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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TCL COMMUNICATION
TECHNOLOGY HOLDINGS,
LTD., *et al.*,
Plaintiffs/Counterclaim-Defendants,

v.

TELEFONAKTIEBOLAGET LM
ERICSSON, *et al.*,
Defendants/Counterclaim-Plaintiffs.

v.

ERICSSON INC., *et al.*,
Plaintiffs/Counterclaim-Defendants,

v.

TCL COMMUNICATION
TECHNOLOGY HOLDINGS,
LTD., *et al.*,
Defendants/Counterclaim-Plaintiffs.

Case No. 8:14-CV-00341 JVS-DFMx

Case No. 2:15-CV-02370 JVS-DFMx

**AMENDED FINAL JUDGMENT AND
INJUNCTION**

Hon. James V. Selna

1 In this consolidated action, Plaintiffs and Counterclaim Defendants TCL
2 Communication Technology Holdings Ltd., TCT Mobile (US) Inc., and TCT
3 Mobile Limited (collectively, “TCL”) brought claims and counterclaims against
4 Defendants and Counterclaim Plaintiffs Telefonaktiebolaget LM Ericsson and
5 Ericsson Inc. (together, “Ericsson”) for breach of contract; promissory estoppel;
6 declaratory judgment; fraudulent misrepresentation; negligent misrepresentation;
7 and violation of the California Unfair Competition Law (the “UCL”); declaratory
8 judgment of non-infringement of U.S. Patent No. 6,301,556 (the “’556 patent”);
9 declaratory judgment of invalidity of the ’556 patent; declaratory judgment of non-
10 infringement of U.S. Patent No. 6,473,506 (the “’506 patent”); declaratory judgment
11 of invalidity of the ’506 patent; infringement of U.S. Patent No. 7,778,340 (the
12 “’340 patent”); and infringement of U.S. Patent No. 7,359,718 (the “’718 patent”).

13 Ericsson brought claims and counterclaims against TCL for breach of the
14 obligation to negotiate in good faith and promissory estoppel, and claims for
15 infringement of the ’556 patent; infringement of the ’506 patent; declaratory
16 judgment; declaratory judgment for non-infringement of the ’340 patent; declaratory
17 judgment of invalidity of the ’340 patent; declaratory judgment of non-infringement
18 of the ’718 patent; and declaratory judgment of invalidity of the ’718 patent.

19 On July 1, 2015, the Court stayed the parties’ claims and counterclaims
20 relating to Ericsson’s ’556 and ’506 patents until further Order of the Court (Dkt.
21 281).

22 On July 24, 2015, the Court dismissed the parties’ claims and counterclaims
23 relating to TCL’s ’340 and ’718 patents without prejudice (Dkt. 289).

24 On June 17, 2016, the Court dismissed TCL’s claims and counterclaims for
25 fraudulent misrepresentation and negligent misrepresentation with prejudice (Dkt.
26 838).

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1 On June 17, 2016, the Court dismissed Ericsson’s counterclaims for breach of
2 the obligation to negotiate in good faith and promissory estoppel with prejudice
3 (Dkt. 838).

4 On August 9, 2016, the Court granted Ericsson’s motion for partial summary
5 judgment of no damages for breach of contract, promissory estoppel, or violation of
6 the UCL (Dkt. 1061), and Ericsson’s motion for partial summary judgment as to
7 TCL’s claim for violation of the UCL (Dkt. 1058).

8 The Court conducted a 10-day bench trial commencing on February 14, 2017.
9 Three claims/counterclaims were tried before the Court: (1) TCL’s
10 claim/counterclaim for breach of contract seeking specific performance; (2) TCL’s
11 claim/counterclaim for declaratory judgment; and (3) Ericsson’s claim/counterclaim
12 for declaratory judgment (Dkt. 1376-1). The Court received evidence in the form of
13 exhibits, designated portions of deposition transcripts, and witness testimony.

14 In its Memorandum of Findings of Fact and Conclusions of Law issued on
15 November 8, 2017 (Dkt. 1778), the Court found that Ericsson’s Option A and B
16 offers were not fair and reasonable, and were discriminatory, and thereafter
17 determined FRAND royalty rates for a license to TCL under Ericsson’s 2G, 3G, and
18 4G standard essential patent portfolios.

19 Consistent with the Court’s Memorandum of Findings of Fact and
20 Conclusions of Law (Dkt. 1778), and based on the record established in this case,
21 the Court enters this Final Judgment and Injunction pursuant to Federal Rule of
22 Civil Procedure 58.

23 **DEFINITIONS**

24 For the purpose of this Final Judgment and Injunction, the following
25 definitions shall apply:

- 26 1. “Affiliate” of a Party means a company or other legal entity which is
27 controlled by the Party. For the purpose of this definition, “control” shall mean
28 direct or indirect ownership of more than fifty percent (50%) of the voting

- 1 power, capital, or other securities of the controlled or commonly controlled
2 entity.
- 3 2. “Brand Company” means a company or other legal entity, other than a
4 Network Operator, which is active in the consumer electronics business and/or
5 wireless communications business and/or IT industry.
- 6 3. “Components” means any item of equipment, including, for example, a sub-
7 system, sub-assembly or component, in software, hardware, and/or firmware
8 form, of any TCL Product, which is sold, licensed, or supplied, or intended to
9 be sold, licensed, or supplied, to a Third Party other than as a complete and
10 ready to use end-use item, for example, because it requires additional
11 industrial, manufacturing, or assembly processes before being used or sold as
12 an end-use item, and is intended for incorporation into any product. Examples
13 of Components include, but are by no means limited to, platforms, ASICs and
14 chipsets, modules, printed circuit boards, integrated circuits, semiconductor
15 devices, processors, multi-core processors, multi-chip modules, and multi-chip
16 packages, embedded modules and core engines. This definition of
17 “Components” shall exclude any product employed for the purpose of repair or
18 upgrade of already sold products which are licensed under this Injunction.
- 19 4. “Consumer” means a natural person who buys products as a final user.
- 20 5. “Costs of Insurance and Transportation” means TCL’s, as the case may be,
21 actual direct costs of insurance and transportation to ship TCL Products to its
22 customers. For the avoidance of doubt, Costs of Insurance and Transportation
23 shall not include any labor fee or any overhead costs of any kind.
- 24 6. “Effective Date” means the date of entry of this Final Judgment and
25 Injunction.
- 26 7. “End User Terminal” means a complete and ready to use device or Knocked
27 Down version of such complete device with the largest of the width, length,
28 and depth of such complete device in its most compact form being 250 mm or

1 less, which can be directly used by a Consumer for wireless communications
2 (*i.e.* to receive and transmit information over the air by means of using one or
3 more of the Standards), without the device having to be integrated or
4 embedded into another device or connected to another device through, for
5 example, a USB, PCMCIA, memory card, WLAN, or Bluetooth interface. For
6 the avoidance of all doubt, the term “End User Terminal” does not mean
7 subassemblies or parts of products such as, but not limited to, Components,
8 other than as sold as part of the End User Terminal or as spare parts or repair
9 parts of already Sold End User Terminals. For the further avoidance of doubt,
10 TCL is not required to pay any royalty to Ericsson for such spare parts or
11 repair parts of already Sold End User Terminals.

12 8. “Entity” means any individual, firm, company, corporation, or other corporate
13 or legal entity (wherever and however incorporated or established),
14 government, state, agency or agency of a state, local or municipal authority or
15 government body or any joint venture, association or partnership (whether or
16 not having a separate legal personality).

17 9. “Ericsson” means Defendants and Counterclaim Plaintiffs Telefonaktiebolaget
18 LM Ericsson, a company established under the laws of Sweden, with
19 organization number 556016-0680, with its registered office at SE-164 83
20 Stockholm, Sweden; Ericsson Inc., a Delaware corporation headquartered at
21 6300 Legacy Drive, Plano, Texas 75024; and all of their Affiliates.

22 10. “External Modem” means a separate external Consumer device which can be
23 connected to or inserted into an external slot of another device by an individual
24 consumer (*i.e.* not an entity of any kind) through, for example, a USB,
25 PCMCIA, memory card, WiFi, or Bluetooth interface, in order to allow said
26 another device to communicate by means of any or more of the Standards. The
27 External Modem may not be designed for the purpose of being embedded into
28 such other device or may not in itself include an immediate physical user-

1 interface to an individual Consumer to transmit or receive wireless data and/or
2 voice transmissions by means of any or more of the Standards (such a device
3 shall fall under the definition of End User Terminal). The term “External
4 Modem” does not include Components (other than as sold incorporated into
5 the External Modem or sold as part of a kit of External Modem) or modules.

6 11. “Future Standards” means the agreed protocols by ETSI, ARIS, T1P1, CCSA,
7 and/or other relevant telecommunications standards setting bodies that are
8 applicable to UMB, WiMax IEEE802.16m, and/or any other beyond 4G
9 standards, irrespective of the transmission medium or frequency band, as well
10 as any updates in respect of such protocols.

11 12. “Have Made” means the right to have a Third Party make a product for the use
12 and benefit of the party exercising the have made right provided all of the
13 following conditions are fulfilled: (a) the party exercising the have made right
14 owns and supplies the designs, specifications and working drawings supplied
15 to such Third Party; and (b) such designs, specifications and working drawings
16 are, complete and sufficient so that no substantial additional design,
17 specification and working drawings are needed by any Third Party; and (c)
18 such Third Party is not allowed to sell such product to other third parties.

19 13. “Injunction” means the Injunction herein and its appendices.

20 14. “Knocked Down” means a complete End User Terminal product in the form of
21 complete knocked down or semi-knocked down kits of parts, including
22 complete and substantially complete kits of parts, where such kit of part or
23 knocked down product is always a complete and ready to use End User
24 Terminal.

25 15. “License Period” means the period commencing on the Effective Date and
26 having a period of five (5) years calculated from the Effective Date.

27 16. “Licensed Patents” means those Patents (in any country of the world) as to
28 which it is, or is claimed by the owner to be, not possible, on technical grounds

1 taking into account normal technical practice and the state of the art generally
2 available at the time of adoption or publication of the relevant Standards, to
3 make, sell, lease, or otherwise dispose of, repair, use, or operate equipment or
4 methods which comply with the relevant Standards, without infringing such
5 Patents.

6 17. “Network Operator” means an Entity, including such Entity’s Affiliates, that
7 as its main business (a) owns or licenses frequency spectrum, directly or
8 indirectly, from a government or other relevant authority or Entity, and offers
9 wireless data- or telecommunications services to Consumers over such owned
10 or licensed spectrum; and/or (b) offers wired data- or telecommunications
11 services to Consumers.

12 18. “Net Selling Price” means the greater of (a) the selling price actually obtained
13 for the TCL Product in the form in which it is Sold, and (b) the selling price
14 which a seller would realize from an un-Affiliated buyer in an arm’s length
15 sale of an equivalent product in the same quantity and at the same time and
16 place as such Sale, whether or not assembled and without excluding therefrom
17 any components or subassemblies thereof. In determining the “Net Selling
18 Price,” only the following shall be excluded to the extent actually included in
19 the selling price obtained for such products: (i) Usual Trade Discounts
20 actually allowed to non-Affiliated persons or entities; (ii) Packing Costs; (iii)
21 Costs of Insurance and Transportation; and (iv) Taxes and Custom Duties. For
22 the avoidance of doubt, allowed deductions for Usual Trade Discounts,
23 Packaging Costs, and Costs of Insurance and Transportation shall in total not
24 exceed eight (8) percent units of the selling price.

25 19. “Packing Costs” means TCL’s, as the case may be, actual direct costs of
26 packing and/or packaging TCL Products for shipment to its customer. For the
27 avoidance of doubt, Packing Costs shall include extra batteries, charger, ear
28 phones, SO card, user manual (in any form including but not limited to CD-

1 ROM), warranty card, USB cable, welcome kit, packing box, labels, protective
2 screen cover, plastic bags, carrying kit and separate additional phone cover
3 case. For the avoidance of doubt, Packing Costs shall not include any labor fee
4 or any overhead costs of any kind.

5 20. “Party/Parties” means Ericsson and TCL.

6 21. “Patents” means patent claims (including claims of licensable patent
7 applications), and like statutory rights other than design patents, owned, or
8 controlled by Ericsson at any time during the License Period.

9 22. “Personal Computer” means a complete and ready to use device, designed
10 mainly for data processing by means of a physical or virtual keyboard, with the
11 largest of the width, length, and depth of such complete device in its most
12 compact form being more than 250 mm, which can be directly used by a
13 Consumer for wireless communications (i.e. to receive and transmit
14 information over the air by means of using any or more of the Standards),
15 without the device having to be integrated or embedded into another device or
16 connected to another device through for example a USB, memory card,
17 WLAN, or Bluetooth interface. For the avoidance of all doubts, the term
18 “Personal Computer” does not mean subassemblies or parts or products such
19 as, but not limited to Intermediate Products, other than as sold as part of the
20 Personal Computer or as spare parts or repair parts of already Sold Personal
21 Computers.

22 23. “Retailer” means an Entity, including such Entity’s Affiliates, other than a
23 Brand Company, a licensee of Ericsson, or a Network Operator, which is
24 having as its main business to sell Third Party branded products to Consumers
25 whether through shops or online.

26 24. “Sale,” “Sell,” “Sold,” or any similar term, mean the delivery of TCL Products
27 in any country of the world to a Third Party regardless of the basis for
28 compensation, if any, including lease, rent or similar transaction, whether as an

1 individual item or as a component or constituent of other products, or the
2 putting into use of the TCL Products by TCL for any purpose other than
3 routine testing thereof—with a Sale being deemed to have occurred upon
4 shipment or invoicing or such putting into use, whichever shall first occur.
5 TCL Products that are returned for refund (for avoidance of doubt to exclude
6 warranty returns), may be netted against units Sold, so long as a returned unit
7 that is subsequently resold is counted as a new Sale.

8 25. “Standards” means the ETSI (or, if applicable, its equivalent internationally
9 recognized body or organization) cellular telecommunication standards 2G, 3G
10 and 4G. For the avoidance of any doubt, Standards does not include WiFi,
11 WiMax, CDMA, or Future Standards.

12 26. “Taxes and Custom Duties” means import, export, excise, sales and value
13 added taxes and custom duties levied or imposed directly upon the Sale of
14 TCL Products that TCL, as the case may be, remits to the government body
15 levying or imposing such taxes or duties.

16 27. “TCL” means Plaintiffs and Counterclaim Defendants TCL Communication
17 Technology Holdings Ltd., a company established under the laws of Cayman
18 Islands, with its registered office at Cricket Square, Hutchins Drive, P.O. Box
19 2681, Grand Cayman KY1-1111, Cayman Islands; TCT Mobile (US) Inc., a
20 Delaware corporation headquartered at 25 Edelman, Irvine, CA 92618; TCT
21 Mobile Limited, a company established under the laws of Hong Kong, having
22 its registered office at Room 1502, Tower 6, China Hong Kong City, 33
23 Canton Road, Tsimshatsui, Kowloon, Hong Kong; and all of their Affiliates.

24 28. “TCL Products” shall mean the End-User Terminals, External Modems, and
25 Personal Computers all being branded with (a) a brand owned by TCL,
26 Network Operators, or Retailers, provided that such TCL Products are not also
27 branded with a brand owned by a Brand Company; (b) a brand licensed to
28 TCL, Network Operators, or Retailer, provided that such licensed brand is not

1 owned by a Brand Company; or (c) TCL shall have the option to ask for
2 permission from Ericsson to add End User Terminals branded with Third Party
3 brands (not being a Brand Company or a licensee of Ericsson) to the definition
4 of TCL Products on a case by case basis. Such addition of End User Terminals
5 branded with a Third Party brand (not being a Brand Company or a licensee of
6 Ericsson) is always subject to Ericsson prior written approval. Such approval
7 is at Ericsson's sole discretion. Notwithstanding the above, TCL Products
8 branded with a brand licensed or transferred to it from Alcatel, Alcatel Lucent,
9 or Blackberry Sold after such license or transfer and are compliant with one or
10 more of the Standards shall be included in this definition of TCL Products and
11 subject to royalty payment in accordance with this Injunction.

12 29. "Third Party/Third Parties" shall mean any Entity that is not Ericsson or TCL.

13 30. "Usual Trade Discounts" shall mean discounts actually allowed by TCL, as the
14 case may be, to un-Affiliated persons or entities for TCL Products Sold by
15 TCL, as the case may be, to such person or entity solely to the extent such
16 discounts are agreed upon in writing by TCL, as the case may be, and such
17 person or entity in a written supply (or related) agreement on, or prior to the
18 time of Sale of such TCL Product, including prompt-pay discounts, volume
19 discounts, price protection discounts, stock balancing discounts, late delivery
20 penalties, payments for promotional rebates provided by such person or entity
21 to its end user customers (the "Trade Discount Deductions"). Notwithstanding
22 anything to the contrary above, the following shall not be included in the Trade
23 Discount Deductions: discounts/payments agreed upon after the time of Sale
24 of a TCL Product and market development and/or business development
25 funds.

26 31. "2G" shall mean Global System for Mobile Communications (GSM) and
27 Generalized Packet Radio System (GPRS), including the Enhanced GPRS (E-
28 GPRS/EDGE) standard specifications released or published by 3GPP and/or

1 relevant local standardization bodies such as ETSI, TIA, T1P1, ARIB, TIC,
2 and CCSA, irrespective of the transmission medium or frequency band, at the
3 time of the Effective Date and thereafter as well as updates in respect of such
4 standard specifications during the License Period. For the avoidance of any
5 doubt, 2G does not include 3G or any Future Standards.

6 32. “3G” shall mean UTRA FDD mode, i.e. UMTS and WCDMA, including
7 HSPA standard specifications released or published by 3GPP and/or relevant
8 local standardization bodies such as ETSI, TIA, T1P1, ARIS, TTC, and
9 CCSA, irrespective of the transmission medium or frequency band, at the time
10 of the Effective Date and thereafter, as well as any updates in respect of such
11 standard specifications during the License Period. For the avoidance of any
12 doubt, 3G does not include 2G, CDMA, WiMax, WiFi, or any Future
13 Standards.

14 33. “4G” shall mean E-UTRA (FOO mode and TDD mode (including but not
15 limited to LTE or TD-LTE)) standard specifications released or published by
16 3GPP and/or relevant local standardization bodies such as but not limited to
17 ETSI, TIA, T1P1, ARIB, TTC, and CCSA, irrespective of the transmission
18 medium or frequency band, at the time of the Effective Date and thereafter, as
19 well as any updates in respect of such standard specifications during the
20 License Period. However, such updates may not extend to any Future
21 Standards. For the avoidance of any doubt, 4G does not include 2G, 3G,
22 CDMA, WiMax , WiFi, or Future Standards.

23 34. “WiFi” shall mean the 802.11 standard specifications released or published by
24 IEEE irrespective of the transmission medium, frequency band, or duplexing
25 scheme, at the lime of the Effective Date, as well as any updates in respect of
26 such standard specifications during the License Period. However, such updates
27 may not extend to any Future Standards. For the avoidance of any doubt, WiFi
28 does not include 2G, 3G, 4G, CDMA, WiMax, or Future Standards.

1 35. “WiMax” shall mean the 802.16 standard specifications released or published
2 by IEEE, irrespective of the transmission medium, frequency band or
3 duplexing scheme, at the time of the Effective Date, as well as any updates in
4 respect of such standard specifications during the License Period. However,
5 such updates may not extend to any Future Standards. For the avoidance of
6 any doubt, WiMax does not include 2G, 3G, 4G, CDMA, WiFi, or Future
7 Standards.

8 36. “CDMA” shall mean CDMA2000 standard specifications released or
9 published by 3GPP2 and/or relevant local standardization bodies such as but
10 not limited to ETSI, TIA, T1P1, ARIB, TTC, and CCSA, irrespective of the
11 transmission medium, frequency band or duplexing scheme, at the time of the
12 Effective Date, as well as any updates in respect of such standard
13 specifications during the License Period. However, such updates may not
14 extend to any Future Standards. For the avoidance of any doubt, CDMA does
15 not include 2G, 3G, 4G, WiMax , WiFi, or Future Standards.

16 **INJUNCTION**

17 **IT IS FURTHER ORDERED THAT:**

18 This Injunction is binding upon the Parties, their officers, agents, servants,
19 employees, and attorneys, and upon those persons in active concert with them who
20 receive actual notice of the Injunction by personal service or otherwise.

21 **A. License Grant**

22 License Grant. Subject to the terms and conditions of this Injunction, TCL
23 hereby is granted a world-wide, non-transferable, and non-exclusive license under
24 Ericsson’s Licensed Patents to make, Have Made, use, import, Sell, and offer for
25 Sale TCL Products. The license and rights granted to TCL granted by this Injunction
26 shall expire at the end of the License Period. The license granted to TCL further
27 includes the right to make, use, and import solely by TCL (but not to Sell, lease, or
28 otherwise dispose of to Third Parties) manufacturing and testing equipment

1 compliant with the Standards for the testing, developing, and manufacturing of TCL
2 Products.

3 Sublicense. TCL shall grant sublicenses of the rights set forth in this Clause
4 to all future Affiliates of TCL Selling TCL Products. TCL shall procure that such
5 future Affiliate shall be bound in all respects to all of the obligations contained in
6 this Injunction, including but not limited to, the payment of royalties as set forth in
7 Clause E of this Injunction. TCL shall be liable for the payment of royalties as set
8 forth in Clause E attributed to all sublicensed future Affiliates, which shall be
9 effectuated by TCL Communication Technology Holdings Ltd. directly. Any
10 sublicense granted hereunder shall terminate if the Affiliate ceases to be an Affiliate
11 of TCL.

12 No Implied License. Nothing in this Injunction shall be construed as a right to
13 use or sell TCL Products in a manner which conveys or purports to convey whether
14 explicitly, by principles of implied license, or otherwise, any rights to any Third
15 Party user or purchaser of the TCL Products, under any patent of Ericsson covering
16 or relating to any combination of the TCL Products with any other product (not
17 licensed hereunder) where the right applies specifically to the combination and not
18 to the TCL Product itself.

19 No Rights to Provide Foundry Services. For the avoidance of all doubt,
20 nothing in this Injunction shall mean that Ericsson is granting a license under any
21 Licensed Patents to TCL for providing of foundry services to Third Parties, *i.e.* TCL
22 manufacturing and selling products based upon Third Party made and owned design
23 when the product is thereafter sold to or directly on behalf of such same Third Party.

24 **B. Limitations of License Grant**

25 Jointly Owned Patents. With respect to Patents licensed herein which are
26 owned jointly by Ericsson with others, the Court recognizes that there are countries
27 which require the express consent of all inventors or their assignees to the grant of
28 licenses or rights under patents issued in such countries for such jointly owned

1 inventions. Ericsson shall give such consent and shall use all reasonable efforts to
2 obtain such consent from its employees, and from other Third Parties and future
3 Affiliates, as required to make full and effective any such licenses and rights
4 granted.

5 If, in spite of such efforts, Ericsson is unable to obtain such consents from any
6 such employees or Third Parties, the resulting inability of Ericsson to make full and
7 effective its purported grant of such licenses and rights shall not be considered to be
8 a breach of this Injunction. For the avoidance of doubt, in such a case, the licenses
9 and rights shall be considered granted by Ericsson to the maximum extent possible,
10 and, consequently, if TCL acquires a corresponding license from the employee or
11 Third Party, TCL shall be deemed licensed under the patent.

12 No Rights Against Infringers. There may be countries in which TCL may
13 have, as a consequence of this Injunction, rights against infringers of Ericsson's
14 Patents licensed hereunder. TCL shall not assert any such right it may have by
15 reason of any Third Party's infringement of any such Patents.

16 **C. Release**

17 Upon the receipt by Ericsson of the release payments set forth in Clause E by
18 TCL, Ericsson shall release TCL and all customers of TCL who have purchased or
19 used products herein licensed to TCL from claims for past patent infringement,
20 provided such act would be licensed under this Injunction if it had occurred
21 subsequent to the Effective Date.

22 Within thirty (30) days of final judgment (inclusive of all appeals and post-
23 trial proceedings) and provided that Ericsson has received the release payment set
24 forth in this Injunction from TCL, the parties shall cooperate to promptly seek the
25 dismissal (with prejudice where available) of all claims and counterclaims in all
26 litigations covered by the Court's anti-suit injunction dated July 10, 2015, Dkt. 284.

27 **D. Know-How and Trade Secrets**

1 No license or other right is granted herein to TCL, directly or by implication,
2 estoppels or otherwise, with respect to any trade secrets or know-how, and no such
3 license or other right shall arise from the consummation of this Injunction or from
4 any acts, statements or dealings leading to such consummation. Except as
5 specifically provided herein, Ericsson is not required by this Injunction to furnish or
6 disclose to TCL any technical or other information.

7 **E. Payments, Reports, and Audit**

8 Royalties. In consideration of the license granted herein, TCL shall pay
9 Ericsson:

- 10 1. A release payment of \$16,449, 071 for past unlicensed sales of End User
11 Terminals compliant with 2G, 3G, and/or 4G for the period 2007 through
12 2015, to be paid within thirty (30) days of the Effective Date;
- 13 2. A release payment for past unlicensed sales of End User Terminals compliant
14 with 2G, 3G, and/or 4G for the period 2016 through 2017, to be reported and
15 paid in January and February 2018, as set forth in the “Reports” and
16 “Payment” section herein; and
- 17 3. A running royalty for End User Terminals Sold beginning January 1, 2018
18 according to the following schedule:
 - 19 a. For each such product Sold that is compliant with GSM, GPRS,
20 or EDGE (but not compliant with WCDMA, HSPA, and/or 4G),
21 0.164% of the Net Selling Price if sold in the United States,
22 0.118% of the Net Selling Price if sold in Europe, and 0.090% of
23 the Net Selling Price if sold anywhere in the world other than the
24 United States or Europe;
 - 25 b. For each such product Sold that is compliant with WCDMA or
26 HSPA (but not compliant with 4G), 0.300% of the Net Selling
27 Price if sold in the United States, 0.264% of the Net Selling Price
28 if sold in Europe, and 0.224% of the Net Selling Price if sold

1 anywhere in the world other than the United States or Europe;
2 c. For each such product Sold that is compliant with 4G, 0.450% of
3 the Net Selling Price if sold in the United States, TCL'S
4 PROPOSED LANGUAGE: and 0.314% of the Net Selling Price
5 if sold anywhere in the world other than the United States.

6 Should TCL purchase TCL End User Terminals from a Third Party claiming
7 to be licensed or to have pass-through rights under Ericsson Licensed Patents that
8 confer a license covering the End User Terminal, then TCL will receive credit for
9 that pass through license in the royalty rates applied. In particular, with regard to
10 Ericsson Patents that are essential to the WCDMA Standards ("Ericsson WCDMA
11 Licensed Patents") for the Selling of ASICs, then TCL may have the option of
12 remaining unlicensed by Ericsson under such Ericsson WCDMA Licensed Patents
13 subject to Selling TCL End User Terminals with ASICs that are compliant with the
14 WCDMA Standard. TCL shall then pay a royalty equal to the rate paid for the
15 GSM/GPRS/EDGE and/or LTE Standards as specified in Clause E(3)(a) or Clause
16 E(3)(c) of this Injunction, as applicable, for each such TCL End User Terminal
17 provided that such TCL End User Terminal is also compliant with any of the
18 GSM/GPRS/EDGE Standards and/or LTE Standards while it is qualified as a
19 WCDMA End User Terminal. For the avoidance of doubt, the Parties acknowledge
20 the doctrine of patent exhaustion. Ericsson confirms that upon the Effective Date it
21 has not provided any licenses with pass-through rights under its 4G patent portfolio
22 to a chipset provider, making, using, importing, selling, or otherwise disposing of
23 4G compliant chipsets and components.

24 For the avoidance of doubt, TCL shall only be required to pay the highest
25 prevailing royalty rate under this Injunction for each End User Terminal. For
26 example, the 3G royalty rate for 3G multimode End User Terminal includes the
27 royalty rate also for the 2G part in such End User Terminal.
28

1 This Injunction does not require TCL to pay any royalties for the Sale of any
2 External Modems or Personal Computers that are compliant with 2G, 3G, and/or 4G
3 during the release period (*i.e.*, prior to January 1, 2018) or the License Period. TCL
4 shall have a royalty-free license for all such sales.

5 Reports. TCL Communication Technology Holdings Ltd. shall, on behalf of
6 all TCL Parties, make written reports to Ericsson for each applicable six months
7 (January to June and July to December (each a “Reported Period”)). Such reports
8 shall be provided to Ericsson no later than one (1) calendar month after the first day
9 of each January, and July for each year during the License Period and as of such
10 dates including the last report after the License Period, stating in each such report,
11 the number, Net Selling Price, gross price and other relevant information for each
12 type of TCL Product Sold or otherwise disposed of during the preceding Reported
13 Period, and on which royalty is payable as provided in this Clause E, and shall be at
14 least as detailed as specified in Appendix 1. In addition to the written report, TCL
15 Communication Technology Holdings Ltd. shall, on behalf of all TCL Parties and
16 TCL Affiliates, send such report in Excel-format (.xls format) to Ericsson via email
17 to: ipr.unit@ericsson.com. In the event that no royalty payment is due for a
18 Reported Period, TCL shall so report.

19 Payment. TCL Communication Technology Holdings Ltd. shall, on behalf of
20 all TCL Parties and Affiliates, pay to Ericsson the royalties specified in this
21 Injunction no later than two calendar months after the end of each Reported Period,
22 *i.e.* no later than on February 28th and August 31st for TCL Products Sold during
23 the preceding Reported Period. The payment to Ericsson shall be made to the
24 Ericsson fully owned Affiliate Ericsson AB by wire transfer to the Ericsson bank
25 account as specified in Appendix 2. Such payment to Ericsson AB shall fulfill
26 TCL’s payment obligations under the Injunction.

27 Ericsson shall have the right to assign any rights of Ericsson in relation to any
28 receivables arising under this Injunction to any financial institution or other Third

1 Party and may disclose confidential information related to this Injunction for such
2 purpose. If required, the TCL shall provide acknowledgment over the assignment to
3 the financial institution or other third party. For the avoidance of doubt, any such
4 assignment shall in no way affect the obligations of TCL to Ericsson under this
5 Injunction.

6 Records and Audits. TCL Communication Technology Holdings Ltd., on
7 behalf of TCL and all Affiliates, shall keep records showing the sales or other
8 disposition of products sold or otherwise disposed of in sufficient detail to enable
9 the royalties payable by TCL to Ericsson to be determined, and further, on behalf of
10 TCL and all Affiliates, shall permit its books and records to be examined to the
11 extent necessary to verify that reports and payments are sufficiently made in
12 accordance with the Injunction, such examination to be made by an independent and
13 professional auditor agreed by the Parties, such appointment not to be unreasonably
14 refused, withheld or delayed by TCL, and without a contingency fee arrangement
15 between the to-be-appointed auditor and Ericsson based on the outcome of the audit
16 amount to be collected. This shall at least include all books, records, and accounts as
17 may under internationally recognized accounting practices contain information
18 bearing upon the amount of royalties payable in accordance with this Injunction. If
19 the auditor confirms, based on *e.g.* the books, records, information and accounts
20 which are provided by TCL to the auditor in accordance with TCL's obligations in
21 this Injunction, that TCL has underpaid, TCL shall pay such deficiency amount
22 within thirty days after receipt of invoice from Ericsson. In the event there is an
23 overpayment by TCL, Ericsson shall credit such overpayment, verified by the
24 auditor, against future payments by TCL to Ericsson. For the avoidance of doubt, an
25 audit shall be conducted no more than once every year and only upon ten (10) days
26 prior written notice to TCL. The auditor shall use best efforts to conduct the audit in
27 a manner that limits its interference with TCL's normal business activities and/or
28 operations.

1 The cost of such audit shall be borne by Ericsson, unless such audit
2 determines that TCL has underpaid the royalties due hereunder by the lesser of (a)
3 more than five percent (5%) or (b) two hundred thousand U.S. Dollars (\$200,000),
4 in which case, TCL shall reimburse Ericsson for the reasonable cost of such audit.
5 TCL shall preserve and maintain all such books and records required for audit for a
6 period of five years after the calendar quarter for which the books and records
7 apply.

8 The expiration of this Injunction shall not prejudice the right of Ericsson to
9 conduct a final audit of the records of TCL, provided such audit is initiated no later
10 than one (1) year from the expiration of the Injunction.

11 TCL Communication Technology Holdings Ltd., on behalf of TCL and all
12 Affiliates, shall, at the agreed date for the auditor visit to the TCL premises, provide
13 the auditor with the books and records, as requested by the auditor. The auditor shall
14 have the right to analyze and verify such books and records at TCL's premises. For
15 the avoidance of all doubt, such relevant books, records and accounts shall be
16 treated as TCL confidential information ("TCL Audit Confidential Information")
17 and any TCL Audit Confidential Information shall not be disclosed to Ericsson
18 under any circumstances. Auditor shall use best efforts to observe the rules of on-
19 site audit field work when in TCL premises.

20 Conversion to U.S. Dollars. To the extent that the Net Selling Price for TCL
21 Products Sold is paid to TCL other than in U.S. Dollars then TCL shall convert the
22 portion of the royalty payable to Ericsson from such Net Selling Price into U.S.
23 Dollars at the official exchange rate of the currency of the country from which the
24 Net Selling Price was paid, as quoted by the Financial Times for the last business
25 day of the calendar quarter in which such TCL Products were Sold. If the transfer of
26 or the conversion into U.S. Dollars is not lawful or possible, the payment of such
27 part of the royalties as is necessary shall be made by the deposit thereof, in the
28 currency of the country where the Sale was made on which the royalty was based to

1 the credit and account of Ericsson or its nominee in any commercial bank or trust
2 company of Ericsson's choice located in that country prompt notice of which shall
3 be given by TCL to Ericsson.

4 Late Payments. TCL shall pay interest on any overdue payment required to be
5 made pursuant to this Injunction, commencing on the date such payment becomes
6 due, at an annual rate of twelve percent (12%).

7 Taxes. All payments required by this Injunction are exclusive of taxes,
8 customs, or any other duties, and TCL shall be responsible for the payment of all
9 such taxes, customs or other duties including, but not limited to, all sales, use, rental
10 receipt, personal property or other taxes and their equivalents which may be levied
11 or assessed in connection with this Injunction (excluding only taxes based on
12 Ericsson's net income).

13 Hence, if in accordance with present or future laws, Ericsson shall be obliged
14 to pay, or TCL obliged to deduct from any payment to Ericsson, any amount with
15 respect to any taxes, customs or any other duties levied, for which Ericsson is
16 responsible as stated above, TCL shall increase the payment to Ericsson by an
17 amount to cover such payment by Ericsson or deduction by TCL.

18 **F. Change of Control**

19 In the event that more than 20% of TCL's ownership changes by merger,
20 acquisition, consolidation, transfer, or otherwise, any party may seek to address with
21 the Court whether such change should impact the rights and obligations set forth in
22 this Injunction, or whether modification, termination, or clarification of the
23 Injunction is required regarding the parties' obligations given such change.

24 **G. Transfer of Licensed Patents**

25 Ericsson shall not transfer or assign any of the Licensed Patents during the
26 License Period unless such assignment, including future assignments of any of the
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1 Licensed Patents, is made subject to maintenance of the licenses and rights as
2 granted under this Injunction.

3 **H. No Additional Limitations or Obligations**

4 Nothing contained in this Injunction shall (i) limit the rights which TCL has
5 outside the scope of the license and rights granted hereunder, or restrict the right of
6 TCL to make, Have Made, use, lease, sell, or otherwise dispose of any particular
7 product or products not licensed herein; (ii) obligate any Party to bring or prosecute
8 actions or suits against Third Parties for infringement; (iii) obligate any Party to
9 furnish any manufacturing or technical information or assistance; (iv) obligate any
10 Party to file any patent application, or to secure any patent or patent rights, or to
11 maintain any patent in force, or to provide copies of patent applications to the other
12 Parties, or to disclose any inventions described or claimed in such patent
13 applications; (v) confer any right to use, in advertising, publicity or otherwise, any
14 name, trade name, trademark, or any contraction, abbreviation, or simulation
15 thereof; (vi) obligate Ericsson to make any determination as to the applicability of
16 any patent to any product of TCL; or (v) require Ericsson to assume any
17 responsibilities whatsoever with respect to the manufacture, sale, lease, use,
18 importation, or disposition of any product or part thereof, by TCL or any direct or
19 indirect supplier or vendee or other transferee of TCL.

20 **I. Waiver**

21 Neither this Injunction nor any provision hereof may be waived without the
22 prior written consent of the Party against whom such waiver is asserted. No delay or
23 omission by either Party to exercise any right or power shall impair any such right
24 or power to be construed to be a waiver thereof. Consent by either Party to, or
25 waiver of, a breach by the other Party shall not constitute consent to, waiver of, or
26 excuse for any other different or subsequent breach.

27 **J. Assignment**

1 Neither this Injunction nor any license or rights hereunder, in whole or in
2 part, shall be assignable or otherwise transferable by either Party without the written
3 consent of the other Party. Any attempt to do so in contravention of this Article shall
4 be void and of no force and effect.

5 **K. Notice**

6 All notices, requests, demands, consents, agreements, and other
7 communications required or permitted to be given under this Injunction shall be in
8 writing and shall be: (a) delivered personally; (b) mailed to the Party to whom
9 notice is given, by first class mail, postage prepaid; or (c) sent by facsimile or
10 electronically, properly addressed with a confirmation copy to the Party’s legal
11 department (as appropriate) as follows:

<p>12 ERICSSON 13 Ericsson AB 14 Att: Chief Intellectual Property Officer 15 Torshamnsgatan 23 16 SE-164 80 Stockholm, Sweden 17 Facsimile No: + 46 10 719 11 12</p>	<p>TCL TCL Telecommunication Technology Holdings Limited Att: Chief Legal Counsel 5th Floor, Building 22E 22 Science Park East Hong Kong Science Park Shatin, New Territories Hong Kong Facsimile No: +852-3180-2800</p>
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19 Royalty reports in .xls format shall be emailed to: ipr.unit@ericsson.com.

20 Unless otherwise specifically provided for in this Injunction, such
21 communications shall take effect upon receipt by the addressee, provided such
22 communications shall be deemed to have arrived upon the expiration of seven (7)
23 days from the date of sending in the case of registered or certified mail and on the
24 day of receipt of the sender’s facsimile confirmation of the transmission in the case
25 of telefax.

26 The above addresses and contacts can be changed by providing notice to the
27 other Party in accordance with this Clause.

28 **L. Confidentiality**

1 Except as may otherwise be required by law or as reasonably necessary for
2 performance of this Injunction, each Party shall keep any information, whether of a
3 commercial or technical nature including but not limited to any related reports,
4 furnished by the other Party pursuant to this Injunction confidential. The
5 confidentiality obligations hereunder shall, for ten (10) years, survive the expiration
6 of this Injunction for any reason.

7 **M. Headings**

8 All headings used in this Injunction are inserted for convenience only and are
9 not intended to affect the meaning or interpretation of this Injunction or any clause
10 or provision herein.

11 **RETENTION OF JURISDICTION**

12 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
13 matter for purposes of construction, modification, and enforcement of this Final
14 Judgment and Injunction.

15 **COSTS**

16 The TCL Parties (TCL Communication Technology Holdings, Ltd., TCT
17 Mobile Limited, and TCT Mobile (US) Inc.) are the prevailing parties, and shall
18 recover their costs.

19 The parties' claims and counterclaims regarding Ericsson's '556 and '506
20 patents are hereby dismissed without prejudice because they are moot in light of the
21 equitable relief granted in the release payment. Insofar as they are not addressed in
22 this Final Judgment and Injunction, all other requests for relief set forth in the
23 parties' pleadings are hereby denied.


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Appendix 2 to this Amended Final Judgment and Injunction contains only banking information and shall remain under seal.

The Clerk is directed and ordered to enter this judgment.

Dated: March 9, 2018


HON. JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

