In *3M Company v. Avery Dennison Corporation*, the Federal Circuit reversed a district court's finding of no jurisdiction in similar circumstances. 673 F.3d at 1378–81. The *3M* patentee reached out to the declaratory judgment plaintiff and "expressly stated that a specific product, the Diamond Grade DG 3, 'may infringe'" the [patents in the case] and that 'licenses are available.'" *Id.* at 1379. The DJ plaintiff rejected the license offer. *Id.* In response, the patentee responded that it had "analyzed the [identified product] with regard to the [patents in the case]" and would provide claim charts. *Id.* The district court dismissed the case after finding that these discussions were not enough to create declaratory judgment jurisdiction. *Id.* at 1376. The Federal Circuit reversed, however, holding that through its conduct, the patentee had "effectively charged" the DJ plaintiff with infringement. *Id.* at 1379.

Qualcomm similarly effectively charged Apple with infringing the Nine Patents. Qualcomm prepared a list of declared SEPs specifically for Apple and told Apple that its products needed a license to all of Qualcomm's SEPs. *See* Apple's First Amended Complaint, ECF No. 83, at ¶¶ 137–39. By declaring a particular patent as essential to ETSI standards, Qualcomm affirmatively stated that it believes that the disclosed patent "may be or may become ESSENTIAL" in relation to an identified standard. Ex. G (IPR Information Statement and Licensing Declaration). This representation applies to each patent identified in the March 18, 2016 List, and Qualcomm has given no indication that this belief that a particular patent "may be or may become ESSENTIAL" has changed.[7]

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[7] Tellingly, Qualcomm never admits or argues that the Nine Patents are not actually essential. Moreover, Qualcomm has not given Apple a covenant-not-to-sue that would permanently moot any claim for infringement, pursuant to *Super Sack Manufacturing Corp. v. Chase Packaging Corp.*, 57 F.3d 1054, 1058–59 (Fed. Cir. 1995) (finding that patentee's promise not to assert its patents against alleged infringer resolved declaratory judgment counterclaims seeking