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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

14 WAYMO LLC,
 15 Plaintiff,
 16 v.
 17 UBER TECHNOLOGIES, INC.;
 OTTOMOTTO LLC; OTTO TRUCKING
 18 LLC,
 19 Defendants.

CASE NO. 3:17-cv-00939-WHA

**PLAINTIFF WAYMO LLC'S NOTICE OF
 MOTION AND MOTION FOR A
 PRELIMINARY INJUNCTION**

**REDACTED VERSION OF DOCUMENT
 FILED UNDER SEAL**

Hearing:

Date: April 27, 2017

Time: 8:00 a.m.

Place: 8, 19th Floor

Judge: The Honorable William H. Alsup

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1 TO DEFENDANTS UBER TECHNOLOGIES, INC., OTTOMOTTO LLC, AND OTTO
2 TRUCKING LLC, AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on April 27, 2017 at 8:00 a.m., or as soon thereafter as the
4 matter may be heard, in the courtroom of the Honorable William H. Alsup at the United States
5 District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco,
6 California, Plaintiff Waymo LLC (“Waymo”) shall and hereby does move the Court for a
7 preliminary injunction prohibiting Defendants Uber Technologies, Inc. (“Uber”), Ottomotto LLC,
8 and Otto Trucking LLC (together, “Otto”) (collectively, “Defendants”), from accessing, using,
9 imitating, copying, disclosing, or making available to any person or entity Waymo’s Asserted
10 Trade Secrets, including but not limited to the Asserted Trade Secrets as embodied in LiDAR
11 systems that contain or are designed to operate with the printed circuit board depicted in the
12 schematic attached as Exhibit 1 to the Declaration of William Grossman or any colorable variation
13 thereof. Waymo further requests that Defendants be enjoined from making, using, selling, or
14 offering to sell devices that infringe claims 1 or 13 of United States Patent No. 8,836,922 and
15 claims 1 or 14 of U.S. Patent 9,285,464. Further, Waymo requests that Defendants be compelled
16 to return any and all Waymo confidential information in their possession or control, including the
17 14,000+ documents unlawfully taken from Waymo by Mr. Anthony Levandowski and his
18 colleagues. Alternatively, Waymo requests an expedited trial on all of the claims set out in its
19 First Amended Complaint.

20 This motion is based on this notice of motion and supporting memorandum of points and
21 authorities, the supporting declarations of Pierre-Yves Droz, Michael Janosko, Gary Brown, Tim
22 Willis, Gregory Kintz, Jordan Jaffe, and accompanying exhibits, reply briefing in further support
23 of this motion and supporting declarations and accompanying exhibits, as well as other written or
24 oral argument that Waymo may present to the Court.

25 Should expedited discovery provide good cause, Waymo respectfully reserves the right to
26 expand the scope of its preliminary injunction request.

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DATED: March 10, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Charles K. Verhoeven
Charles K. Verhoeven
Attorneys for Plaintiff Waymo LLC

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1 PRELIMINARY STATEMENT

2 This case is about Uber, Ottomoto, and Otto Trucking trying to gain a crucial edge in the
3 self-driving car market by using trade secrets stolen from Waymo and by infringing Waymo’s
4 patents. Today, dozens of established companies and startups are in a frenzied race, vying to
5 commercialize self-driving technology. This technology will revolutionize the way people and
6 goods move around, generating untold revenues for those companies that successfully master it
7 early. In order to prevent Defendants from misappropriating Waymo’s own technology to cheat
8 and distort competition in this nascent market, Waymo respectfully seeks a preliminary injunction.

9 Waymo is the industry leader in self-driving hardware and software and has been since
10 launching its self-driving car project in 2009. While Waymo’s self-driving cars are a common
11 (and very public) phenomenon on the Bay Area’s roads, the underpinning technology is powered
12 in large part by *non*-public, trade secret technologies developed over thousands of research and
13 development hours by leading engineers, designers and researchers. As part of those efforts,
14 Waymo has developed its own unique, proprietary LiDAR systems tailored to fully autonomous
15 vehicles. LiDAR is a laser-based technology that uses the reflection of laser beams off objects to
16 create a real-time 3D image of the world. Waymo designed its own LiDAR systems to enable a
17 self-driving vehicle to “see” its surroundings and thus detect traffic, pedestrians, and other
18 obstacles that a vehicle must be able to see in order to drive safely. This technology was pivotal in
19 Waymo achieving the world’s first — and only — truly driverless trip on public roads in 2015.

20 Uber, on the other hand, is a late entrant to the self-driving car space. Desperate to catch
21 up with Waymo — by any means necessary — Uber jump-started its self-driving car efforts by
22 using Waymo trade secrets stolen by Anthony Levandowski, a former Waymo employee. In
23 December 2015, just weeks before he resigned without notice, Mr. Levandowski systematically
24 downloaded more than 14,000 confidential Waymo files and then attempted to wipe the forensic
25 evidence. In January 2016, Mr. Levandowski met with senior Uber executives. Shortly thereafter,
26 his new venture Ottomotto LLC was founded. Mr. Levandowski resigned on January 27, 2016,

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1 and his related venture Otto Trucking was officially formed four days later. Otto¹ launched
2 publicly in May 2016, and less than three months later Uber purchased the start-up — which had
3 few assets and no marketable product — for over half a billion dollars.

4 In December 2016, Waymo was inadvertently copied on an email from one of its LiDAR
5 component vendors, which attached machine drawings of what purports to be an Uber LiDAR
6 circuit board. However, the circuit board bears a striking resemblance to Waymo’s own highly
7 confidential design and reflects Waymo trade secrets — including those contained in the more
8 than 14,000 files downloaded by Mr. Levandowski. The Uber LiDAR circuit board also indicates
9 that Otto and Uber’s LiDAR systems infringe Waymo’s LiDAR patents.

10 On February 9, 2017 — through a public records request — Waymo learned that Otto told
11 Nevada state regulators that it is no longer using a third-party LiDAR solution, but rather has
12 “developed in house and/or currently deployed” an “[i]n-house custom built 64-laser” LiDAR
13 system. As is clear from the evidence, the LiDAR technology that Uber and Otto have “developed
14 in house and/or currently deployed” is in fact Waymo’s LiDAR technology. Defendants’
15 statement about “deploying” this technology create an imminent threat that Defendants will use
16 Waymo’s technology to gain a potentially irreversible edge in the new self-driving car market. To
17 prevent Defendants from gaining a crucial market edge through the misuse of Waymo’s
18 technology, Waymo respectfully requests a preliminary injunction.

19 **STATEMENT OF FACTS**

20 **I. WAYMO IS A LEADER IN THE SELF-DRIVING CAR INDUSTRY**

21 Google was the first major U.S. technology firm to dedicate significant resources to the
22 development of self-driving car technology, which promises to make transportation safer, cleaner,
23 more efficient, and more widely available. *See* Declaration of Jordan Jaffe (“Jaffe Decl.”) Exs.
24 22-25. Google initiated its self-driving car project in 2009. *Id.* Before long, Google’s self-
25 driving cars had navigated from the Bay Area to Los Angeles, drove the Pacific Coast Highway,
26 and circled Lake Tahoe, logging over 140,000 miles — a first in robotics research. *Id.* Ex. 22. In

27
28 ¹ Collectively, OttoMotto LLC and Otto Trucking LLC are referred to herein as “Otto.”

1 2014, Google unveiled its own reference vehicle, a two-door fully autonomous car without pedals
2 or a steering wheel. *Id.* Exs. 26-28. A year later, this prototype made the first ever fully self-
3 driving trip in normal traffic on public roads. *Id.* Exs. 29-30.

4 In 2016, Google’s self-driving car program became Waymo.² *Id.* Exs. 24-25, 31-32. To
5 date, Waymo’s fleet of self-driving vehicles has logged over 2.5 million miles in autonomous
6 mode on public roads (equating to over 300 years of human driving experience), and its systems
7 have logged over a billion miles of simulated driving using Waymo’s in-house simulator and
8 Google’s massive data centers. *Id.* Exs. 31-33.



9 Waymo’s early, sustained investment in self-driving car technology has made it a leader
10 not only in performance and safety but also in cost-reduction, a critical element for
11 commercialization. As a result, Waymo is at the forefront of the effort to bring fully self-driving
12 cars to market.

13 **II. WAYMO DEVELOPS ITS OWN LiDAR TECHNOLOGY FOR IMPROVED**
14 **PERFORMANCE AND REDUCED COST**

15 Laser systems known as LiDAR (“Light Detection and Ranging”) provide the “vision” for
16 autonomous vehicles. Declaration of Gregory Kintz (“Kintz Decl.”) ¶ 21. LiDAR uses high-
17 frequency, high-power pulsing lasers to measure distances between a car and external objects. *Id.*
18 After a laser beam is fired, it reflects off the surface of surrounding objects, and data regarding the
19 light that bounces back to designated receivers is recorded. *Id.* Software analyzes the data in
20 order to create a three-dimensional view of the environment, which is used to identify objects,
21 assess their motion and orientation, predict their behavior, and make driving decisions. *Id.*
22 Waymo has invested millions of dollars and thousands of engineering hours to develop its own
23 proprietary LiDAR systems that are high-performing and low-cost — *i.e.*, tailored to advance the
24 commercialization of autonomous vehicles. Declaration of Pierre-Yves Droz (“Droz Decl.”) ¶ 38.
25
26

27 ² Further references to “Waymo” refer to the self-driving car project from its inception in
28 2009 to the present.

1 Waymo’s early efforts to develop its mid-range LiDAR systems³ were directed at selecting
2 a fundamental architecture that could provide the right balance among a variety of priorities: high
3 resolution, compact and durable design, simple software, easy manufacture, and overall
4 robustness. *Id.* ¶¶ 10-12. The Waymo team spent years working on a variety of possibilities —

5 
6 , among others. *Id.* ¶¶ 10-11. Waymo’s experience with these “dead-end” designs helped
7
8 lead Waymo to the architecture now at the heart of its current LiDAR systems. *Id.* ¶ 12.

9
10 In contrast to other publicly available systems, Waymo’s custom and revolutionary new
11 technology permits the use of a single lens to both transmit the laser beams used to scan the
12 environment and receive the light reflected when those beams bounce off surrounding objects. *Id.*
13 ¶¶ 13-16. This single-lens design was (and remains today) vastly different from commercially
14 available LiDAR systems, including those produced by leading suppliers like Velodyne and
15 Quanergy Systems, as well as Waymo’s own previous generations of LiDAR (as described
16 above). Prior systems had used separate lens assemblies — often with multiple lens elements —
17 for the “transmit path” and the “receive path.” *Id.* ¶¶ 14-15. Waymo’s common single lens design
18 was a game-changer over these prior designs. *Id.* ¶ 15. It reduced the size of Waymo’s LiDAR by
19 reducing the number of optical system components; it reduced the complexity of Waymo’s
20 technology by eliminating the need to painstakingly align pairs of transmit and receive lenses
21 (with even a slight mis-calibration of a lens pair affecting the accuracy of the system); and it
22 helped reduce the cost of the system to less than one-tenth of the cost of benchmark LiDAR
23 systems that were on the market just a few years prior — all this, while maintaining high
24 resolution and performance. *Id.* Waymo’s custom LiDAR solutions are thus a significant

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26 ³ Autonomous vehicles must be able to “see” objects at different distances (*e.g.*, an oncoming
27 emergency vehicle 100 meters away, a pedestrian at an intersection 10 meters away, and a curb
28 immediately next to the car). Droz Decl. ¶ 9. Because a LiDAR system optimal for use in closer
ranges will usually not be optimal for use in longer ranges, Waymo has developed mid-range and
long-range LiDAR technology. *Id.* ¶¶ 9-11.

1 differentiating factor over later entrants into the self-driving space, who typically rely on the prior-
2 art separate lens designs, with their attendant cost and manufacturing deficiencies.

3 Waymo replaced the third-party LiDAR systems it had been using for its autonomous
4 vehicle program with its in-house single-lens system [REDACTED] *Id.* ¶ 19.
5 Waymo now has over a dozen patents on various innovations implemented in [REDACTED] including the
6 fundamental single-lens architecture described in U.S. Patent Nos. 8,836,922 and 9,285,464.
7 Kintz Decl. ¶¶ 94-96, 135-137.

8 Waymo's current-generation LiDAR technology, known internally as [REDACTED] reflects
9 additional improvements on the single-lens design that was at the heart of [REDACTED]. Droz Decl. ¶¶
10 20-22. These innovations further optimize the balance among resolution, durability, size,
11 simplicity, ease of manufacture, and cost. *Id.* ¶ 20. As just one example, [REDACTED]

12 [REDACTED]
13 [REDACTED] *Id.* ¶¶ 20-21. Innovations like these are not patented, are not visible to passers-by as
14 Waymo tests its vehicles,⁴ and derive their economic value from being kept secret from
15 competitors. *See, e.g.*, Kintz Decl. ¶¶ 28-31, 36-39, 44-45, 49-50, 54. Thus, these innovations
16 qualify as trade secrets. Concurrently with this Motion, Waymo is submitting a List of Asserted
17 Trade Secrets Pursuant to Cal. Civ. Proc. Code § 2019.210, detailing with particularity 121 of its
18 trade secrets related to its LiDAR technology. Jaffe Decl., Ex. 1.

19 **III. THE UNPATENTED INNOVATIONS UNDERLYING WAYMO'S LiDAR**
20 **TECHNOLOGY ARE HEAVILY GUARDED SECRETS**

21 Unless and until it is patented, Waymo's LiDAR technology is subject to robust measures
22 to protect its secrecy.

23 As a condition of employment, Waymo requires all employees to enter into written
24 agreements to maintain the confidentiality of proprietary and trade secret information. Droz Decl.
25 ¶ 30. As a related ongoing measure, Waymo enforces an employee code of conduct that explains
26 employees' strict obligations to maintain the secrecy of confidential information. *Id.*

27 ⁴ Waymo's LiDAR systems are generally contained within a housing unit that precludes an
28 observer from viewing its internal architecture. *See* '922 Patent at 6:29-36; Jaffe Decl., Ex. [REDACTED]

1 Waymo employs network security measures and access policies that restrict the access and
2 dissemination of confidential and proprietary trade secret information to only teams that are
3 working on projects related to that information. Droz Decl. ¶ 32. For example, Google employees
4 working on projects with no relation to Waymo or self-driving cars have never had access to
5 Waymo’s confidential and proprietary technical information stored on the secure SVN repository.
6 *Id.*; Declaration of Michael Janosko (“Janosko Decl.”) ¶¶ 23-25.

7 Waymo also employs reasonable measures to monitor and secure the networks and devices
8 that employees use to access confidential and proprietary information. Droz Decl. ¶ 33; Janosko
9 Decl. ¶¶ 4-25. Networks hosting such information are encrypted and require passwords for access.
10 *Id.* ¶¶ 13-16, 25. Devices (e.g. computers, tablets, and cell phones) provided to employees are also
11 encrypted, password protected, and subject to other security measures. *Id.* ¶¶ 5-10. Certain
12 Waymo databases storing confidential and proprietary information, such as the SVN database
13 (Waymo’s confidential design server), are available on a need to know basis only and require
14 special software to access. *Id.* ¶ 25; Droz Decl. ¶ 32.

15 Waymo takes reasonable measures to mark confidential and proprietary information, such
16 as documents and other materials, with visible legends designating them as such. *Id.* ¶ 34;
17 Declaration of Tim Willis (“Willis Decl.”) ¶ 4. Waymo employs reasonable efforts to secure
18 physical facilities by restricting access and employing locks, cameras, guards, and other security
19 measures. Droz Decl. ¶ 35; Janosko Decl. ¶ 22.

20 Waymo also strictly requires all consultants, vendors, and manufacturers to sign
21 confidentiality agreements that require that they undertake reasonable efforts to maintain, and not
22 to disclose, any confidential or trade secret information. Willis Decl. ¶¶ 4-5. Each outside vendor
23 or manufacturer that has received Waymo’s LiDAR-related confidential and proprietary trade
24 secret information has executed at least one written non-disclosure agreement. *Id.*

25 **IV. UBER IS LATE TO ENTER THE SELF-DRIVING CAR MARKET**

26 Uber came to view its entry into the self-driving car space as an “existential” imperative
27 when it saw Waymo’s successful self-driving car efforts. Jaffe Decl. Ex. 35. But whereas Waymo
28 began developing its self-driving cars in 2009, Uber’s first serious foray into automation was not

1 until six years later when — in February 2015 — Uber announced a partnership with Carnegie
2 Mellon University. *Id.* Exs. 36-37. According to public reports of the partnership, Uber hired at
3 least 40 CMU faculty members, researchers, and technicians, including the former head of CMU’s
4 National Robotics Engineering Center, to help jump-start an Uber vehicle automation program.
5 *Id.*

6 By early 2016, Uber had invested significant sums in the team from Carnegie Mellon, but
7 the research and development process was slow. *Id.* Ex. 37. And with respect to LiDAR
8 technology, Uber’s program appeared to rely solely on a third-party, off-the-shelf LiDAR system
9 manufactured by Velodyne Inc. (the HDL-64E). *Compare id.* Ex. 38 (product page for
10 Velodyne’s HDL-64E with photo) *with* Ex. 39 (August 2016 article with photo of Uber LiDAR).

11 Uber’s stalled program did not make any significant advances toward designing or
12 manufacturing its own LiDAR technology for improved performance or lower cost. *Id.* Ex. 37.
13 As of mid-2016, Uber remained years behind in the race to develop vehicle automation technology
14 suitable for the mass market.

15 **V. WHILE AT WAYMO, ANTHONY LEVANDOWSKI AND OTHER WAYMO**
16 **EMPLOYEES SECRETLY DOWNLOAD THOUSANDS OF CONFIDENTIAL**
17 **FILES BEFORE LEAVING FOR OTTO**

18 Unbeknownst to Waymo at the time, by late 2015, Waymo manager Anthony
19 Levandowski was secretly preparing to launch a competing vehicle automation venture — a
20 company named “280 Systems,” which later would become Otto. In November 2015, an Internet
21 domain name was registered for 280 Systems. Jaffe Decl. Ex. 40. On December 3, 2015, Mr.
22 Levandowski searched for instructions on how to access the SVN database, Waymo’s highly
23 confidential design server. Declaration of Gary Brown (“Brown Decl.”) ¶ 15. This server holds
24 detailed technical information related to Waymo’s LiDAR systems, including the blueprints for its
25 key hardware components, and is accessible only on a need-to-know basis. Janosko Decl. ¶¶ 23-
26 25; Droz Decl. ¶ 32.

26 On December 11, 2015, Mr. Levandowski – who had a total of three Waymo-issued
27 computers – installed special software on a Waymo laptop to access the design server. Brown
28 Decl. ¶ 16. Until shortly before installing the software, Mr. Levandowski had used this particular

1 laptop only a handful of times in the previous eight months. *Id.* ¶ 13. On that same day,
2 December 11, 2015, Mr. Levandowski then downloaded over 14,000 proprietary files from that
3 server. *Id.* ¶ 17. Mr. Levandowski’s download included 9.7 GBs of sensitive, secret, and valuable
4 internal Waymo information. *Id.*; Janosko Decl. ¶¶ 23-25. 2 GBs of the download related to
5 Waymo’s LiDAR technology. *Id.* ¶ 24. Among the downloaded documents were confidential
6 specifications for each version of every generation of Waymo’s LiDAR circuit boards. Droz Decl.
7 ¶ 24; Kintz Decl. ¶ 25. On December 14, Mr. Levandowski attached a removable media device
8 (an SD Card) to the laptop containing the downloaded files for approximately eight hours. Brown
9 Decl. ¶ 18.

10 On December 18, seven days after Mr. Levandowski completed his download of
11 confidential Waymo information and four days after he removed the SD Card, he reformatted the
12 laptop, attempting to erase any evidence of what happened to the downloaded files. *Id.* ¶ 19.
13 After wiping the laptop clean, Mr. Levandowski used the reformatted laptop for a few minutes and
14 then never used it again. *Id.* ¶¶ 19-20.

15 On January 4, 2016, Mr. Levandowski used his Waymo credentials and security clearances
16 to download additional confidential Waymo documents to a personal device (as opposed to
17 viewing documents online, as is typical for Waymo employees). *Id.* ¶ 22. These downloaded
18 materials included at least five highly sensitive internal presentations containing proprietary
19 technical details regarding the manufacture, assembly, calibration, and testing of Waymo’s LiDAR
20 sensors. *Id.*; Droz Decl. ¶¶ 25-26 & Exs. A-B, D-F. At around the same time, Mr. Levandowski
21 confided in some Waymo colleagues that he planned to “replicate” Waymo’s technology at a
22 Waymo competitor. *Id.* ¶ 27.

23 In mid-January, Mr. Levandowski was spotted at Uber’s headquarters in San Francisco,
24 attending meetings with high-level Uber executives. *Id.* ¶ 29. On January 15, Mr. Levandowski’s
25 venture 280 Systems — which became OttoMotto LLC — was officially formed (though it
26 remained in stealth mode for several months). Jaffe Decl. Ex. 41. On January 27, Mr.
27 Levandowski resigned from Waymo without notice. And on February 1, Mr. Levandowski’s
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1 venture Otto Trucking was officially formed (also remaining in stealth mode for several months).

2 *Id.* Ex. 42.

3 Other Waymo employees would later download additional confidential documents
4 immediately prior to resigning from Waymo and joining Otto. Brown Decl. ¶¶ 24-29; Willis Decl.
5 ¶¶ 6-11.

6 **VI. UBER ACQUIRES OTTO, AFTER ONLY SIX MONTHS OF OFFICIAL**
7 **EXISTENCE, FOR OVER HALF A BILLION DOLLARS**

8 In July 2016, after just six months of existence, Uber inked a deal to acquire Otto. Jaffe
9 Decl. Exs. 43-45. As *Forbes* reported at the time, “one of the keys to this acquisition[] could be
10 the LIDAR system that was developed in-house at Otto.” *Id.* Ex. 44.

11 Otto’s purchase price was reported as \$680 million, the payment of which is reportedly
12 contingent on Otto meeting various technical milestones and — ultimately — getting self-driving
13 Uber cars deployed. *Id.* Ex. 46. In recognition of the central role of Otto’s technology within
14 Uber, Uber named Otto co-founder Mr. Levandowski as its vice president in charge of Uber’s self-
15 driving car project. *Id.* Ex. 47. Uber rechristened Otto’s existing San Francisco office as Uber’s
16 new self-driving research and development center. *Id.* Ex. 43.

17 The sudden resignations from Waymo, Otto’s quick path from formation to public launch
18 with Mr. Levandowski at the helm, and Uber’s near-immediate acquisition of Otto for more than
19 half a billion dollars all raised suspicions at Waymo regarding possible misuse of its intellectual
20 property. Accordingly, in the summer of 2016, Waymo began to investigate the events
21 surrounding the departure of Waymo employees for Otto and ultimately discovered Mr.
22 Levandowski’s 14,000-document download, his efforts to hide the disposition of those documents,
23 and the downloading of other Waymo confidential materials by Mr. Levandowski and other
24 former Waymo employees. Brown Decl. ¶¶ 12-29.

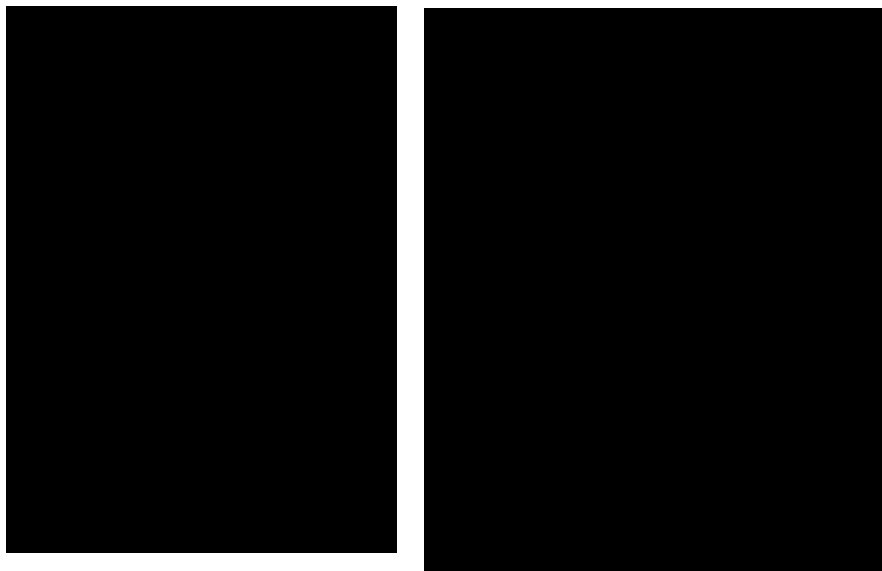
25 Though Waymo found evidence that Mr. Levandowski and others had downloaded
26 Waymo’s confidential materials in a suspicious manner, Waymo did not yet have evidence that its
27 secret intellectual property was actually being acquired for use by another party, much less used
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1 for any imminent product launch in the self-driving car market. Such evidence, however, would
2 soon be forthcoming.

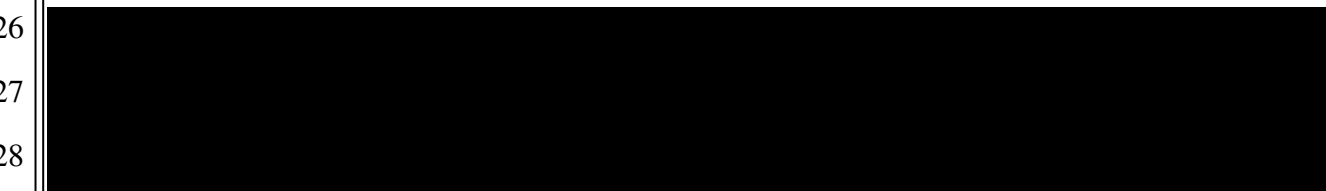
3 **VII. WAYMO OBTAINS PROOF THAT DEFENDANTS ARE ACTUALLY USING ITS**
4 **INTELLECTUAL PROPERTY**

5 One of Waymo’s LiDAR component vendors is [REDACTED] On
6 December 13, 2016, a Waymo employee received an email from a [REDACTED] employee, entitled “RE:
7 OTTO FILES.” Declaration of William Grossman (“Grossman Decl.”), Ex. 1. The email’s
8 recipients included the email alias Uber@[REDACTED].com — seemingly indicating that the
9 thread was a discussion among members of [REDACTED] “Uber” team. *Id.* Attached to the email
10 was a machine drawing of what purported to be an Otto printed circuit board (the “Replicated
11 Board”) that bore a striking resemblance to — and shared several unique characteristics with —
12 Waymo’s highly confidential current-generation [REDACTED] circuit boards, the design of
13 which had been among the more than 14,000 files downloaded by Mr. Levandowski before his
14 resignation. *Id.*, Kintz Decl. ¶¶ 25, 47.

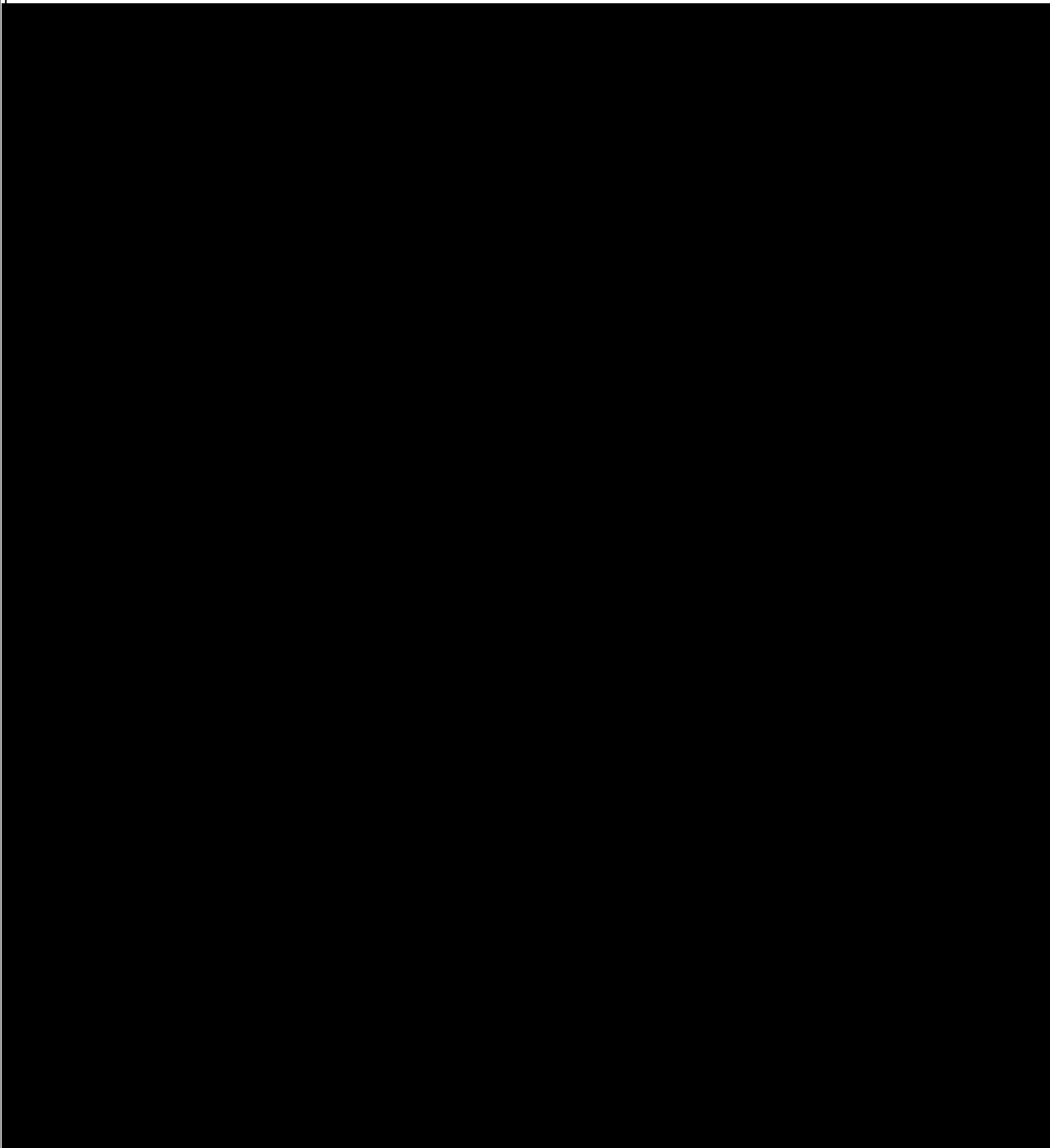
15 Indeed, in all key respects, the Replicated Board is indistinguishable from Board [REDACTED]’ in
16 Waymo’s current-generation [REDACTED] LiDAR systems:



25 *Id.* ¶¶ 26, 32-34, 40-42, 46-48, 51-52, 55.



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VIII. WAYMO OBTAINS EVIDENCE THAT DEFENDANTS ARE USING WAYMO'S INTELLECTUAL PROPERTY FOR AN IMMINENT PRODUCT LAUNCH

On February 3, 2017, aware that Defendants were pre-testing or testing self-driving cars in Nevada, Waymo filed a public records request with the Nevada Governor's Office of Economic Development and Department of Motor Vehicles. Jaffe Decl. Ex. 51. Among the documents that Waymo received on February 9 in response to that request was a submission in which Otto

1 represented that it had “developed in house and/or currently deployed” an “[i]n-house custom built
2 64-laser” LiDAR system. *Id.* Ex. 52 at 59-60. In other words, Defendants were using Waymo’s
3 intellectual property for an imminent product launch — an actual “deploy[ment]” of its stolen
4 LiDAR technology in the self-driving market.

5 Since Waymo filed its Complaint in this action, Forbes published the following statement
6 by Mr. Levandowski: “How did we get to where we are? We understand what not to do and
7 where not to waste time because we have experience from having tried it before and it didn’t
8 work. *And we have experience in trying things that do work, so we are just doing the things*
9 *that do work and focus on that.*” Jaffe Decl. Ex. 53. Defendants are now deploying technology
10 that replicates “the things that do work” — *i.e.*, Waymo’s intellectual property.

11 **ARGUMENT**

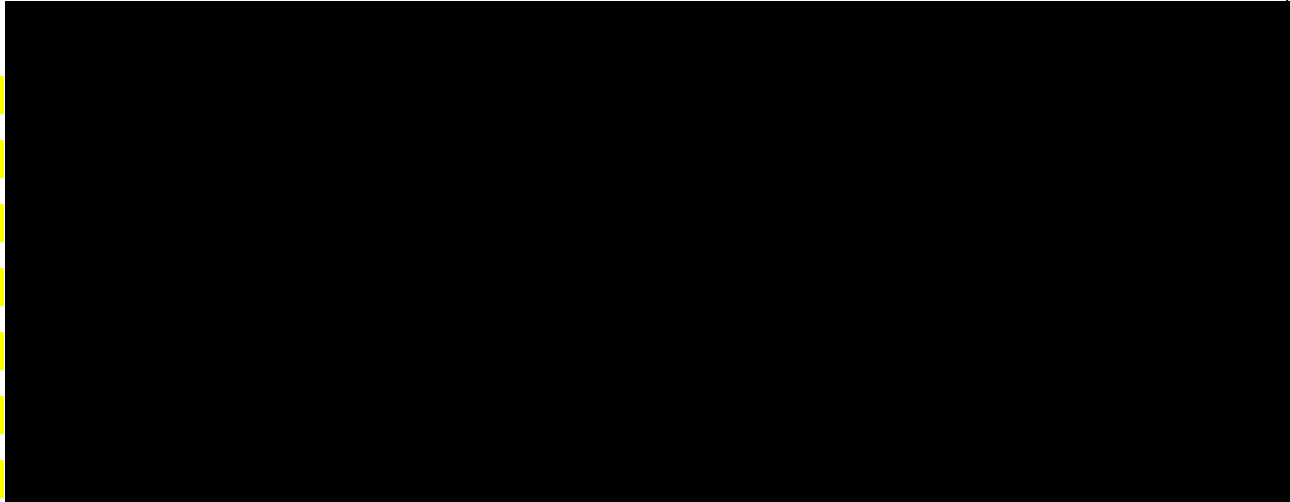
12 To obtain a preliminary injunction, Waymo “must establish that it is likely to succeed on
13 the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief, that the
14 balance of equities tips in its favor, and that an injunction is in the public interest.” *AstraZeneca*
15 *LP v. Apotex Corp.*, 633 F.3d 1042, 1049 (Fed. Cir. 2010) (alterations omitted) (quoting *Winter v.*
16 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). As explained below and in the
17 accompanying declarations, Defendants’ theft of Waymo’s trade secrets and infringement of
18 Waymo’s patents easily meets this standard. Accordingly, Waymo is entitled to a preliminary
19 injunction.

20 **I. WAYMO IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS**

21 **A. Waymo Is Likely To Succeed On Its Trade Secret Claims**

22 In order to prevail on its claims under the California Uniform Trade Secrets Act and the
23 Defend Trade Secrets Act, Waymo need only show that Defendants acquired Waymo’s trade
24 secrets with reason to know that the trade secrets were acquired by improper means. Cal. Civ.
25 Code § 3426; 18 U.S.C. § 1836. There can be no viable dispute on this point: Mr. Levandowski
26 improperly downloaded thousands of Waymo’s confidential and proprietary LiDAR documents
27 while he was setting up his competing venture and meeting with Uber executives. Statement of
28 Facts § V, *supra*.

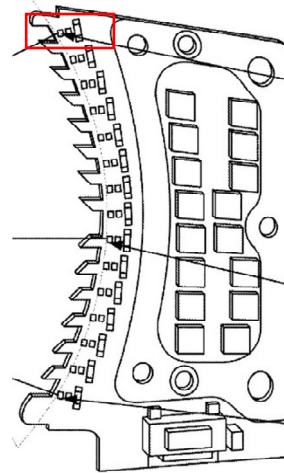
1 But it is not just Defendants' *acquisition* of Waymo's trade secrets that makes a
2 preliminary injunction particularly warranted here; it is also Defendants' *use* of those trade secrets
3 in a system that is apparently now fully developed and being deployed (or about to be deployed) in
4 self-driving vehicles.



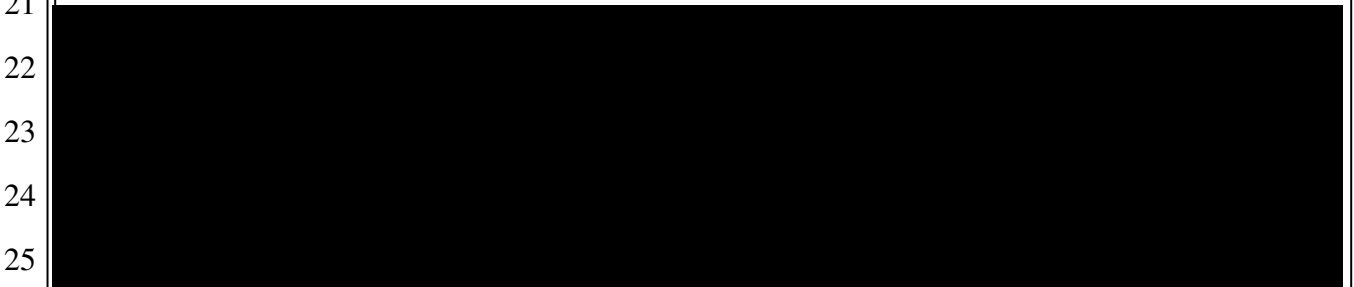
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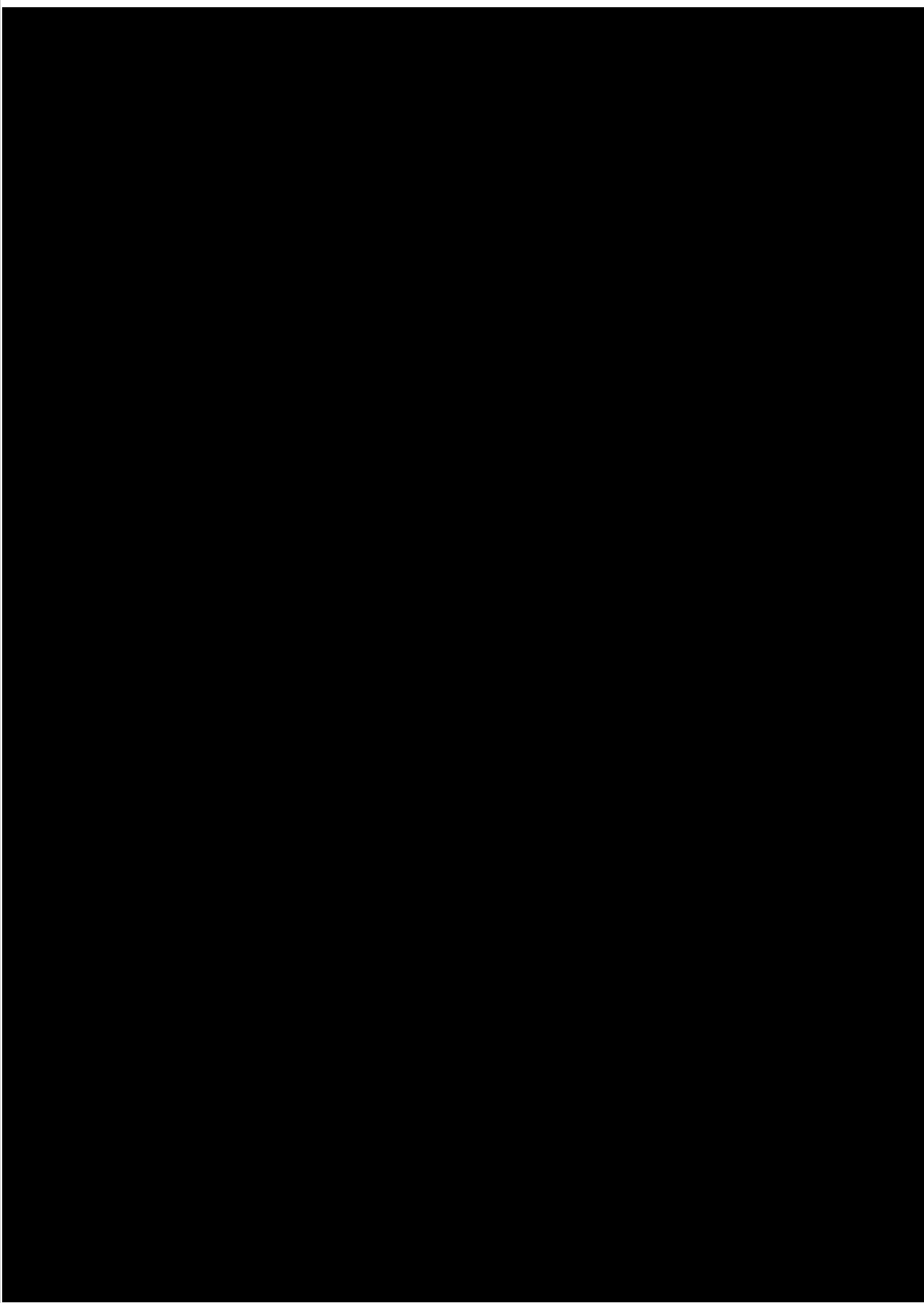
'922 Fig. 4



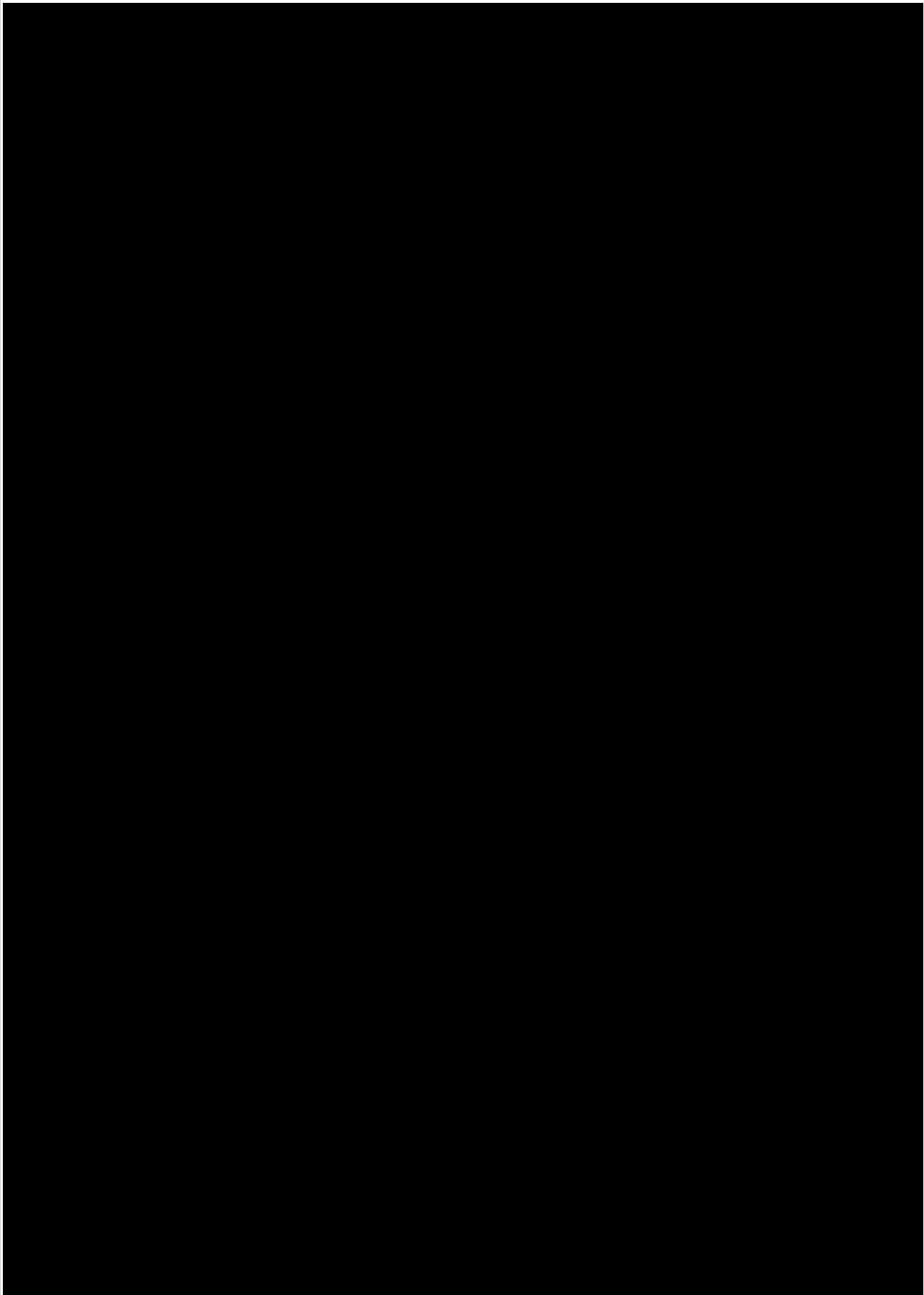
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27 ⁵ All of the trade secrets discussed in this Section are examples from Waymo's List of
28 Asserted Trade Secrets Pursuant to Cal. Civ. Proc. Code § 2019.210, filed herewith as Exhibit 1 to
the Declaration of Jordan Jaffe. This List details, with particularity, 121 Waymo trade secrets.

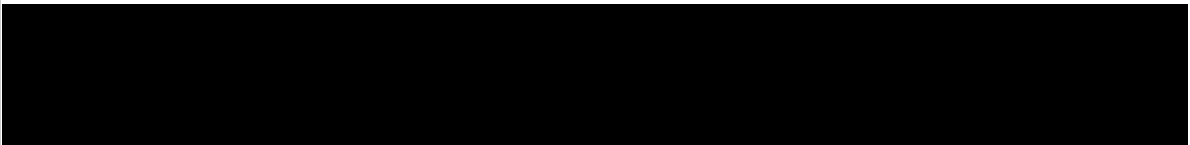
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B. Waymo Is Likely To Succeed On Its Patent Infringement Claims

While Defendants’ misappropriation of these trade secrets is apparent from the Replicated Board itself, the board is one part of a larger LiDAR device and thus interacts with a host of other components — including other boards, lenses, and transmit and receive components — in order to function properly. In this context, the Replicated Board as part of the entire LiDAR device “deployed” by Defendants reads on the fundamental common lens design patents granted to Waymo.

Waymo developed the [REDACTED] specifically to interface with components in the design covered by U.S. Patent Nos. 8,836,922 (“the ’922 Patent”) and 9,285,464 (“the ’464 Patent”), and Mr. Levandowski downloaded confidential documentation related to all aspects of that design. Mr. Levandowski and his team are well aware of these specific patents. He and some of his colleagues were named inventors on them when they developed the pioneering common lens design at Waymo.

The ’922 Patent teaches an optical configuration that uses a common lens to both transmit and receive light beams, rather than using separate lenses for transmission and receipt. ’922 Patent at 4:5-11; Kintz Decl. ¶ 56. One of [REDACTED] innovations was this common-lens design to both transmit and receive the collection of laser beams used to scan the surrounding environment. Droz Decl. ¶ 13.

Traditionally, a LiDAR system used lens assemblies with multiple elements, such as 3 lens elements (a triplet lens) for transmit side and another triplet lens for the receive side. *Id.* ¶ 14. But this approach was not practical in a LiDAR system meant for self-driving cars because the size and cost of the system would be very large due to the complexity of manufacturing numerous complex lens elements. *Id.* Thus, one of Waymo’s key insights was that using one lens for both transmitting and receiving is simpler and allows for a smaller and less expensive LiDAR unit. *Id.* ¶ 15. Using one lens better ensures that focal lengths are equal for both sending laser beams out

1 (transmit side) and for receiving reflected light back (receive side) so that the transmit and receive
 2 arrays can match perfectly. *Id.*

3 While offering important savings in cost, performance, and complexity, a common-lens
 4 design poses problems that must be solved. *Id.* For example, using a single lens makes the focal
 5 plane curved like a bowl rather than flat like a pancake, but Waymo developed a curved transmit
 6 board to echo the curved focal plane. *Id.* Waymo’s ingenuity enabled it to get the small-size and
 7 low-cost benefits of a single-lens system.

8 According to the ‘922 patent on Waymo’s single-lens design, the common lens is mounted
 9 to a housing. ‘922 Patent at 1:50-51; Kintz Decl. ¶ [REDACTED] Within the housing, a transmit block emits
 10 light to the lens via an exit aperture in a wall that includes a reflective surface. ‘922 Patent at
 11 3:61-67, 4:37-39; Kintz Decl. ¶ [REDACTED] The wall shields the light from the transmit block from
 12 blinding the detectors, but a narrow exit aperture is necessary to allow the light to exit the lens into
 13 the surrounding environment, as required for the LiDAR device to function. When that light
 14 returns after reflecting off an object in the surrounding environment, it returns into the housing in
 15 the same direction that it exited, *i.e.*, it travels towards the wall containing the exit aperture.
 16 Because the surface of the wall that faces the lens is reflective, the wall is able to direct the
 17 returning object-reflected light towards the receive block, which measures the time-of-flight of the
 18 laser beam to calculate object distance. ‘922 Patent at 4:26-39; Kintz Decl. ¶ [REDACTED]

19 The architecture of the Replicated Board (including its curved edge and other design
 20 elements) shows that the Accused LiDAR Device is designed to interface with a common-lens
 21 design that would meet every element of at least claim 1 of the ‘922 Patent. *Id.* ¶¶ [REDACTED] In brief,
 22 Waymo is likely to show infringement of at least ‘922 claim 1, which claims a LiDAR device
 23 comprising:

<p>24 a lens mounted to a housing, wherein the 25 housing is configured to rotate about an axis 26 and has an interior space that includes a 27 transmit block, a receive block, a transmit path, 28 and a receive path, wherein the transmit block has an exit aperture in a wall that comprises a reflective surface, wherein the receive block has an entrance aperture, wherein the transmit path</p>	<p>This claim limitation describes the optical configuration claimed by the patent — a configuration by which a common lens handles transmitting and receiving, and by which the light travels through an exit aperture in a wall, which wall doubles as a reflector for returning object-reflected light. Given the layout of the Replicated Board [REDACTED]</p>
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<p>1 extends from the exit aperture to the lens, and 2 wherein the receive path extends from the lens 3 to the entrance aperture via the reflective 4 surface;</p>	<p>[REDACTED]</p> <p>Further, other characteristics of the Replicated Board indicate that it is designed to project its laser beams towards the claimed exit aperture within a wall with a reflective surface. Kintz Decl. ¶¶ [REDACTED]</p>
<p>6 a plurality of light sources in the transmit block, 7 wherein the plurality of light sources are 8 configured to emit a plurality of light beams 9 through the exit aperture in a plurality of 10 different directions, the light beams comprising 11 light having wavelengths in a wavelength 12 range;</p>	<p>The Accused LiDAR Device’s Replicated Board contains [REDACTED]</p> <p>[REDACTED] <i>Id.</i> ¶¶ [REDACTED]</p>
<p>10 a plurality of detectors in the receive block, 11 wherein the plurality of detectors are configured 12 to detect light having wavelengths in the 13 wavelength range; and</p>	<p>The Replicated Board necessarily corresponds to a plurality of detectors in the receive block of the Accused LiDAR Device, because if there were only one detector, the Accused LiDAR Device would be unable to emit 6.4 million beams per second, as claimed by Defendants. The detectors will be configured to detect the light emitted by [REDACTED] because otherwise the LiDAR device could not function. <i>Id.</i> ¶¶ [REDACTED]</p>
<p>16 wherein the lens is configured to receive the 17 light beams via the transmit path, collimate the 18 light beams for transmission into an 19 environment of the LIDAR device, collect light 20 comprising light from one or more of the 21 collimated light beams reflected by one or more 22 objects in the environment of the LIDAR 23 device, and focus the collected light onto the 24 detectors via the receive path.</p>	<p>As described above, the Replicated Board is part of the Accused LiDAR Device, which uses a common lens to receive the outgoing light on the transmit path and to collect returning light that has reflected off external objects. Furthermore, all LiDAR transmit lenses collimate light for transmission, and all LiDAR receive lenses focus collected light onto detectors; the common lens necessarily follows these basic properties. <i>Id.</i> ¶ [REDACTED]</p>

23 A more detailed infringement analysis for claim 1 and 13 is set forth in the attached
 24 Declaration of Gregory Kintz, an expert in optical designs who has designed LiDAR and other
 25 laser systems for the U.S. Navy and Lockheed Martin. *See id.* at ¶¶ [REDACTED].

26 Mr. Kintz further explains how the ‘922 claims are valid, since their configuration of
 27 elements — including the single lens, housing with transmit/receive blocks, and transmit path —
 28 “was a departure from the LiDAR devices in existence at the time. The invention made advances

1 in size, cost, and complexity, and would not have been obvious to a person of ordinary skill in the
 2 art. There are LiDAR systems in prior art, but none achieve the benefits enabled by the elegant
 3 configuration disclosed by the '922 Patent.” *Id.* at ¶¶ [REDACTED]

4 The '464 Patent is a continuation of the '922 Patent and shares its specification and
 5 figures. Claim 1 of the '464 Patent is identical to claim 1 of the '922 Patent except that the first
 6 element is slightly worded differently:

<p>7 '922 Patent 8 a lens mounted to a housing, wherein the 9 housing is configured to rotate about an axis 10 and has an interior space that includes a 11 transmit block, a receive block, a transmit path, 12 and a receive path, wherein the transmit block 13 has an exit aperture in a wall that comprises a 14 reflective surface, wherein the receive block has an entrance aperture, wherein the transmit path extends from the exit aperture to the lens, and wherein the receive path extends from the lens to the entrance aperture via the reflective surface;</p>	<p>'464 Patent a lens mounted to a housing, wherein the housing is configured to rotate about an axis and has an interior space that includes a transmit block, a receive block, a transmit path, and a receive path, wherein the transmit block has an exit aperture, wherein the receive block has an entrance aperture, wherein the transmit path extends from the exit aperture to the lens, wherein the receive path extends from the lens to the entrance aperture, and wherein the transmit path at least partially overlaps the receive path in the interior space between the transmit block and the receive block;</p>
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 16 While both patents claim a common-lens system, the '464 Patent does not specifically
 17 require that the exit aperture exist within a wall that doubles as a mirror on the receive path.
 18 Rather, it requires that the transmit path overlap the receive path within the shared interior space.
 19 Thus, while the '464 Patent is slightly different than the '922 Patent, the Accused LIDAR Device
 20 infringes claims 1 and 14 of the '464 Patent for the same reasons it infringes claims 1 and 13 of
 21 the '922 Patent. Kintz Decl. at ¶¶ 101-30. Mr. Kintz has also explained that the '464 patent is
 22 valid. *Id.* at ¶ 131-34.

23 * * *

24 While Defendants' misappropriation of certain trade secrets and infringement of certain
 25 patents is apparent from Waymo's inadvertent receipt of the Replicated Board and the limited
 26 public information that Waymo has been able to obtain, Waymo strongly suspects that this is only
 27 the tip of the proverbial iceberg. Expedited discovery is likely to show that Defendants have
 28 misappropriated additional trade secrets and infringed additional Waymo patents. Thus, as

1 detailed in Waymo’s Motion for Expedited Discovery (filed herewith), Waymo respectfully
2 requests that expedited discovery be granted, and Waymo reserves the right to amend this Motion
3 should expedited discovery provide further details about additional trade secret misappropriation
4 and patent infringement.

5 **II. WAYMO WILL SUFFER IRREPARABLE HARM WITHOUT AN INJUNCTION**

6 Numerous courts in this District have held that threatened or continued use of another
7 party’s trade secrets generally creates irreparable harm. *See, e.g., Gallagher Benefits Servs., Inc.*
8 *v. De La Torre*, No. C 07-5495 VRW, 2007 WL 4106821, at *5 (N.D. Cal. Nov. 16, 2007) (“In
9 general, the imminent use of a trade secret constitutes irreparable harm.”); *aff’d in relevant part*,
10 283 F. App’x 543 (9th Cir. 2008); *see also Western Directories, Inc. v. Golden Guide Directories,*
11 *Inc.*, No. C 09-1625 CW, 2009 WL 1625945, *6 (N.D. Cal. June 8, 2009) (“The Court presumes
12 that Plaintiff will suffer irreparable harm if its proprietary information is misappropriated.”); *Vinyl*
13 *Interactive, LLC v. Guarino*, No. C 09-0987 CW, 2009 WL 1228695, at *8 (N.D. Cal. May 1,
14 2009) (same); *Teleflora, LLC v. Florists’ Transworld Delivery, Inc.*, No. C 03-05858 JW, 2004
15 WL 1844847, at *6 (N.D. Cal. Aug. 18, 2004) (“Use or disclosure of trade secrets is an irreparable
16 harm which will support the granting of a preliminary injunction.”) Courts in other districts have
17 reached similar conclusions. *See, e.g., Advanced Instructional Sys., Inc. v. Competentum USA,*
18 *Ltd.*, No. 1:15CV858, 2015 WL 7575925, at *4 (M.D. N.C. Nov. 25, 2015) (“In most instances,
19 courts presume irreparable harm when a trade secret has been misappropriated.”); *Pixon Imaging,*
20 *Inc. v. Empower Techs. Corp.*, No. 11-CV-1093-JM MDD, 2011 WL 3739529, at *6 (S.D. Cal.
21 Aug. 24, 2011) (“[A]n intention to make imminent or continued use of a trade secret or to
22 disclose it to a competitor will almost always show irreparable harm.”)

23 The usual rule applies forcefully in this case. Specifically, Defendants’ continued use of
24 Waymo’s trade secrets to unfairly compete with Waymo in the nascent self-driving car industry
25 would cause irreparable harm to Waymo. After all, this nascent industry includes several fierce
26 competitors who are racing to become the first to offer a full suite of commercial self-driving
27 services and thus gain a critical first-mover advantage. *See, e.g.,* Adrienne LaFrance, “The High-
28 Stakes Race to Rid the World of Human Drivers,” *The Atlantic* (Dec. 1, 2015) (noting that (“[t]he

1 race to bring driverless cars to the masses is only just beginning, but already it is a fight for the
2 ages Aspects of this race evoke several pivotal moments in technological history: the
3 construction of railroads, the dawn of electric light, the birth of the automobile, the beginning of
4 aviation.”) It naturally follows that Waymo would be irreparably harmed if Defendants were
5 allowed to use Waymo’s own trade secrets to gain a critical edge in this race. *Lamb-Weston, Inc.*
6 *v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991) (“An injunction in a trade secret case
7 seeks to protect the secrecy of misappropriated information and to eliminate any unfair head start
8 the defendant may have gained.”); *Netlist Inc v. Diablo Techs. Inc.*, No. 13-CV-05962-YGR, 2015
9 WL 153724, at *8 (N.D. Cal. Jan. 12, 2015) (“The Court finds that the showing of a head-start
10 advantage to Diablo, based upon an improper use of Netlist’s technology, is sufficient to establish
11 that any harm to Netlist would not be remedied by money damages alone.”). Uber’s own CEO
12 Travis Kalanick recently explained the irreparable effects that will result from whichever company
13 wins the race to first commercialize self-driving cars, stating: “If we are not tied for first, then the
14 person who is in first, or the entity that’s in first, then rolls out a ride-sharing network that is far
15 cheaper or far higher-quality than Uber’s, then Uber is no longer a thing.” Biz Carson, “Uber
16 CEO Travis Kalanick on Uber’s Bet on Self-Driving Cars: ‘I Can’t Be Wrong’”, *Business Insider*
17 (Aug. 18, 2016). Jaffe Decl. Ex. 35.

18 Waymo would also be irreparably harmed because Defendants’ continued use of Waymo’s
19 trade secrets is likely to result in further *disclosure* of those trade secrets. As explained in
20 Statement of Facts Section VIII, *supra*, Defendants have already begun making regulatory filings
21 that reference Waymo’s trade secrets. If Defendants continue using Waymo’s trade secrets in
22 their self-driving car endeavors, there would likely be additional filings disclosing other aspects of
23 Waymo’s trade secrets. Furthermore, Defendants’ disrespectful treatment of Waymo’s trade
24 secrets — as shown by Defendants’ willingness to capitalize on their outright theft — leaves little
25 doubt that Defendants would not hesitate to throw Waymo’s trade secrets open to the general
26 public if Defendants decided that it suited their purposes. Improper disclosure of trade secrets is,
27 of course, a classic irreparable injury because such disclosure destroys the trade secret altogether.

28

1 *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919 (D. Nev. 2006) (“Public disclosure of a trade
2 secret destroys the information’s status as a trade secret.”)

3 A similar analysis applies to Defendants’ patent infringement, which — if left unchecked
4 — will inflict many of the same irreparable harms as Defendants’ trade secret misappropriation.
5 For example, like Defendants’ continued trade secret misappropriation, Defendants’ continued
6 patent infringement would give Defendants an unfair advantage in the high-stakes race to offer
7 commercial self-driving services. Were Waymo to lose the race to successfully commercialize
8 this nascent field, the harm would be irreparable. This Court reached a similar conclusion last Fall
9 in the *Illumina, Inc. v. Qiagen N.V.* case, finding irreparable harm where “[t]he market for DNA
10 sequencing in clinical laboratories is expected to grow substantially in the near future Now,
11 as the doors to the market have swung open, Qiagen seeks to usurp Illumina’s position in that
12 market with pirated technology.” *Illumina, Inc. v. Qiagen, N.V.*, -- F.Supp. 3d --, 2016 WL
13 4719269, at *10 (N.D. Cal. Sept. 9, 2016) (Alsup, J.) Other courts have likewise found irreparable
14 harm when a defendant's patent infringement allows the defendant to gain a competitive edge in a
15 nascent or fast-growing market. *See Visto Corp. v. Sproqit Techs., Inc.*, 413 F. Supp. 2d 1073,
16 1092 (N.D. Cal. 2006) (finding irreparable harm when patentee and infringer were direct
17 competitors fighting for market share in a rapidly changing market); *Transocean Offshore*
18 *Deepwater Drilling, Inc. v. GlobalSantaFe Corp.*, No. H-03-2910, 2006 WL 3813778, at *4 (S.D.
19 Tex. Dec. 27, 2006) (finding irreparable harm because the infringer would steal sales and market
20 share in a “developing market”); *Power-One, Inc. v. Artesyn Tech., Inc.*, No. 2:05-CV-463, 2008
21 WL 1746636, at *1 n.1 (E.D. Tex. Apr. 11, 2008) (finding irreparable harm where the patentee
22 and infringer were direct competitors, and the relevant market had been “recently created”).

23 To be sure, when a patentee claims irreparable harm from lost sales or market share in an
24 existing market, it must show “‘some connection’ between the patented features and the demand
25 for [the infringing] products.” *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 642 (Fed. Cir.
26 2015) (“*Apple IV*”). This is often called the “causal nexus” requirement. Here, there is a clear
27 causal nexus between Defendants’ patent infringement and the harm resulting from Defendants’
28 unfair head-start in the race to commercialize self-driving cars. This is because the Waymo

1 patents at issue in this motion — the '922 Patent and the '464 Patent — cover core technical
2 features that enable a LiDAR system to meet the challenges of the self-driving environment. More
3 specifically, these patents cover a single-lens configuration that offers great advantages in size,
4 cost, and complexity compared with prior LiDAR configurations. It would be much more difficult
5 to successfully launch a self-driving car without this patented technology. *See, e.g.*, Kintz Decl. ¶¶
6 39, 44. Indeed, as explained above, the single-lens architecture reduces costs by an order of
7 magnitude over prior art multi-lens architectures. Statement of Facts § II, *supra*. Thus, adopting
8 this infringing architecture gives Defendants a huge unearned cost advantage in their efforts to win
9 the race to launch a commercially-viable self-driving car.

10 **III. THE BALANCE OF HARDSHIPS STRONGLY FAVORS AN INJUNCTION**

11 The balance of hardships strongly favors a preliminary injunction, on both the trade secret
12 claim and the patent claims. On the trade secret claim, it should be noted that Waymo is not
13 seeking to enjoin Defendants from pursuing self-driving car projects *in toto*. Waymo merely asks
14 that Defendants not be allowed to use Waymo's trade secrets in doing so. Given that Defendants
15 have no right to use Waymo's trade secrets at all, they would suffer no legally-cognizable hardship
16 from being forced to abandon Waymo's trade secrets in their self-driving endeavors. Conversely,
17 Waymo would be greatly harmed if its own trade secrets were used against it in the race to
18 commercialize self-driving technology. Thus, the balance of hardships strongly favors Waymo.
19 *See, e.g., TMX Funding, Inc. v. Impero Techs., Inc.*, No. C 10-00202 JF (PVT), 2010 WL
20 1028254, at *8 (N.D. Cal. Mar. 18, 2010) ("The injunctive relief sought by TMX is specific to the
21 use of proprietary information belonging to TMX Accordingly, the balance of hardships
22 weighs in favor of TMX.") *Farmers Ins. Exch. v. Steele Ins. Agency, Inc.*, No. 2:13-CV-00784-
23 MCE, 2013 WL 2151553, at *14 (E.D. Cal. May 16, 2013) ("Courts have found that the balance
24 of hardships tips in favor of a plaintiff seeking an injunction which would 'merely prohibit the
25 defendants from misappropriating the trade secrets of the plaintiff.'") (brackets deleted).

26 The balance of hardships also favors Waymo on the patent infringement claims. While
27 Defendants may face some hardship in being enjoined from using the accused instrumentalities,
28 "[o]ne who elects to build a business on a product found to infringe cannot be heard to complain if

1 an injunction against continuing infringement destroys the business so elected.” *Robert Bosch,*
2 *LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1156 (Fed. Cir. 2011) (quoting *Windsurfing Int’l, Inc. v.*
3 *AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986)). This Court reached a similar conclusion in
4 *Illumina*. -- F.Supp. 3d --, 2016 WL 4719269 at *11 (“Qiagen contends . . . that it would be
5 unable to recoup its investment in the development and marketing of the GeneReader. But that is
6 the price of its election ‘to build a business on a product found to infringe....’ The balance of
7 hardships weighs in favor of an injunction.”) (quoting *Windsurfing*, 782 F.2d at 1003 n.12).

8 Moreover, Defendants would be free to use non-infringing alternative components in their
9 business, such as the same third-party LiDAR systems that they had previously used before
10 switching to Waymo’s patented technology. Merely reverting back to a non-infringing alternative
11 is not a significant hardship under the law. *Douglas Dynamics, LLC v. Buyers Prod. Co.*, 717
12 F.3d 1336, 1345 (Fed. Cir. 2013) (“If indeed Buyers had a non-infringing alternative which it
13 could easily deliver to the market, then the balance of hardships would suggest that Buyers should
14 halt infringement and pursue a lawful course of market conduct.”)

15 On the other side of the ledger, Waymo would suffer severe hardship from being forced “to
16 compete against its own patented invention.” *Robert Bosch*, 659 F.3d at 1156. This is particularly
17 true given the new market that Waymo is racing to commercialize. Thus, the balance of hardships
18 strongly favors Waymo.

19 **IV. THE PUBLIC INTEREST SUPPORTS AN INJUNCTION**

20 The public interest also weighs in favor of enjoining Defendants, on both the trade secret
21 claim and the patent claims. First, there is a strong public interest in vindicating both trade secret
22 and patent rights — a public interest that far outweighs any public interest in *allowing* products
23 that infringe on trade secret or patent rights. See *Vinyl Interactive*, 2009 WL 1228695 at *8 (“the
24 third prong of the requested injunction, which simply enjoins Eddy from using Vinyl’s proprietary
25 information, would further the public’s interest in prohibiting unfair competition.”); *Douglas*
26 *Dynamics*, 717 F.3d at 1346 (holding that the public has a “general interest in the judicial
27 protection of property rights in inventive technology” that “outweighs any interest the public has
28 in . . . infringing products.”); *Illumina*, -- F.Supp. 3d --, 2016 WL 4719269 at *11 (“[A]bsent

1 any other relevant concerns...the public is best served by enforcing patents that are likely valid and
2 infringed.”) (quoting *Abbott Labs. v. Andrx Pharm., Inc.*, 452 F.3d 1331, 1348 (Fed. Cir. 2006)).

3 The public does have an interest in competition and consumer choice. But a preliminary
4 injunction against Defendants would hardly stifle competition or create a monopoly in the nascent
5 self-driving car market. Besides Waymo and Defendants, such corporate heavyweights as Apple,
6 Tesla, Ford, General Motors, and Nvidia are all pursuing self-driving car technology. *See* Jaffe
7 Decl. Exs. 54-56. And, of course, Defendants themselves would be free to continue pursuing this
8 technology as well, as long as they do not use Waymo’s trade secrets or patents to do so. Thus, an
9 injunction would be squarely in the public interest and would not disserve the goals of healthy and
10 vigorous competition.

11 CONCLUSION

12 For the foregoing reasons, Waymo respectfully requests that the Court enjoin Defendants,
13 together with their officers, agents, attorneys, and those persons who are in active concert or
14 participation with Defendants, from accessing, using, imitating, copying, disclosing, or making
15 available to any person or entity Waymo’s Asserted Trade Secrets, including but not limited to the
16 Asserted Trade Secrets as embodied in LiDAR systems that contain or are designed to operate
17 with the printed circuit board depicted in the schematic attached as Exhibit 1 to the Declaration of
18 William Grossman or any colorable variation thereof. Waymo further requests that Defendants be
19 enjoined from making, using, selling, or offering to sell devices that infringe claims 1 or 13 of
20 United States Patent No. 8,836,922 and claims 1 or 14 of U.S. Patent 9,285,464. Waymo also
21 requests that Defendants be compelled to return any and all Waymo confidential information in
22 their possession or control, including the 14,000+ documents unlawfully taken from Waymo by
23 Mr. Anthony Levandowski and his colleagues. Alternatively, Waymo requests an expedited trial
24 on all of the claims set out in its Amended Complaint. Should expedited discovery provide good
25 cause, Waymo respectfully reserves the right to expand the scope of its preliminary injunction
26 request.

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