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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-06371-SJO-JC
12 Liability Company,)
13 Plaintiff,) **FIRST AMENDED COMPLAINT**
14) **FOR PATENT INFRINGEMENT**
15 v.) **TRIAL BY JURY DEMANDED**
16 FLYWHEEL SOFTWARE, INC., a)
17 Delaware Corporation,)
18 Defendant.)
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1 Plaintiff Eclipse IP LLC (“Eclipse”), by and through counsel, complains
2 against Flywheel Software, Inc. (“Flywheel”) 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).
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10 **PARTIES AND PATENTS**

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12 2. Eclipse is a company organized under the laws of Florida and having a
13 principal place of business at 115 NW 17th St, Delray Beach, Florida 33444.

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15 3. Eclipse owns all right, title, and interest in and has standing to sue for
16 infringement of United States Patent No. 7,064,681 ("the '681 patent"), entitled
17 "Response systems and methods for notification systems" (Exhibit A); United States
18 Patent No. 7,482,952 ("the '952 patent"), entitled "Response systems and methods
19 for notification systems for modifying future notifications" (Exhibit B); United
20 States Patent No. 7,479,899 ("the '899 patent"), entitled "Notification systems and
21 methods enabling a response to cause connection between a notified PCD and a
22 delivery or pickup representative" (Exhibit C); United States Patent No. 7,479,901
23 ("the '901 patent"), entitled "Mobile thing determination systems and methods based
24 upon user-device location" (Exhibit D); and United States Patent No. 7,538,691
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1 ("the '691 patent"), entitled "Mobile thing determination systems and methods based
2 upon user-device location" (Exhibit E) (collectively, "the Eclipse Patents").

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4 4. On information and belief, Flywheel is a corporation existing under the
5 laws of Delaware.

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7 5. On information and belief, Flywheel does regular business in this
8 Judicial District and conduct leading to Flywheel's acts of infringement has
9 occurred in this Judicial District.

10 **JURISDICTION AND VENUE**

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12 6. This Court has personal jurisdiction over Flywheel because it has
13 engaged in continuous and systematic business in California; upon information and
14 belief, derives substantial revenues from commercial activities in California; and
15 upon information and belief, is operating and/or supporting products or services that
16 fall within one or more claims of Eclipse's patents in this District.

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18 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and
19 28 U.S.C. § 1400(a) at least because the claim arises in this Judicial District,
20 Flywheel may be found and transacts business in this Judicial District, and injuries
21 suffered by Plaintiff took place in this Judicial District. Flywheel is subject to the
22 general and specific personal jurisdiction of this Court at least because of its
23 contacts with the State of California.
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FACTUAL BACKGROUND

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8. On information and belief, Flywheel designs, makes, advertises, and/or distributes a mobile application (“the Flywheel Application”) that connects users of the Flywheel Application with drivers of cars for hire (“Flywheel Drivers”).

9. On information and belief, users of the Flywheel Application can use their smartphone or tablet computer (“tablet”) to request that a vehicle pick them up from a given location.

10. On information and belief, when a user opens the Flywheel Application, Flywheel tracks the location of the user’s smartphone or tablet and attempts to pinpoint the user on a map. Flywheel also tracks the location of Flywheel Drivers. A non-limiting, exemplary image appears below:



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1 11. On information and belief, when the user of the Flywheel Application
2 selects a pickup location, Flywheel sends a pickup request to the closest available
3 Flywheel Driver. If that Flywheel Driver declines or is non-responsive, Flywheel
4 sends the pickup request to other Flywheel Drivers. When Flywheel receives a
5 response indicating that a Flywheel Driver will accept the fare, Flywheel notifies the
6 user in at least one way. A non-limiting, exemplary image appears below:
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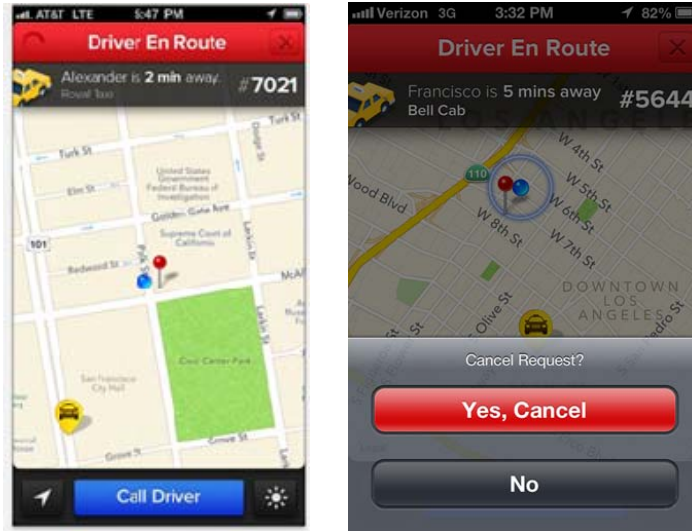
12. On information and belief, through the Flywheel Application, Flywheel
displays the location of the Flywheel Driver, the pickup location, and the time until
the Flywheel Driver's arrival at the pickup location, allowing the user of the
Flywheel Application to track the Flywheel Driver's progress.

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13. On information and belief, through the Flywheel Application, Flywheel allows the user to communicate with the driver or cancel the trip. Non-limiting, exemplary images appear below:



14. On information and belief, Flywheel also notifies the user of the Flywheel Application in at least one way when the Flywheel Driver is arriving at the indicated pickup location. A non-limiting, exemplary image appears below:



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FLYWHEEL’S ACTS OF PATENT INFRINGEMENT

15. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 14 above as if fully set forth herein.

16. Flywheel owns, uses, deploys, and/or operates at least one service and/or system for booking a taxi electronically.

17. The at least one service and/or system allows users of a smartphone or tablet to request a taxi to pick them up.

18. To implement the at least one service and/or system, Flywheel created and/or developed at least one smartphone application – the Flywheel Application – which plays a material role in the at least one car booking service and/or system.

19. The Flywheel Application is available on several different platforms, including but not limited to on smartphones and tablets running versions of Apple Inc.’s iOS platform and Google, Inc.’s Android platform.

20. Among other things, the Flywheel Application allows users to schedule or arrange a pickup on their smartphone or tablet, and track the status of the vehicle on a map.

21. Among other things, Flywheel tracks the location of the user’s smartphone or tablet, tracks the location of a smartphone being used by each Flywheel Driver, distributes requests for pickups received from users of the Flywheel Application, receives responses from at least one Flywheel Driver, and notifies the user when their vehicle is arriving at the pickup location.

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CLAIMS FOR RELIEF

COUNT 1

**(Patent Infringement of U.S. Patent No. 7,064,681
Under 35 U.S.C. § 271 et seq.)**

22. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 21 above as if fully set forth herein.

23. On June 20, 2006, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,064,681, entitled "Response systems and methods for notification systems." Eclipse is the owner of the entire right, title and interest in and to the '681 patent. A true and correct copy of the '681 patent is attached as Exhibit A to this Complaint.

24. The '681 patent is valid and enforceable.

25. Eclipse is informed and believes, and thereupon alleges, that:
(1) Flywheel has infringed and continues to infringe one or more claims of the '681 patent, literally and/or under the doctrine of equivalents and additionally and/or in the alternative, (2) Flywheel 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 '681 patent in this District and elsewhere in the United States.

26. On information and belief, Flywheel has directly infringed and continues to directly infringe one or more claims of the '681 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 communication in connection with a computer-based

1 notification system to, for example: notify a Flywheel Driver of a requested pickup;
2 receive a response indicating whether or not the Flywheel Driver will perform the
3 pickup; if the Flywheel Driver will perform the pickup, refrain from sending
4 additional notifications to the Flywheel Driver until detection of one or more events
5 indicating that the user's trip is complete; and if the Flywheel Driver will not pickup
6 the user, notify another Flywheel Driver in order to request assistance in picking up
7 the user.
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10 27. Additionally and/or in the alternative, on information and belief,
11 Flywheel has actively induced and continues to actively induce and/or has
12 contributed to and continues to contribute to the infringement of one or more claims
13 of the '681 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
14 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
15 others to make, use, offer for sale, and/or sell portions of a computer-based
16 notification system that infringes one or more claims of the '681 patent, with the
17 specific intent to encourage infringement and with the knowledge that the making,
18 using, offering to sell, and/or selling of such a system would constitute
19 infringement.
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24 28. On information and belief, Flywheel has had knowledge of the '681
25 patent at least as early as September 6, 2013, the day that it was served with a copy
26 of the Complaint, which set forth factual allegations of Flywheel's infringement.
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28 *See* Dkt. No. 6. Additionally, at least as early as September 6, 2013, Flywheel knew

1 or should have known that its continued offering, use, deployment, and/or operation
2 of the at least one service and/or system for booking a taxi electronically and its
3 continued support of others, if those parties perform any limitations of one or more
4 of the claims of the '681 patent, would induce direct infringement of the '681 patent,
5 as it had actual knowledge of the patent and factual allegations of its infringement
6 thereof.
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9 29. On information and belief, Flywheel has not changed or modified its
10 infringing behavior since September 6, 2013.
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12 30. Flywheel's aforesaid infringing activity has directly and proximately
13 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or
14 licensing revenues it would have made but for the infringements. Unless enjoined,
15 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse
16 for which there is no adequate remedy at law.
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19 **COUNT 2**
(Patent Infringement of U.S. Patent No. 7,482,952
20 **Under 35 U.S.C. § 271 et seq.)**

21 31. Eclipse reiterates and reincorporates the allegations set forth in
22 paragraphs 1 through 30 above as if fully set forth herein.
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24 32. On January 27, 2009, the United States Patent and Trademark Office
25 duly and legally issued United States Patent No. 7,482,952, entitled "Response
26 systems and methods for notification systems for modifying future notifications."
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1 Eclipse is the owner of the entire right, title and interest in and to the '952 patent. A
2 true and correct copy of the '952 patent is attached as Exhibit B to this Complaint.

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4 33. The '952 patent is valid and enforceable.

5 34. Eclipse is informed and believes, and thereupon alleges, that:

6 (1) Flywheel has infringed and continues to infringe one or more claims of the '952
7 patent, literally and/or under the doctrine of equivalents and additionally and/or in
8 the alternative, (2) Flywheel has actively induced and continues to actively induce
9 and/or has contributed to and continues to contribute to the infringement of one or
10 more claims of the '952 patent in this District and elsewhere in the United States.
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13 35. On information and belief, Flywheel has directly infringed and
14 continues to directly infringe one or more claims of the '952 patent, in violation of
15 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or
16 selling a method for a computer-based notification system to, for example: schedule
17 a time for a taxi to arrive at a pickup location; schedule a notification
18 communication when the taxi arrives; determine a change in the schedule of the
19 taxi; notify the user of the change in schedule; and allow the user to cancel the later-
20 scheduled notification.
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24 36. Additionally and/or in the alternative, on information and belief,
25 Flywheel has actively induced and continues to actively induce and/or has
26 contributed to and continues to contribute to the infringement of one or more claims
27 of the '952 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
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1 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
2 others to make, use, offer for sale, and/or sell portions of a computer-based
3 notification system that infringes one or more claims of the '952 patent, with the
4 specific intent to encourage infringement and with the knowledge that the making,
5 using, offering to sell, and/or selling of such a system would constitute
6 infringement.
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9 37. On information and belief, Flywheel has had knowledge of the '952
10 patent at least as early as September 6, 2013, the day that it was served with a copy
11 of the Complaint, which set forth factual allegations of Flywheel's infringement.
12 *See* Dkt. No. 6. Additionally, at least as early as September 6, 2013, Flywheel knew
13 or should have known that its continued offering, use, deployment, and/or operation
14 of the at least one service and/or system for booking a taxi electronically and its
15 continued support of others, if those parties perform any limitations of one or more
16 of the claims of the '952 patent, would induce direct infringement of the '952 patent,
17 as it had actual knowledge of the patent and factual allegations of its infringement
18 thereof.
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22 38. On information and belief, Flywheel has not changed or modified its
23 infringing behavior since September 6, 2013.
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25 39. Flywheel's aforesaid infringing activity has directly and proximately
26 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or
27 licensing revenues it would have made but for the infringements. Unless enjoined,
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1 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse
2 for which there is no adequate remedy at law.

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4 **COUNT 3**

5 **(Patent Infringement of U.S. Patent No. 7,479,899**
6 **Under 35 U.S.C. § 271 et seq.)**

7 40. Eclipse reiterates and reincorporates the allegations set forth in
8 paragraphs 1 through 39 above as if fully set forth herein.

9 41. On January 20, 2009, the United States Patent and Trademark Office
10 duly and legally issued United States Patent No. 7,479,899, entitled "Notification
11 systems and methods enabling a response to cause connection between a notified
12 PCD and a delivery or pickup representative." Eclipse is the owner of the entire
13 right, title and interest in and to the '899 patent. A true and correct copy of the '899
14 patent is attached as Exhibit C to this Complaint.

15 42. The '899 patent is valid and enforceable.

16 43. Eclipse is informed and believes, and thereupon alleges, that:

17 (1) Flywheel has infringed and continues to infringe one or more claims of the '899
18 patent, literally and/or under the doctrine of equivalents and additionally and/or in
19 the alternative, (2) Flywheel has actively induced and continues to actively induce
20 and/or has contributed to and continues to contribute to the infringement of one or
21 more claims of the '899 patent in this District and elsewhere in the United States.

22 44. On information and belief, Flywheel has directly infringed and
23 continues to directly infringe one or more claims of the '899 patent, in violation of
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1 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or
2 selling a method for an automated notification system to, for example: monitor the
3 location of a Flywheel user; notify the user when the taxi is approaching the pickup
4 location; and enable the user to communicate with the Flywheel Driver.
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6 45. Additionally and/or in the alternative, on information and belief,
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8 Flywheel has actively induced and continues to actively induce and/or has
9 contributed to and continues to contribute to the infringement of one or more claims
10 of the '899 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
11 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
12 others to make, use, offer for sale, and/or sell portions of an automated notification
13 system that infringes one or more claims of the '899 patent, with the specific intent
14 to encourage infringement and with the knowledge that the making, using, offering
15 to sell, and/or selling of such a system would constitute infringement.
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18 46. On information and belief, Flywheel has had knowledge of the '899
19 patent at least as early as September 6, 2013, the day that it was served with a copy
20 of the Complaint, which set forth factual allegations of Flywheel's infringement.
21 *See* Dkt. No. 6. Additionally, at least as early as September 6, 2013, Flywheel knew
22 or should have known that its continued offering, use, deployment, and/or operation
23 of the at least one service and/or system for booking a taxi electronically and its
24 continued support of others, if those parties perform any limitations of one or more
25 of the claims of the '899 patent, would induce direct infringement of the '899 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 47. On information and belief, Flywheel has not changed or modified its
5 infringing behavior since September 6, 2013.

6 48. Flywheel'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 **COUNT 4**

14 **(Patent Infringement of U.S. Patent No. 7,479,901**
15 **Under 35 U.S.C. § 271 et seq.)**

16 49. Eclipse reiterates and reincorporates the allegations set forth in
17 paragraphs 1 through 48 above as if fully set forth herein.

18 50. On January 20, 2009, the United States Patent and Trademark Office
19 duly and legally issued United States Patent No. 7,479,901, entitled "Mobile thing
20 determination systems and methods based upon user-device location." Eclipse is the
21 owner of the entire right, title and interest in and to the '901 patent. A true and
22 correct copy of the '901 patent is attached as Exhibit D to this Complaint.
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25 51. The '901 patent is valid and enforceable.

26 52. Eclipse is informed and believes, and thereupon alleges, that:

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28 (1) Flywheel has infringed and continues to infringe one or more claims of the '901

1 patent, literally and/or under the doctrine of equivalents and additionally and/or in
2 the alternative, (2) Flywheel has actively induced and continues to actively induce
3 and/or has contributed to and continues to contribute to the infringement of one or
4 more claims of the '901 patent in this District and elsewhere in the United States.
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6 53. On information and belief, Flywheel has directly infringed and
7 continues to directly infringe one or more claims of the '901 patent, in violation of
8 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or
9 selling a method for a notification system to, for example: monitor the user's
10 location; receive a request for a pickup; notify a Flywheel Driver of the requested
11 pickup; receive a response from the Flywheel Driver; and communicate the response
12 to the user.
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15 54. Additionally and/or in the alternative, on information and belief,
16 Flywheel has actively induced and continues to actively induce and/or has
17 contributed to and continues to contribute to the infringement of one or more claims
18 of the '901 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
19 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
20 others to make, use, offer for sale, and/or sell portions of a notification system that
21 infringes one or more claims of the '901 patent, with the specific intent to encourage
22 infringement and with the knowledge that the making, using, offering to sell, and/or
23 selling of such a system would constitute infringement.
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1 55. On information and belief, Flywheel has had knowledge of the '901
2 patent at least as early as September 6, 2013, the day that it was served with a copy
3 of the Complaint, which set forth factual allegations of Flywheel's infringement.
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5 *See* Dkt. No. 6. Additionally, at least as early as September 6, 2013, Flywheel knew
6 or should have known that its continued offering, use, deployment, and/or operation
7 of the at least one service and/or system for booking a taxi electronically and its
8 continued support of others, if those parties perform any limitations of one or more
9 of the claims of the '901 patent, would induce direct infringement of the '901 patent,
10 as it had actual knowledge of the patent and factual allegations of its infringement
11 thereof.
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14 56. On information and belief, Flywheel has not changed or modified its
15 infringing behavior since September 6, 2013.
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17 57. Flywheel's aforesaid infringing activity has directly and proximately
18 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or
19 licensing revenues it would have made but for the infringements. Unless enjoined,
20 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse
21 for which there is no adequate remedy at law.
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24 **COUNT 5**

25 (Patent Infringement of U.S. Patent No. 7,538,691
26 Under 35 U.S.C. § 271 et seq.)

27 58. Eclipse reiterates and reincorporates the allegations set forth in
28 paragraphs 1 through 57 above as if fully set forth herein.

1 59. On May 26, 2009, the United States Patent and Trademark Office duly
2 and legally issued United States Patent No. 7,538,691, entitled "Mobile thing
3 determination systems and methods based upon user-device location." Eclipse is the
4 owner of the entire right, title and interest in and to the '691 patent. A true and
5 correct copy of the '691 patent is attached as Exhibit E to this Complaint.
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8 60. The '691 patent is valid and enforceable.

9 61. Eclipse is informed and believes, and thereupon alleges, that:
10 (1) Flywheel has infringed and continues to infringe one or more claims of the '691
11 patent, literally and/or under the doctrine of equivalents and additionally and/or in
12 the alternative, (2) Flywheel has actively induced and continues to actively induce
13 and/or has contributed to and continues to contribute to the infringement of one or
14 more claims of the '691 patent in this District and elsewhere in the United States.
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17 62. On information and belief, Flywheel has directly infringed and
18 continues to directly infringe one or more claims of the '691 patent, in violation of
19 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or
20 selling a method for implementation in connection with a computer-based
21 notification system to, for example: determine the user's location; identify a pickup
22 location; and notify the user when the taxi is approaching the pickup location.
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25 63. Additionally and/or in the alternative, on information and belief,
26 Flywheel has actively induced and continues to actively induce and/or has
27 contributed to and continues to contribute to the infringement of one or more claims
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1 of the '691 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other
2 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting
3 others to make, use, offer for sale, and/or sell portions of a computer-based
4 notification system that infringes one or more claims of the '691 patent, with the
5 specific intent to encourage infringement and with the knowledge that the making,
6 using, offering to sell, and/or selling of such a system would constitute
7 infringement.
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10 64. On information and belief, Flywheel has had knowledge of the '691
11 patent at least as early as September 6, 2013, the day that it was served with a copy
12 of the Complaint, which set forth factual allegations of Flywheel's infringement.
13 *See* Dkt. No. 6. Additionally, at least as early as September 6, 2013, Flywheel knew
14 or should have known that its continued offering, use, deployment, and/or operation
15 of the at least one service and/or system for booking a taxi electronically and its
16 continued support of others, if those parties perform any limitations of one or more
17 of the claims of the '691 patent, would induce direct infringement of the '691 patent,
18 as it had actual knowledge of the patent and factual allegations of its infringement
19 thereof.
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23 65. On information and belief, Flywheel has not changed or modified its
24 infringing behavior since September 6, 2013.
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1 4. A reasonable royalty for Flywheel’s use of Eclipse’s patented
2 technology, as alleged herein;

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4 5. An award to Eclipse of all remedies available under 35 U.S.C. §§ 284
5 and 285; and

6 6. Such other and further relief as this Court or a jury may deem proper
7 and just.
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9

10 DATED: October 21, 2013

OLAVI DUNNE LLP

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By: /s/ Matt Olavi

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Matt Olavi
Brian J. Dunne
Attorneys for Plaintiff
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