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7 STRAIGHT PATH IP GROUP, INC.

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**

11 STRAIGHT PATH IP GROUP, INC.,

12 Plaintiff,

13 v.

14 APPLE INC.

15 Defendant.

16 AND RELATED COUNTERCLAIMS.

**Case No. 3:14-cv-4302**

**COMPLAINT**

RUSS, AUGUST & KABAT

1 1. Plaintiff Straight Path IP Group, Inc. ("Straight Path" or "Plaintiff"), for its Complaint  
2 against Defendant Apple Inc. ("Defendant"), hereby alleges as follows:

3 **PARTIES**

4 2. Straight Path is a Delaware corporation with its principal place of business at 5300  
5 Hickory Park Dr. Suite 218, Glen Allen, VA 23059.

6 3. On information and belief, Defendant is a California corporation with its principal place  
7 of business at 1 Infinite Loop, Cupertino, California 95014.

8 **NATURE OF THE ACTION**

9 4. This is a civil action for the infringement of United States Patent No. 6,108,704 (the "'704  
10 Patent") (attached as Exhibit A), United States Patent No. 6,131,121 (the "'121 Patent") (attached  
11 as Exhibit B), United States Patent No. 6,701,365 (the "'365 Patent") (attached as Exhibit C), and  
12 United States Patent No. 7,149,208 (the "'208 Patent") (attached as Exhibit D) (collectively, the  
13 "Patents-in-Suit") under the patent laws of the United States, 35 U.S.C. § 1, et seq.

14 5. This action involves Defendant's manufacture, use, sale, offer for sale, and/or importation  
15 into the United States of infringing products, methods, processes, services and systems that are  
16 primarily used or primarily adapted for use in point-to-point network communications devices  
17 and products containing same, including, for example but without limitation, software and  
18 servers used to perform telecommunications over internet protocol, that infringe one or more of  
19 the claims of the Patents-in-Suit.

20 **JURISDICTION AND VENUE**

21 6. This Court has original jurisdiction over the subject matter of this Complaint under 28  
22 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States,  
23 including 35 U.S.C. §§ 1, et seq.

24 7. Defendant is subject to personal jurisdiction in this judicial district because Defendant  
25 regularly transacts business in this judicial district by, among other things, offering Defendant's  
26 products and services to customers, business affiliates and partners located in this judicial  
27 district. In addition, the Defendant has committed acts of direct infringement of one or more of  
28 the claims of one or more of the Patents-in-Suit in this judicial district.

1 8. Venue in this district is proper under 28 U.S.C. § 1400(b) and 1391(b) and (c), because  
2 the Defendant is subject to personal jurisdiction in this district and have committed acts of  
3 infringement in this district.

#### 4 **FACTUAL BACKGROUND**

5 9. The Patents-in-Suit were previously owned by NetSpeak Corporation ("NetSpeak").  
6 NetSpeak used the technology claimed in the Patents-in-Suit in one of its products, WebPhone.

7 10. WebPhone earned numerous awards from publications in the fields of computer and  
8 communications technology. In 1996, WebPhone was selected by PC Magazine as the "Editors  
9 Choice" of Internet telephone software. Computer Telephony Magazine also designated  
10 WebPhone an "Editor's Choice" product in 1996. In 1998, Internet Telephony magazine named  
11 WebPhone one of its "Product[s] of the Year."

12 11. WebPhone was also the subject of contemporaneous published articles that praised the  
13 product. The authors of these articles described WebPhone and its underlying technology as  
14 being new and original, and commented on the potentially far-reaching implications of  
15 WebPhone for communications and computer technology. For example, in August of 1996,  
16 Computer Telephony Magazine published an article in which it concluded that NetSpeak's new  
17 Business WebPhone System had the potential to be "absolutely revolutionary." The Computer  
18 Telephony Magazine article observes that the method devised by the inventors for establishing  
19 point-to-point connections between WebPhone client processes was a "new method" that  
20 distinguished WebPhone from other competing products available at the time. A separate review  
21 by Consummate Winsock Apps in 1996 observed that "WebPhone may well be on its way  
22 towards becoming the killer app that puts to shame similar offerings" from NetSpeak's  
23 competitors.

24 12. Straight Path is the lawful owner-by-assignment of all right, title and interest in and to the  
25 Patents-in-Suit. Straight Path is a majority owned subsidiary of Straight Path Communications,  
26 Inc. ("SPCI"). SPCI is a holding company for two companies, Straight Path and Straight Path  
27 Spectrum, Inc. ("Straight Path Spectrum"). Straight Path Spectrum holds, leases and markets  
28 fixed wireless spectrum in the 39 GHz and 29 GHz spectrums that are used for

1 telecommunications. In particular, Straight Path Spectrum's spectrum is primarily used to  
2 provide backhaul services for existing wireless Internet service providers and for cellular mobile  
3 backhaul.

4 13. All maintenance fees for the Patents-in-Suit have been timely paid, and there are no fees  
5 currently due.

## 6 **COUNT I**

### 7 **(Defendant's Infringement of the '704 Patent)**

8 14. Paragraphs 1 through 13 are incorporated by reference as if fully restated herein.

9 15. United States Patent No. 6,108,704, entitled "Point-to-Point Internet Protocol," issued on  
10 August 22, 2000 from United States Patent Application No. 08/533,115 filed on September 25,  
11 1995. On October 26, 2010, an Ex Parte Reexamination Certificate issued for the '704 Patent. A  
12 true and correct copy of the '704 Patent is attached as Exhibit A.

13 16. Defendant has been and now is directly infringing one or more claims of the '704 Patent  
14 under 35 U.S.C. §271(a), in this judicial District and elsewhere in the United States, by, among  
15 other things, making, using, selling, offering to sell and/or importing into the United States for  
16 subsequent sale or use computer program products capable of executing a first process,  
17 connecting to a second process and a server over a computer network, and that include program  
18 code for (a) transmitting a network protocol address for the first process to the server; (b)  
19 transmitting a query to server as to whether a second process is connected to the network; (c) if  
20 the response is in the affirmative, receiving the network address of the second process; and (d)  
21 after receiving the network address of the second process, establishing a point-to-point  
22 communication link between the first and second processes. For example, and without  
23 limitation, Defendant directly infringes the '704 Patent by making, using, selling, offering to sell  
24 and/or importing into the United States IP telecommunications products such as Defendant's  
25 Facetime software. These products infringe the '704 Patent literally and/or under the doctrine of  
26 equivalents.

1 17. Defendant actively, knowingly, and intentionally induced, and continues to actively,  
2 knowingly, and intentionally induce, infringement of the '704 Patent under 35 U.S.C. ¶271(b) by  
3 its customers and end users.

4 18. Defendant has had knowledge of the '704 Patent since at least the filing of this lawsuit.

5 19. Defendant has induced its customers and end users to infringe the '704 Patent by using  
6 computer program products capable of executing a first process, connecting to a second process  
7 and a server over a computer network, and that include program code for (a) transmitting a  
8 network protocol address for the first process to the server; (b) transmitting a query to server as  
9 to whether a second process is connected to the network; (c) if the response is in the affirmative,  
10 receiving the network address of the second process; and (d) after receiving the network address  
11 of the second process, establishing a point-to-point communication link between the first and  
12 second processes. For example, Defendant encourages its customers and end users to make  
13 infringing point-to-point connections through the materials it provides to its customers, including  
14 those materials provided on Defendant's Internet website. *See, e.g.*,  
15 <http://www.apple.com/mac/facetime/>.

16 20. Defendant specifically intends its customers and/or end users to infringe the '704 Patent,  
17 either literally or by the doctrine of equivalents, because Defendant has known about the '704  
18 Patent and how Defendant's products infringe the claims of the '704 Patent but Defendant has not  
19 taken steps to prevent the infringement by its customers and/or end users. Accordingly,  
20 Defendant has acted with the specific intent to induce infringement of the '704 Patent.

21 21. Accordingly, Defendant has induced infringement of the '704 Patent under 35 U.S.C.  
22 §271(b).

23 22. Defendant has had knowledge of and notice of the '704 Patent and its infringement since  
24 at least the filing of this lawsuit and, despite this knowledge, continues to commit tortious  
25 conduct by way of patent infringement.

26 23. Defendant has been and continues to be infringing one or more of the claims of the '704  
27 Patent through the aforesaid acts.

28 24. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

**COUNT II**

**(Defendant's Infringement of the '121 Patent)**

25. Paragraphs 1 through 13 are incorporated by reference as if fully restated herein.

26. United States Patent No. 6,131,121, entitled "Point-to-Point Computer Network Communication Utility Utilizing Dynamically Assigned Network Protocol Addresses," issued on October 10, 2000 from United States Patent Application No. 08/719,554 filed on September 25, 1996. On December 14, 2010, an Ex Parte Reexamination Certificate issued for the '121 Patent. A true and correct copy of the '121 Patent is attached as Exhibit B.

27. Defendant has been and now is directly infringing one or more claims of the '121 Patent under 35 U.S.C. §271(a), in this judicial District and elsewhere in the United States, by, among other things, making, using, selling, offering to sell and/or importing into the United States for subsequent sale or use apparatuses capable of executing a first process operatively coupled over a computer network to a second process and a directory database server process, and that include program logic for (a) forwarding a dynamically assigned network protocol address through which the first process can be accessed to the address server; (b) querying the address as to whether the second process is connected to the computer network; (c) receiving a dynamically assigned network protocol address of the second process if it is connected to the computer network; and (d) establishing a point-to-point communication link with the second process in response to receiving its address. For example, and without limitation, Defendant directly infringes the '121 Patent by making, using, selling, offering to sell and/or importing into the United States IP telecommunications such as Defendant's Facetime software. These products infringe the '121 Patent literally and/or under the doctrine of equivalents.

28. Defendant actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the '121 Patent under 35 U.S.C. ¶271(b) by its customers and end users.

29. Defendant has had knowledge of the '121 Patent since at least the filing of this lawsuit.

30. Defendant has induced its customers and end users to infringe the '121 Patent by using apparatuses capable of executing a first process operatively coupled over a computer network to

1 a second process and a directory database server process, and that include program logic for (a)  
2 forwarding a dynamically assigned network protocol address through which the first process can  
3 be accessed to the address server; (b) querying the address as to whether the second process is  
4 connected to the computer network; (c) receiving a dynamically assigned network protocol  
5 address of the second process if it is connected to the computer network; and (d) establishing a  
6 point-to-point communication link with the second process in response to receiving its address.  
7 For example, Defendant encourages its customers and end users to make infringing point-to-  
8 point connections through the materials it provides to its customers, including those materials  
9 provided on Defendant's Internet website. *See, e.g.,* <http://www.apple.com/mac/facetime/>.

10 31. Defendant specifically intends its customers and/or end users to infringe the '121 Patent,  
11 either literally or by the doctrine of equivalents, because Defendant has known about the '121  
12 Patent and how Defendant's products infringe the claims of the '121 Patent but Defendant has not  
13 taken steps to prevent the infringement by its customers and/or end users. Accordingly,  
14 Defendant has acted with the specific intent to induce infringement of the '121 Patent.

15 32. Accordingly, Defendant has induced infringement of the '121 Patent under 35 U.S.C.  
16 §271(b).

17 33. Defendant has had knowledge of and notice of the '121 Patent since at least the filing of  
18 this lawsuit and, despite this knowledge, continues to commit tortious conduct by way of patent  
19 infringement.

20 34. Defendant has been and continues to be infringing one or more of the claims of the '121  
21 Patent through the aforesaid acts.

22 35. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

### 23 **COUNT III**

#### 24 **(Defendant's Infringement of the '365 Patent)**

25 36. Paragraphs 1 through 13 are incorporated by reference as if fully restated herein.

26 37. United States Patent No. 6,701,365, entitled "Point-to-Point Internet Protocol," issued on  
27 March 2, 2004 from United States Patent Application No. 09/345,222 filed on June 30, 1999.  
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1 On August 3, 2010, an Ex Parte Reexamination Certificate issued for the '365 Patent. A true and  
2 correct copy of the '365 Patent is attached as Exhibit C.

3 38. Defendant has been and now is directly infringing one or more claims of the '365 Patent  
4 under 35 U.S.C. §271(a), in this judicial District and elsewhere in the United States, by, among  
5 other things, making, using, selling, offering to sell and/or importing into the United States for  
6 subsequent sale or use computer program products for use with a server operatively connected  
7 over a computer network to a plurality of processes, and that include program code for (a)  
8 receiving the current dynamically assigned network protocol address of one of the processes  
9 connected to the network; (b) receiving an identifier associated with the process; and (c)  
10 receiving queries for either the address or the identifier from another process and allowing the  
11 establishment of packet-based point-to-point communication between the processes. For  
12 example, and without limitation, Defendant directly infringes the '365 Patent by making, using,  
13 selling, offering to sell and/or importing into the United States IP telecommunications such as  
14 Defendant's Facetime software. These products infringe the '365 Patent literally and/or under the  
15 doctrine of equivalents.

16 39. Defendant actively, knowingly, and intentionally induced, and continues to actively,  
17 knowingly, and intentionally induce, infringement of the '365 Patent under 35 U.S.C. ¶271(b) by  
18 its customers and end users.

19 40. Defendant has had knowledge of the '365 Patent since the filing of this lawsuit.

20 41. Defendant has induced its customers and end users to infringe the '365 Patent by using  
21 computer program products for use with a server operatively connected over a computer network  
22 to a plurality of processes, and that include program code for (a) receiving the current  
23 dynamically assigned network protocol address of one of the processes connected to the  
24 network; (b) receiving an identifier associated with the process; and (c) receiving queries for  
25 either the address or the identifier from another process and allowing the establishment of  
26 packet-based point-to-point communication between the processes. For example, Defendant  
27 encourages its customers and end users to make infringing point-to-point connections through  
28



1 the materials it provides to its customers, including those materials provided on Defendant's  
2 Internet website. *See, e.g.*, <http://www.apple.com/mac/facetime/>.

3 42. Defendant specifically intends its customers and/or end users to infringe the '365 Patent,  
4 either literally or by the doctrine of equivalents, because Defendant has known about the '365  
5 Patent and how Defendant's products infringe the claims of the '365 Patent but Defendant has not  
6 taken steps to prevent the infringement by its customers and/or end users. Accordingly,  
7 Defendant has acted with the specific intent to induce infringement of the '365 Patent.

8 43. Accordingly, Defendant has induced infringement of the '365 Patent under 35 U.S.C.  
9 §271(b).

10 44. Defendant has had knowledge of and notice of the '365 Patent and its infringement since  
11 at least the filing of this lawsuit and, despite this knowledge, continues to commit tortious  
12 conduct by way of patent infringement.

13 45. Defendant has been and continues to be infringing one or more of the claims of the '365  
14 Patent through the aforesaid acts.

15 46. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

#### 16 **COUNT IV**

#### 17 **(Defendant's Infringement of the '208 Patent)**

18 47. Paragraphs 1 through 13 are incorporated by reference as if fully restated herein.

19 48. United States Patent No. 7,149,208, entitled "Method And Apparatus For Providing  
20 Caller Identification Based Responses In A Computer Telephony Environment," issued on  
21 December 12, 2006 from United States Patent Application No. 08/719,639 filed on September  
22 25, 1996. A true and correct copy of the '208 Patent is attached as Exhibit D.

23 49. Defendant has been and now is directly infringing one or more claims of the '208 Patent  
24 under 35 U.S.C. §271(a), in this judicial District and elsewhere in the United States, by, among  
25 other things, making, using, selling, offering to sell and/or importing into the United States for  
26 subsequent sale or use of devices that include telephony processes with dynamically assigned  
27 network protocol addresses that include a method of selectively alerting a user of an incoming  
28 communication, including (a) receiving a call packet containing an information profile

1 identifying a telephony process that is the source of a communications; (b) responding to the  
2 incoming communication in accordance with the identify of the source; and (c) wherein a central  
3 server stores the address used to establish a connection between telephony processes. For  
4 example, and without limitation, Defendant directly infringes the '208 Patent by making, using,  
5 selling, offering to sell and/or importing into the United States IP telecommunications such as  
6 Defendant's Facetime software. These products infringe the '208 Patent literally and/or under the  
7 doctrine of equivalents.

8 50. Defendant actively, knowingly, and intentionally induced, and continues to actively,  
9 knowingly, and intentionally induce, infringement of the '208 Patent under 35 U.S.C. ¶271(b) by  
10 its customers and end users.

11 51. Defendant has had knowledge of the '208 Patent since the filing of this lawsuit.

12 52. Defendant has induced its customers and end users to infringe the '208 Patent by using  
13 subsequent sale or use of devices that include telephony processes with dynamically assigned  
14 network protocol addresses that include a method of selectively alerting a user of an incoming  
15 communication, including (a) receiving a call packet containing an information profile  
16 identifying a telephony process that is the source of a communications; (b) responding to the  
17 incoming communication in accordance with the identify of the source; and (c) wherein a central  
18 server stores the address used to establish a connection between telephony processes. For  
19 example, Defendant encourages its customers and end users to make infringing point-to-point  
20 connections through the materials it provides to its customers, including those materials provided  
21 on Defendant's Internet website. *See, e.g.,* <http://www.apple.com/mac/facetime/>.

22 53. Defendant specifically intends its customers and/or end users to infringe the '208 Patent,  
23 either literally or by the doctrine of equivalents, because Defendant has known about the '208  
24 Patent and how Defendant's products infringe the claims of the '208 Patent but Defendant has not  
25 taken steps to prevent the infringement by its customers and/or end users. Accordingly,  
26 Defendant has acted with the specific intent to induce infringement of the '208 Patent.

27 54. Accordingly, Defendant has induced infringement of the '208 Patent under 35 U.S.C.  
28 §271(b).

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1 55. Defendant has had knowledge of and notice of the '208 Patent and its infringement since  
2 at least the filing of this lawsuit and, despite this knowledge, continues to commit tortious  
3 conduct by way of patent infringement.

4 56. Defendant has been and continues to be infringing one or more of the claims of the '208  
5 Patent through the aforesaid acts.

6 57. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

7 **PRAYER FOR RELIEF**

8 Wherefore, Straight Path IP Group, Inc., respectfully requests the following relief:

- 9 a) A judgment that Defendant has infringed the '704 Patent;
- 10 b) A judgment that Defendant has infringed the '121 Patent;
- 11 c) A judgment that Defendant has infringed the '365 Patent;
- 12 d) A judgment that Defendant has infringed the '208 Patent;
- 13 e) A judgment that awards Straight Path all appropriate damages under 35 U.S.C. § 284 for  
14 the Defendant's past infringement, and any continuing or future infringement of the  
15 Patents-in-Suit, up until the date such judgment is entered, including interest, costs, and  
16 disbursements as justified under 35 U.S.C. § 284 and, if necessary, to adequately  
17 compensate Straight Path for Defendant's infringement;
- 18 f) An adjudication that this case is exceptional within the meaning of 35 U.S.C. § 285;
- 19 g) An adjudication that Straight Path be awarded the attorneys' fees, costs, and expenses it  
20 incurs in prosecuting this action; and
- 21 h) An adjudication that Straight Path be awarded such further relief at law or in equity as the  
22 Court deems just and proper.

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Respectfully submitted,

DATED: September 24, 2014

**RUSS, AUGUST & KABAT**

*/s/ Marc A. Fenster*

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Straight Path IP Group, Inc. request a trial by jury of any issues so triable by right.

Respectfully submitted,

DATED: September 24, 2014

**RUSS, AUGUST & KABAT**

/s/ Marc A. Fenster

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