

1 Christopher D. Banys (CA State Bar: 230038)
Richard C. Lin (CA State Bar: 209233)
2 Daniel M. Shafer (CA State Bar: 244839)
cdb@banyspc.com
3 rcl@banyspc.com
dms@banyspc.com
4 BANYS, P.C.
1032 Elwell Court, Suite 100
5 Palo Alto, CA 94303
6 Telephone: (650) 308-8505
Facsimile: (650) 353-2202
7

8 Attorneys for Plaintiff,
ADAPTIX. INC.

9
10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
11

12 ADAPTIX, INC.

13 Plaintiff,

14 v.

15 APPLE, INC., and CELLCO
16 PARTNERSHIP *d/b/a* VERIZON
WIRELESS

17 Defendants.

Case No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

18 **ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

19 This is an action for patent infringement in which plaintiff, ADAPTIX, Inc. (“ADAPTIX”),
20 complains against defendants, Apple, Inc. (“Apple”) and Cellco Partnership d/b/a Verizon Wireless
21 (“Verizon”) (collectively “the Defendants”), as follows:
22

23 **THE PARTIES**

24 1. ADAPTIX is a Delaware corporation with its principal place of business at 4100
25 Midway Road, Suite 2010, Carrollton, Texas 75007.
26

27 2. On information and belief, Apple is a California corporation with a principal place of
28 business at 1 Infinite Loop, Cupertino, California 95014.

1 ADAPTIX request for leave to supplement its Infringement Contentions in the aforesaid -1774 Case
2 (the “September 20th Hearing”).

3 11. On information and belief, counsel-of-record for APPLE and Verizon, among others,
4 were either present at the September 20th Hearing or on the telephone during the Hearing.

5 12. Towards the end of the September 20th Hearing, ADAPTIX’s counsel stated to the
6 Court, in words or effect, that ADAPTIX is in the process of supplementing its Infringement
7 Contentions in at least the first-filed case to add as accused products APPLE’s just-newly-publicly-
8 released-that-day products known as the Apple iPhone 5s and Apple iPhone 5c. At the time of the
9 filing of this Complaint, ADAPTIX had not yet received its September 25th electronic Transcript
10 Order request for the September 20th Hearing.

11 13. On September 26, 2013, ADAPTIX sent separate emails to APPLE’s and Verizon’s
12 counsel that stated the following: “As a follow-up to our concerns made apparent by our verbal
13 comments during last Friday’s (September 20, 2013) hearing in front of Judge Grewal, Adaptix is in
14 the process of supplementing its Infringement Contentions to add the Apple iPhone 5s and Apple
15 iPhone 5c. We understand that these products were publicly released ... on or about September 20,
16 2013. Please advise whether you will oppose Adaptix’s supplementation, and if so, please provide a
17 time you will be available to meet and confer regarding the supplementation.”

18 14. On information and belief, APPLE and Verizon were aware at least as early as
19 September 20, 2013 that ADAPTIX had formed a belief that the Apple iPhone 5s and Apple iPhone 5c
20 devices infringed one or more claims of the Suit Patents, and that ADAPTIX was seeking
21 supplementation of its Infringement Contentions in at least the first-filed cases to add as accused
22 products APPLE’s just-newly-publicly-released-that-day products known as the Apple iPhone 5s and
23 Apple iPhone 5c.

24 **COUNT I**
25 **(INFRINGEMENT OF U.S. PATENT NO. 7,454,212)**

26 15. ADAPTIX is the owner by assignment of United States patent number 7,454,212,
27 entitled “OFDMA WITH ADAPTIVE SUBCARRIER-CLUSTER CONFIGURATION AND
28 SELECTIVE LOADING” (“the ‘212 Patent”) with ownership of all substantial rights in the ‘212

1 Patent, including the right to exclude others and to sue and recover damages for the past and future
2 infringement thereof. A true and correct copy of the '212 Patent is attached as Exhibit A.

3 16. On information and belief, Apple is directly and/or indirectly infringing at least one or
4 more claims of the '212 Patent in this judicial district and elsewhere in California and the United
5 States by, among other things, making, using, offering for sale, selling and/or importing computerized
6 devices, including without limitation the iPhone 5s and iPhone 5c, which, at a minimum, directly
7 infringe the '212 Patent. Apple is thereby liable for infringement of the '212 Patent pursuant to 35
8 U.S.C. § 271. Apple's infringement has caused damage to ADAPTIX, which infringement by the
9 Defendants and damage to ADAPTIX will continue unless and until Apple is enjoined.
10

11 17. On information and belief, Verizon is directly and/or indirectly infringing at least one
12 or more claims of the '212 Patent in this judicial district and elsewhere in California and the United
13 States by, among other things, making, using, offering for sale, selling and/or importing computerized
14 devices, including without limitation the iPhone 5s and iPhone 5c which, at a minimum, directly
15 infringe the '212 Patent. Verizon is thereby liable for infringement of the '212 Patent pursuant to 35
16 U.S.C. § 271. Verizon's infringement has caused damage to ADAPTIX, which infringement and
17 damage will continue unless and until Verizon is enjoined.
18

19 18. Defendants directly contribute to and induce infringement through supplying infringing
20 systems and components to customers. Defendants' customers who purchase systems and components
21 thereof and operate such systems and components thereof in accordance with defendants' instructions
22 directly infringe one or more claims of the '212 Patent in violation of 35 U.S.C. § 271.

23 19. The infringement by each defendant identified in this Count has caused irreparable
24 injury to ADAPTIX for which remedies at law are inadequate. Considering the balance of the
25 hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and
26 such a remedy would be in the public interest.
27
28

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 6,947,748)

20. ADAPTIX is the owner by assignment of United States patent number 6,947,748 entitled “OFDMA WITH ADAPTIVE SUBCARRIER-CLUSTER CONFIGURATION AND SELECTIVE LOADING” (“the ‘748 patent”) with ownership of all substantial rights in the ‘748 patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the ‘748 patent is attached as Exhibit B.

21. On information and belief, Apple is directly and/or indirectly infringing at least one or more claims of the ‘748 Patent in this judicial district and elsewhere in California and the United States by, among other things, making, using, offering for sale, selling and/or importing computerized communications devices, including without limitation the iPhone 5s and iPhone 5c, which, at a minimum, directly infringe the ‘748 Patent. Apple is thereby liable for infringement of the ‘748 Patent pursuant to 35 U.S.C. § 271. Apple’s infringement has caused damage to ADAPTIX, which infringement by Defendants and damage to ADAPTIX will continue unless and until Apple is enjoined.

22. On information and belief, Verizon is directly and/or indirectly infringing at least one or more claims of the ‘748 patent in this judicial district and elsewhere in California and the United States by, among other things, making, using, offering for sale, selling and/or importing computerized devices, including without limitation the iPhone 5s and iPhone 5c which, at a minimum, directly infringe the ‘748 patent. Verizon is thereby liable for infringement of the ‘748 patent pursuant to 35 U.S.C. § 271. Verizon’s infringement has caused damage to ADAPTIX, which infringement and damage will continue unless and until Verizon is enjoined.

23. Defendants directly contribute to and induce infringement through supplying infringing systems and components to customers. Defendants’ customers who purchase systems and components thereof and operate such systems and components thereof in accordance with Defendants’ instructions directly infringe one or more claims of the ‘748 patent in violation of 35 U.S.C. § 271.

24. The infringement by each defendant identified in this Count has caused irreparable injury to ADAPTIX for which remedies at law are inadequate. Considering the balance of the

1 hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and
2 such a remedy would be in the public interest.

3 **PRAYER FOR RELIEF**

4 Wherefore, ADAPTIX respectfully requests that this Court enter:

5 A. Judgment in favor of ADAPTIX that each defendant has infringed the '212 and '748
6 patents as aforesaid;

7 B. A permanent injunction enjoining each defendant, its officers, directors, agents,
8 servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active
9 concert or privity therewith from direct, indirect and/or joint infringement of the '212 and '748 patents
10 pursuant to 35 U.S.C. § 283;

11 C. Judgment and order requiring each defendant to pay ADAPTIX its damages with pre-
12 and post-judgment interest thereon pursuant to 35 U.S.C. § 284; and

13 D. Any and all further relief to which the Court may deem ADAPTIX entitled.

14 **DEMAND FOR JURY TRIAL**

15 ADAPTIX requests a trial by jury on all issues so triable by right pursuant to Fed. R. Civ. P.
16 38.

17
18 Date: September 26, 2013

ADAPTIX, INC.

19
20 By: /s/ Daniel M. Shafer
Christopher D. Banys (CA State Bar: 230038)
21 Richard C. Lin (CA State Bar: 209233)
Daniel M. Shafer (CA State Bar: 244839)
22 cdb@banyspc.com
rcl@banyspc.com
23 dms@banyspc.com
BANYS, P.C.
1032 Elwell Court, Suite 100
24 Palo Alto, CA 94303
Telephone: (650) 308-8505
25 Facsimile: (650) 353-2202

26
27 Paul J. Hayes
28 Steven E. Lipman

HAYES MESSINA GILMAN & HAYES, LLC
300 Brickstone Square, 9th Floor
Andover, MA 01810
phayes@hayesmessina.com
slipman@hayesmessina.com
Telephone: (978) 809-3850
Facsimile: (978) 809-3869

**ATTORNEYS FOR THE PLAINTIFF
ADAPTIX, INC.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28