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8 *Attorneys for Plaintiff Eclipse IP LLC*

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

11 ECLIPSE IP LLC, a Florida Limited) Case No. 2:13-cv-06650-SJO-FFM
12 Liability Company,)
13 Plaintiff,) **FIRST AMENDED COMPLAINT**
14) **FOR PATENT INFRINGEMENT**
15 v.) **TRIAL BY JURY DEMANDED**
16 AIR CANADA, a Canadian)
17 Corporation,)
18 Defendant.)
19)

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1 Plaintiff Eclipse IP LLC (“Eclipse”), by and through counsel, complains
2 against Air Canada as follows:

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4 **NATURE OF LAWSUIT**

5 1. This is a suit for patent infringement arising under the patent laws of
6 the United States, Title 35 of the United States Code § 1 *et seq.* This Court has
7 exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C.
8 §§ 1331 and 1338(a).
9

10 **PARTIES AND PATENTS**

11 2. Eclipse is a company organized under the laws of Florida and having a
12 principal place of business at 115 NW 17th St, Delray Beach, Florida 33444.
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14 3. Eclipse owns all right, title, and interest in and has standing to sue for
15 infringement of United States Patent No. 7,119,716 ("the '716 patent"), entitled
16 "Response systems and methods for notification systems for modifying future
17 notifications" (Exhibit A) and United States Patent No. 7,504,966 ("the '966
18 patent"), entitled "Response systems and methods for notification systems for
19 modifying future notifications" (Exhibit B) (collectively, "the Eclipse Patents").
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22 4. On information and belief, Air Canada is a corporation existing under
23 the laws of Canada.
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25 5. On information and belief, Air Canada does regular business in this
26 Judicial District and conduct leading to Air Canada’s acts of infringement has
27 occurred in this Judicial District.
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JURISDICTION AND VENUE

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2 6. This Court has personal jurisdiction over Air Canada because it has
3 engaged in continuous and systematic business in California; upon information and
4 belief, derives substantial revenues from commercial activities in California; and,
5 upon information and belief, is operating and/or supporting products or services that
6 fall within one or more claims of Eclipse's patents in this District.
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9 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and
10 28 U.S.C. § 1400(a) at least because the claim arises in this Judicial District, Air
11 Canada may be found and transacts business in this Judicial District, and injuries
12 suffered by Plaintiff took place in this Judicial District. Air Canada is subject to the
13 general and specific personal jurisdiction of this Court at least because of its
14 contacts with the State of California.
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FACTUAL BACKGROUND

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18 8. On information and belief, Air Canada is an airline that offers domestic
19 and international flights from cities across the United States, including many from
20 Los Angeles.
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22 9. On information and belief, Air Canada creates and maintains a
23 timetable for every scheduled Air Canada flight, which includes a scheduled
24 departure time and a scheduled arrival time for every Air Canada flight.
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26 10. On information and belief, Air Canada, either on its own or through its
27 agents, monitors the location of its various airplanes, and based at least in part on
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1 the location of a given airplane, determines whether a particular flight will depart
2 from its scheduled departure city and/or whether a particular flight will arrive at its
3 scheduled arrival city earlier than the scheduled time, at the scheduled time, or later
4 than the scheduled time.
5

6 11. On information and belief, Air Canada also uses the location of its
7 various planes to determine whether or not to cancel flights.
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9 12. On information and belief, Air Canada uses, makes, deploys,
10 advertises, and/or operates at lease one system and/or service (the “Air Canada
11 System”) that can automatically notify one or more individuals about the status of a
12 flight.
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14 13. On information and belief, as one non-limiting example, the Air
15 Canada System can automatically notify one or more individuals whether a flight is
16 delayed, or cancelled a set number of hours before the flight is scheduled to depart.
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18 14. On information and belief, as another non-limiting example, the Air
19 Canada System can automatically notify one or more individuals that the departure
20 of a scheduled flight will be delayed.
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22 15. On information and belief, these notifications can occur through at least
23 one communications method, including but not limited to through email and SMS
24 messages, and that the one or more individuals can select or modify which of the at
25 least one communications method should be used.
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AIR CANADA’S ACTS OF PATENT INFRINGEMENT

16. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 15 above as if fully set forth herein.

17. Air Canada owns, uses, deploys, and/or operates at least one computerized service and/or system, the Air Canada System, for notifying one or more individuals regarding flight departure and/or arrival times.

18. Based at least in part on the location of an Air Canada airplane, the Air Canada System provides electronic notifications to one or more individuals regarding flight departure and/or arrival times.

CLAIMS FOR RELIEF

COUNT 1

(Patent Infringement of U.S. Patent No. 7,119,716
Under 35 U.S.C. § 271 et seq.)

19. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 18 above as if fully set forth herein.

20. On October 10, 2006, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,119,716, entitled "Response systems and methods for notification systems for modifying future notifications." Eclipse is the owner of the entire right, title and interest in and to the '716 patent. A true and correct copy of the '716 patent is attached as Exhibit A to this Complaint.

21. The '716 patent is valid and enforceable.

1 22. Eclipse is informed and believes, and thereupon alleges, that: (1) Air
2 Canada has infringed and continues to infringe one or more claims of the '716
3 patent, literally and/or under the doctrine of equivalents and additionally and/or in
4 the alternative, (2) Air Canada has actively induced and continues to actively induce
5 and/or has contributed to and continues to contribute to the infringement of one or
6 more claims of the '716 patent in this District and elsewhere in the United States.
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9 23. On information and belief, Air Canada has directly infringed and
10 continues to directly infringe one or more claims of the '716 patent, in violation of
11 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or
12 selling a method for communications in connection with a computer-based
13 notification system to, for example: store contact data in computer memory; provide
14 electronic notification communications to a personal communications device based
15 on the contact data; receive changes to the contact data; and modify if and/or how
16 future notification communications will be sent.
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19 24. Additionally and/or in the alternative, on information and belief, Air
20 Canada has actively induced and continues to actively induce and/or has contributed
21 to and continues to contribute to the infringement of one or more claims of the '716
22 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other things,
23 actively, knowingly, and intentionally encouraging, aiding, and/or abetting others to
24 make, use, offer for sale, and/or sell portions of a computer-based notification
25 system that infringes one or more claims of the '716 patent, with the specific intent
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1 to encourage infringement and with the knowledge that the making, using, offering
2 to sell, and/or selling of such a system would constitute infringement.

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4 25. On information and belief, Air Canada has had knowledge of the '716
5 patent at least as early as September 17, 2013, the day that it was served with a copy
6 of the Complaint, which set forth factual allegations of Air Canada's infringement.
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8 *See* Dkt. No. 9. Additionally, at least as early as September 17, 2013, Air Canada
9 knew or should have known that its continued offering, use, deployment, and/or
10 operation of the at least one flight notification service and/or system and its
11 continued support of others, if those parties perform any limitations of one or more
12 of the claims of the '716 patent, would induce direct infringement of the '716 patent,
13 as it had actual knowledge of the patent and factual allegations of its infringement
14 thereof.
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17 26. On information and belief, Air Canada has not changed or modified its
18 infringing behavior since September 17, 2013.

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20 27. Air Canada's aforesaid infringing activity has directly and proximately
21 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or
22 licensing revenues it would have made but for the infringements. Unless enjoined,
23 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse
24 for which there is no adequate remedy at law.
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COUNT 2
(Patent Infringement of U.S. Patent No. 7,504,966
Under 35 U.S.C. § 271 et seq.)

28. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 27 above as if fully set forth herein.

29. On March 17, 2009, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,504,966, entitled "Response systems and methods for notification systems for modifying future notifications." Eclipse is the owner of the entire right, title and interest in and to the '966 patent. A true and correct copy of the '966 patent is attached as Exhibit B to this Complaint.

30. The '966 patent is valid and enforceable.

31. Eclipse is informed and believes, and thereupon alleges, that: (1) Air Canada has infringed and continues to infringe one or more claims of the '966 patent, literally and/or under the doctrine of equivalents and additionally and/or in the alternative, (2) Air Canada has actively induced and continues to actively induce and/or has contributed to and continues to contribute to the infringement of one or more claims of the '966 patent in this District and elsewhere in the United States.

32. On information and belief, Air Canada has directly infringed and continues to directly infringe one or more claims of the '966 patent, in violation of 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or selling a method for communications in connection with a computer-based notification system to, for example: monitor the location of a plane; send a

1 notification communication to a personal communications device when appropriate;
2 receive a response from the personal communications device; and based upon the
3 response, initiate one or more future notifications to one or more different
4 individuals.
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6 33. Additionally and/or in the alternative, on information and belief, Air
7 Canada has actively induced and continues to actively induce and/or has contributed
8 to and continues to contribute to the infringement of one or more claims of the '966
9 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other things,
10 actively, knowingly, and intentionally encouraging, aiding, and/or abetting others to
11 make, use, offer for sale, and/or sell portions of a computer-based notification
12 system that infringes one or more claims of the '966 patent, with the specific intent
13 to encourage infringement and with the knowledge that the making, using, offering
14 to sell, and/or selling of such a system would constitute infringement.
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18 34. On information and belief, Air Canada has had knowledge of the '966
19 patent at least as early as September 17, 2013, the day that it was served with a copy
20 of the Complaint, which set forth factual allegations of Air Canada's infringement.
21 *See* Dkt. No. 9. Additionally, at least as early as September 17, 2013, Air Canada
22 knew or should have known that its continued offering, use, deployment, and/or
23 operation of the at least one flight notification service and/or system and its
24 continued support of others, if those parties perform any limitations of one or more
25 of the claims of the '966 patent, would induce direct infringement of the '966 patent,
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1 as it had actual knowledge of the patent and factual allegations of its infringement
2 thereof.

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4 35. On information and belief, Air Canada has not changed or modified its
5 infringing behavior since September 17, 2013.

6 36. Air Canada's aforesaid infringing activity has directly and proximately
7 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or
8 licensing revenues it would have made but for the infringements. Unless enjoined,
9 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse
10 for which there is no adequate remedy at law.
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13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against Air
15 Canada and against each of Air Canada's respective subsidiaries, affiliates, agents,
16 servants, employees and all persons in active concert or participation with it,
17 granting the following relief:
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20 1. A judgment that Air Canada has infringed each and every one of the
21 Eclipse Patents;

22 2. A permanent injunction against Air Canada, its respective officers,
23 agents, servants, employees, attorneys, parent and subsidiary corporations, assigns
24 and successors in interest, and those persons in active concert or participation with
25 them, enjoining them from direct and indirect infringement of each and every one of
26 the Eclipse Patents;
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1 3. An award of damages adequate to compensate Eclipse for the
2 infringement that has occurred, together with prejudgment interest from the date
3 infringement of the Eclipse Patents began;
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5 4. A reasonable royalty for Air Canada’s use of Eclipse’s patented
6 technology, as alleged herein;
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8 5. An award to Eclipse of all remedies available under 35 U.S.C. §§ 284
9 and 285; and,
10

11 6. Such other and further relief as this Court or a jury may deem proper
12 and just.
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14 DATED: October 21, 2013

OLAVI DUNNE LLP

17 By: /s/ Matt Olavi

18 Matt Olavi
19 Brian J. Dunne
20 Attorneys for Plaintiff
21 Eclipse IP LLC

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JURY DEMAND

Eclipse demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

DATED: October 21, 2013

OLAVI DUNNE LLP

By: /s/ Matt Olavi

Matt Olavi
Brian J. Dunne
Attorneys for Plaintiff
Eclipse IP LLC