

1 Paul J. Hayes (*pro hac vice*)  
Kevin Gannon (*pro hac vice*)  
2 Steven Lipman (*pro hac vice*)  
HAYES MESSINA GILMAN & HAYES, LLC  
200 State Street, 6<sup>th</sup> Floor  
3 Boston, MA 02109  
phayes@hayesmessina.com  
4 kgannon@hayesmessina.com  
slipman@hayesmessina.com  
5 Telephone: (617) 345-6900  
6 Facsimile: (617) 443-1999

7 Christopher D. Banys  
Richard C Lin  
8 Jennifer L. Gilbert  
cdb@banyspc.com  
rcl@banyspc.com  
9 jlg@banyspc.com  
BANYS, P.C.  
10 1032 Elwell Court, Suite 100  
Palo Alto, CA 94303  
11 Telephone: (650) 308-8505  
12 Facsimile: (650) 353-2202

13 Attorneys for Plaintiff  
ADAPTIX, INC.

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

17 ADAPTIX, Inc.,  
18 Plaintiff,

v.

19 HTC CORPORATION, HTC AMERICA,  
20 INC., and CELLCO PARTNERSHIP *d/b/a*  
21 VERIZON WIRELESS

22 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

23 **ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

24  
25 This is an action for patent infringement in which plaintiff, ADAPTIX, Inc. (“ADAPTIX”),  
26 complains against defendants, HTC Corporation, HTC America, Inc. (together “HTC”), and Cellco  
27 Partnership d/b/a Verizon Wireless (“Verizon”) (collectively “the Defendants”), as follows:  
28

**THE PARTIES**

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

4 2. On information and belief, HTC Corporation is a Taiwanese corporation with its  
5 principal place of business at 23 Xinghau Road, Taoyuan City, Taoyuan 330, Taiwan, R.O.C. and  
6 does business in this judicial district by, among other things, committing directly and/or indirectly the  
7 tort of patent infringement giving rise to this complaint. HTC Corporation may be served at its  
8 principal place of business at 23 Xinghau Road, Taoyuan City, Taoyuan 330, Taiwan, R.O.C.

9 3. On information and belief, HTC America, Inc. is a Washington corporation with its  
10 principal place of business at 13290 SE Eastgate Way, Suite 400, Bellevue, Washington 98005 and  
11 does business in Texas at 5950 Corporate Drive, Houston, Texas 77036 and in this judicial district by,  
12 among other things, committing jointly, directly, and/or indirectly the tort of patent infringement  
13 giving rise to this complaint. HTC America, Inc.'s registered agent for service of process in  
14 California is National Registered Agents, Inc., 818 W. Seventh Street, Los Angeles, California 90017.

15 4. On information and belief, Verizon is a Delaware general partnership with its principal  
16 place of business at 1 Verizon Way, Basking Ridge, New Jersey 07920675, and by committing jointly,  
17 directly, and/or indirectly the tort of patent infringement giving rise to this complaint. Verizon's  
18 registered agent for service of process in California is CT Corporation System, 818 W. Seventh Street  
19 2<sup>nd</sup> Floor, Los Angeles, California 90017.

20 **JURISDICTION AND VENUE**

21 5. This action arises under the patent laws of the United States, Title 35 of the United  
22 States Code, 35 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
23 §§ 1331 and 1338(a).

24 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b-c) and 1400(b)  
25 a because Defendants have committed acts within this judicial district giving rise to this action, and  
26 continue to conduct business in this District, and/or have committed acts of patent infringement within  
27 this District giving rise to this action.

28



1 continue unless and until HTC is enjoined. HTC is thereby liable for infringement of the '212 Patent  
2 pursuant to 35 U.S.C. § 271(a).

3 14. On information and belief, Verizon has and continues to directly infringe at least one or  
4 more claims of the '212 Patent in this judicial district and elsewhere in California and the United  
5 States including at least Claim 1 by, among other things, making, using, offering for sale, selling  
6 and/or importing computerized communications devices, including without limitation the HTC One  
7 M8 which, at a minimum, directly infringes the '212 Patent. Verizon's infringement has caused  
8 damage to ADAPTIX, which infringement and damage will continue unless and until Verizon is  
9 enjoined. Verizon is thereby liable for infringement of the '212 Patent pursuant to 35 U.S.C. § 271(a).

10 15. Based upon information set forth in the preceding two paragraphs, on information and  
11 belief, both HTC and Verizon have and continue to directly and jointly infringe one or more claims of  
12 the '212 Patent in this judicial district and/or elsewhere in California. And the United States, including  
13 at least Claim 1 by, among other things, making, using, offering for sale, selling, and/or importing  
14 computerized communications devices including without limitation the HTC One M8 which, at a  
15 minimum, directly infringes the '212 Patent. HTC's and Verizon's joint infringement has caused  
16 damage to ADAPTIX, which infringement and damage will continue unless and until HTC and  
17 Verizon are enjoined. Thereby, HTC and Verizon are jointly liable for infringement of the '212 Patent  
18 pursuant to 35 U.S.C. § 271(a).

19 **(Indirect Infringement – Inducement)**

20 16. Based on the information presently available to ADAPTIX, absent discovery, and in  
21 the alternative to direct infringement, ADAPTIX contends that HTC has and continues to indirectly  
22 infringe one or more claims of the '212 Patent, including at least Claim 16 by, among other things,  
23 making, selling, testing, and/or importing the HTC One M8 and/or advertising the LTE capability of  
24 the HTC One M8. Verizon and/or HTC's end users who purchase systems and components thereof  
25 and operate such systems and components in accordance with HTC's instructions directly infringe one  
26 or more claims of the '212 Patent in violation of 35 U.S.C § 271(b). HTC's infringement has caused  
27 damage to ADAPTIX, which infringement and damage will continue unless and until HTC is  
28 enjoined. HTC is thereby liable for infringement of the '212 Patent pursuant to 35 U.S.C. § 271(b).



1 contributing to the direct infringement of others, including entities such as Verizon and end users of  
2 HTC's computerized communications devices, including without limitation the HTC One M8, through  
3 supplying infringing systems and components, that infringe one or more claims of the '212 Patent,  
4 including at least claim 16, in violation of 35 U.S.C. § 271(c).

5 23. Based on information presently available to ADAPTIX, absent discovery, and in the  
6 alternative to direct infringement, ADAPTIX contends that Verizon has and continues to indirectly  
7 infringe one or more claims of the '212 Patent, including at least claim 16 by, among other things,  
8 contributing to the direct infringement of others, including entities such as customers of Verizon's  
9 computerized communications device, including without limitation the HTC One M8, through  
10 supplying infringing systems and components, that infringe one or more claims of the '212 Patent,  
11 including at least Claim 16, in violation of 35 U.S.C. § 271(c).

12 24. Defendants have and continue to contribute to the direct infringement of others, such as  
13 end users of Defendants' computerized communications devices, by making, offering to sell, selling,  
14 re-selling, and/or importing into the United States a component of a patented apparatus that constitutes  
15 a material part of the invention, knowing the same to be especially made or especially adapted for use  
16 in infringement of the '212 Patent and not a staple article or commodity of commerce suitable for  
17 substantial non-infringing use. An example of such a material component offered for sale, sold,  
18 and/or imported by Defendants is Defendants' computerized communications devices and the  
19 technology associated therewith.

20 25. On information and belief, Defendants have been on notice of the '212 Patent since at  
21 least service of this action, or before, but have continued since that time to cause others to directly  
22 infringe the '212 Patent as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), ADAPTIX  
23 will likely have additional evidentiary support after a reasonable opportunity for further investigation  
24 or discovery on this issue.

25 26. Since Defendants have been on notice of the '212 Patent since at least service of this  
26 action, Defendants knew or should have known that Defendants computerized communications  
27 devices and the technology associated therewith constituted material components of the invention  
28 claimed in the '212 Patent, are especially made or especially adapted for use in infringement of the

1 '212 Patent, and are not a staple article or commodity of commerce suitable for substantial non-  
2 infringing use.

3 27. By virtue of at least this Complaint, Defendants have been provided with written notice  
4 of ADAPTIX's allegations that Defendants have and continue to contributorily infringe the '212  
5 Patent and written identification of exemplar products that infringe one or more claims of the '212  
6 Patent (e.g. systems used by end users of Defendants' computerized communication devices) and  
7 written notice of an exemplar material part of these devices (e.g. Defendants' computerized  
8 communications devices and the technology associated therewith) that are especially made or  
9 especially adapted for use in infringing the '212 Patent and are not staple articles or commodities of  
10 commerce suitable for substantial non-infringing use.

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

13 28. ADAPTIX incorporates paragraphs 1 through 27 herein by reference.

14 29. This cause of action arises under the patent laws of the United States and, in particular,  
15 35 U.S.C. §§ 271 *et seq.*

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

21 31. The '748 patent is valid, enforceable, and was duly issued in full compliance with Title  
22 35 of the United States Code.

23 32. ADAPTIX has been damaged as a result of the Defendants' infringing conduct  
24 described in this Count. The Defendants are, thus, liable to ADAPTIX in an amount that adequately  
25 compensates it for their infringement which, by law, cannot be less than a reasonable royalty, together  
26 with interest and costs as fixed by this Court under 35 U.S.C. § 284.

27  
28

1 **(Direct Infringement)**

2 33. On information and belief, HTC has and continues to directly infringe one or more  
3 claims of the '748 Patent in this judicial district and/or elsewhere in California and the United States  
4 including at least Claims 6 and 8 by, among other things, making, using, offering for sale, selling  
5 and/or importing computerized communication devices, including without limitation the HTC One  
6 M8 and the HTC One max, which, at a minimum, directly infringe the '748 Patent. HTC's  
7 infringement has caused damage to ADAPTIX, which infringement by the Defendants and damage to  
8 ADAPTIX will continue unless and until HTC is enjoined. HTC is thereby liable for infringement of  
9 the '748 Patent pursuant to 35 U.S.C. § 271(a).

10 34. On information and belief, Verizon has and continues to directly infringe at least one or  
11 more claims of the '748 Patent in this judicial district and elsewhere in California and the United  
12 States including at least Claims 6 and 8 by, among other things, making, using, offering for sale,  
13 selling and/or importing computerized communications devices, including without limitation the HTC  
14 One M8 which, at a minimum, directly infringes the '748 Patent. Verizon's infringement has caused  
15 damage to ADAPTIX, which infringement and damage will continue unless and until Verizon is  
16 enjoined. Verizon is thereby liable for infringement of the '748 Patent pursuant to 35 U.S.C. § 271(a).

17 35. Based upon information set forth in the preceding two paragraphs, on information and  
18 belief, both HTC and Verizon have and continue to directly and jointly infringe one or more claims of  
19 the '748 Patent in this judicial district and/or elsewhere in California. And the United States, including  
20 at least Claims 6 and 8 by, among other things, making, using, offering for sale, selling, and/or  
21 importing computerized communications devices including without limitation the HTC One M8  
22 which, at a minimum, directly infringes the '748 Patent. HTC's and Verizon's joint infringement has  
23 caused damage to ADAPTIX, which infringement and damage will continue unless and until HTC and  
24 Verizon are enjoined. Thereby, HTC and Verizon are jointly liable for infringement of the '748 Patent  
25 pursuant to 35 U.S.C. § 271(a).

26 **(Indirect Infringement – Inducement)**

27 36. Based on the information presently available to ADAPTIX, absent discovery, and in  
28 the alternative to direct infringement, ADAPTIX contends that HTC has and continues to indirectly



1 infringe one or more claims of the '748 Patent, including at least Claims 6 and 8 by, among other  
2 things, making, selling, testing, and/or importing the HTC One M8 and/or advertising the LTE  
3 capability of the HTC One M8. Verizon and/or HTC's end users who purchase systems and  
4 components thereof and operate such systems and components in accordance with HTC's instructions  
5 directly infringe one or more claims of the '748 Patent in violation of 35 U.S.C § 271(b). HTC's  
6 infringement has caused damage to ADAPTIX, which infringement and damage will continue unless  
7 and until HTC is enjoined. HTC is thereby liable for infringement of the '748 Patent pursuant to 35  
8 U.S.C. § 271(b).

9 37. Based on the information presently available to ADAPTIX, absent discovery, and in  
10 the alternative to direct infringement, ADAPTIX contends that Verizon has and continues to indirectly  
11 infringe one or more claims of the '748 Patent, including at least Claims 6 and 8 by, among other  
12 things, taking active steps to encourage and facilitate its customers to purchase and use the HTC One  
13 M8. Verizon customers who purchase systems and components thereof and operate such systems and  
14 components in accordance with Verizon's instructions directly infringe one or more claims of the '748  
15 Patent in violation of 35 U.S.C § 271(b). Verizon's infringement has caused damage to ADAPTIX,  
16 which infringement and damage will continue unless and until Verizon is enjoined. Verizon is thereby  
17 liable for infringement of the '748 Patent pursuant to 35 U.S.C. § 271(b).

18 38. On information and belief, Defendants have been on notice of the '748 Patent since at  
19 least service of this action. In accordance with Fed. R. Civ. P. 11(b)(3), ADAPTIX will likely have  
20 additional evidentiary support after a reasonable opportunity for further investigation or discovery on  
21 this issue.

22 39. On information and belief, since Defendants have been on notice of the '748 Patent  
23 since at least service of this action, Defendants have been knowingly inducing infringement of the  
24 '748 Patent, including at least Claims 6 and 8 of the '748 Patent, and possessing specific intent to  
25 encourage others' infringement.

26 40. On information and belief, since Defendants have been on notice of the '748 Patent  
27 since at least service of this action, Defendants knew or should have known that their actions would  
28 induce actual infringement of the '748 Patent, including at least Claims 6 and 8 of the '748 Patent.





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

3 D. A determination that this case is exceptional pursuant to 35 U.S.C. § 285; and

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

5 **DEMAND FOR JURY TRIAL**

6 ADAPTIX requests a trial by jury on all issues so triable by right pursuant to Fed. R. Civ. P.  
7 38.

8  
9 Date: May 21, 2014

**ADAPTIX, INC.**

10 By: Christopher D. Banys

11 Christopher D. Banys

12 Richard C Lin

Jennifer L. Gilbert

13 cdb@banyspc.com

rcl@banyspc.com

14 jlg@banyspc.com

**BANYS, P.C.**

15 1032 Elwell Court, Suite 100

Palo Alto, CA 04303

16 Telephone: (650) 308-8505

Facsimile: (650) 353-2202

17 Paul J. Hayes

18 Kevin Gannon

Steven E. Lipman

19 **HAYES MESSINA GILMAN & HAYES LLC**

20 200 State Street, 6<sup>th</sup> Floor

Boston, Massachusetts 02109

21 Tel: (617) 345-6900

22 Fax: (617) 443-1999

Email: phayes@hayesmessina.com

23 Email: kgannon@hayesmessina.com

Email: slipman@hayesmessina.com

24  
25 **ATTORNEYS FOR THE PLAINTIFF**

26 **ADAPTIX, INC.**