHIBIT P-3: Standard-setting organizations’ member lists:

EXHIBIT P-3A: IEEE-SA Corporate Members Q-T list, dated January 28, 2021;

EXHIBIT P-3B: ETSI Members list, dated January 25, 2021;

EXHIBIT P-3C: ITU Platinum Sector Members list, dated January 28, 2021;

EXHIBIT P-3D: ATIS Members list, dated January 25, 2021;

EXHIBIT P-3E: TIA Member lists, dated January 11, 2021;

EXHIBIT P-4: Standard-setting organization's intellectual property rights policies:

EXHIBIT P-4A: IEEE-SA *Standards Board Bylaws* for years 2012 to current*, bundled*;

EXHIBIT P-4B: ETSI *Rules of Procedure* for years 2013 to current*, bundled;*

EXHIBIT P-4C: ITU *Guidelines for Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC* for years 2012 to current, *bundled*;

EXHIBIT P-4D: ATIS *Operating Procedures* for years 2020 to current, *bundled*;

EXHIBIT P-4E: TIA *Intellectual Property Rights Policy* for years 2016 to current, *bundled*;

EXHIBIT P-5: Global Mobile Suppliers Association's September 2020 Report entitled "LTE & 5G Subscribers";

EXHIBIT P-6: Paper published by Qualcomm in October 2006 entitled "Commonalities between CDMA2000 and WCDMA Technologies";

EXHIBIT P-7: Qualcomm's *LTE/WiMax Patent Licensing Statement* dated December 2008;

EXHIBIT P-8: Paper published by Qualcomm in May 2009 entitled "LTE – An Optimized OFDMA Solution for Wider Bandwidth Spectrum".

These exhibits are available on request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, January 29, 2021

Trudel Johnston & Lespérance

TRUDEL, JOHNSTON & LESPÉRANCE
Counsel for the Plaintiff

NOTICE OF PRESENTATION

TO: **QUALCOMM INCORPORATED**, a legal person having a place of business at 105, Commerce Valley Drive West, Suite 100, Markham, province of Ontario, L3T 7W3

Me Simon Seida
Me Robert J. Torralbo
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TAKE NOTICE that the *Originating application* will be presented at the Superior Court at the Courthouse of Montréal, located at 1 Notre-Dame Street East, at a date and time to be determined.

PLEASE ACT ACCORDINGLY.

Montreal, January 29, 2021.

Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Counsel for the Plaintiff

APPENDIX A

Acronyms

ATIS	Alliance for Telecommunications Industry Solutions; a SSO
CDMA	Code Division Multiple Access
DCMs	Device Contract Manufacturer
ETSI	European Telecommunications Standards Institute; a SSO
FRAND / RAND	Fair, Reasonable, and Non-Discriminatory terms (sometimes described simply as Reasonable and Non-Discriminatory)
IEEE-SA	Institute of Electrical and Electronic Engineers Standards Association; a SSO
ITU	International Telecommunications Union; a SSO
LTE	Long Term Evolution of UMTS
OEM	Original Equipment Manufacturers
OFDMA	Orthogonal Frequency Division Multiple Access
QCT	Qualcomm CDMA Technologies, a segment of Qualcomm's business
QTL	Qualcomm Technology Licensing, the intellectual property arm of Qualcomm
SEP	Standard-essential patents
SSOs	Standard-setting organizations
TIA	Telecommunications Industry Association; a SSO
TDMA	Time Division Multiple Access
UMTS	Universal Mobile Telecommunications Service
WCDMA	Wideband CDMA Radio Technology

No.: **500-06-000896-171**

(Class Action Division)
S U P E R I O R C O U R T
DISTRICT OF MONTRÉAL

RICKY TENZER, [redacted]

Plaintiff

v.

QUALCOMM INCORPORATED, a legal person having a place of business at 105, Commerce Valley Drive West, Suite 100, Markham, province of Ontario, L3T 7W3

Defendant

Our file: 1398-1 BT 1415

ORIGINATING APPLICATION
(Articles 141 and 583 *C.C.P.*)

ORIGINAL

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