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12 Attorneys for Plaintiff,
 13 ADAPTIX. INC.

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 ADAPTIX, INC.

17 Plaintiff,

18 v.

19 APPLE, INC., and AT&T MOBILITY
 20 LLC

21 Defendants.

Case No. _____

**COMPLAINT FOR PATENT
 INFRINGEMENT**

JURY TRIAL DEMANDED

22 **ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

23 This is an action for patent infringement in which plaintiff, ADAPTIX, Inc. (“ADAPTIX”),
 24 complains against defendants, Apple, Inc. (“Apple”) and AT&T Mobility LLC (“AT&T”)
 25 (collectively “the Defendants”), as follows:

26 **THE PARTIES**

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

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

1 11. The second-filed case alleged infringement by those defendants of the Suit Patents, the
2 same two patents alleged against APPLE and AT&T in this Complaint, as set forth in detail *infra.*;

3 12. On information and belief, APPLE and AT&T were again made aware of each of the
4 Suit Patents at least as early as the January 4, 2013 filing date of the second-filed case.

5 13. On or about March 28, 2013, motions to transfer the first- and second-filed cases to this
6 District filed by APPLE and AT&T were granted. Eventually, the cases ended up in this Division and
7 were given Case Nos. 5:13-cv-1774 PSG and 5:13-cv-2023 PSG, respectfully, and assigned to the
8 Honorable Paul S. Grewal.

9 14. On or about September 20, 2013, an in-person and telephone hearing was held before
10 Judge Grewal in a case related to the first- and second-filed cases, i.e., Case No. 5:13-cv-1774,
11 concerning an ADAPTIX request for leave to supplement its Infringement Contentions in the
12 aforesaid -1774 Case (the “September 20th Hearing”).

13 15. On information and belief, counsel-of-record for APPLE and AT&T, among others,
14 were either present at the September 20th Hearing or on the telephone during the Hearing.

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

21 17. On September 26, 2013, ADAPTIX sent separate emails to APPLE and AT&T counsel
22 that stated the following: “As a follow-up to our concerns made apparent by our verbal comments
23 during last Friday’s (September 20, 2013) hearing in front of Judge Grewal, Adaptix is in the process
24 of supplementing its Infringement Contentions to add the Apple iPhone 5s and Apple iPhone 5c. We
25 understand that these products were publicly released ... on or about September 20, 2013. Please
26 advise whether you will oppose Adaptix’s supplementation, and if so, please provide a time you will
27 be available to meet and confer regarding the supplementation.”

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

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

9
10 **COUNT II**
(INFRINGEMENT OF U.S. PATENT NO. 6,947,748)

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

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

24 26. On information and belief, AT&T is directly and/or indirectly infringing at least one or
25 more claims of the '748 patent in this judicial district and elsewhere in California and the United
26 States by, among other things, making, using, offering for sale, selling and/or importing computerized
27 devices, including without limitation the iPhone 5s and iPhone 5c which, at a minimum, directly
28 infringe the '748 patent. AT&T is thereby liable for infringement of the '748 patent pursuant to 35

1 U.S.C. § 271. AT&T's infringement has caused damage to ADAPTIX, which infringement and
2 damage will continue unless and until AT&T is enjoined.

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

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

11 **PRAYER FOR RELIEF**

12 Wherefore, ADAPTIX respectfully requests that this Court enter:

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

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

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

21 D. Any and all further relief to which the Court may deem ADAPTIX entitled.
22

23 **DEMAND FOR JURY TRIAL**

24 ADAPTIX requests a trial by jury on all issues so triable by right pursuant to Fed. R. Civ. P.
25 38.

1 Date: September 26, 2013

ADAPTIX, INC.

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