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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 ADAPTIX, INC.,
 18 Plaintiff,
 19 v.
 20 APPLE, INC., AT&T MOBILITY LLC,
 AND JOHN DOE NOS. 1-10,
 21 Defendants.

Case No. 5:15-cv-00364

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL REQUESTED

23 This is an action for patent infringement in which Plaintiff, ADAPTIX, Inc. (“ADAPTIX”),
 24 complains against Defendants Apple, Inc. (“Apple”), AT&T Mobility LLC (“AT&T”), and John Doe
 25 Nos. 1-10 (collectively “the Defendants”), as follows:

THE PARTIES

27 1. ADAPTIX is a Delaware corporation with its principal place of business at 2400 Dallas
 28 Parkway, Suite 200, Plano, Texas 75093.

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

3 3. AT&T is a Delaware corporation with its principal place of business at 1025 Lenox
4 Park Blvd. NE, Atlanta, Georgia 30319 and does business in this judicial district by, among other
5 things, committing the infringing acts giving rise to this Complaint.

6 4. Defendants John Doe Nos. 1-10 are customers of Apple and AT&T who have
7 purchased or have been provided and have used the iPhone 6, iPhone 6 Plus, iPad with Retina display,
8 iPad mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and
9 iPhone 5s, and whose identities are not currently known to ADAPTIX.

10 **JURISDICTION AND VENUE**

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

14 6. Defendants are subject to this Court’s specific and general personal jurisdiction,
15 pursuant to due process and/or the California Long Arm Statute.

16 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b-c) and 1400(b)
17 because, among other things, Defendants have committed acts of patent infringement within this
18 judicial district, giving rise to this action, Apple and AT&T continue to conduct business in this
19 district, and John Doe Nos. 1-10 reside in this district.

20 **COUNT I**

21 **(INFRINGEMENT OF U.S. PATENT NO. 7,454,212)**

22 8. ADAPTIX incorporates by reference paragraphs 1 through 7 herein.

23 9. This cause of action arises under the patent laws of United States of America and, in
24 particular, 35 U.S.C. §§ 271, et seq.

25 10. ADAPTIX is the owner by assignment of United States patent number 7,454,212,
26 entitled “OFDMA With Adaptive Subcarrier-Cluster Configuration And Selective Loading” (“the
27 ’212 Patent”), with ownership of all substantial rights in the ’212 Patent, including the right to exclude
28 others and to sue and recover damages for the past and future infringement thereof. A true and correct

1 copy of the '212 Patent is attached as Exhibit A.

2 **Direct Infringement**

3 11. AT&T has infringed, and continues to infringe, at least claim 18 of the '212 patent in
4 this judicial district and elsewhere in the United States by, among other things, making and using its
5 4G LTE Wireless Network ("AT&T's LTE network").

6 12. AT&T supplies cellular communication devices, including without limitation the
7 iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini, iPad Mini 3, iPad Mini with Retina
8 Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, which together with the base
9 stations that AT&T operates create AT&T's LTE Network. AT&T's LTE Network infringes at least
10 claim 18 of the '212 patent. AT&T is thereby liable for infringement of the '212 Patent, pursuant to
11 35 U.S.C. § 271(a).

12 13. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 1 of the
13 '212 patent in this judicial district and elsewhere in the United States by, among other things, using
14 cellular communication devices, including without limitation the iPhone 6, iPhone 6 Plus, iPad with
15 Retina display, iPad mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5,
16 iPhone 5c and iPhone 5s, on AT&T's 4G LTE Wireless Network.

17 14. AT&T's and John Doe Nos. 1-10's infringement has caused damage to ADAPTIX,
18 which infringement by AT&T and John Doe Nos. 1-10 and damage to ADAPTIX will continue unless
19 and until AT&T and John Doe Nos. 1-10 are enjoined.

20 **Indirect Infringement**

21 15. Apple has induced infringement of and continues to induce infringement of at least
22 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,
23 among other things, providing, offering for sale, selling, and/or importing cellular communication
24 devices, including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini,
25 iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s,
26 for use on AT&T's LTE network. Apple knowingly encourages and intends for its customers to use
27 those devices in a manner that infringes the '212 patent. Apple's customers who operate such devices
28 in accordance with Apple's instructions, as well as AT&T, directly infringe one or more claims of the

1 '212 Patent in violation of 35 U.S.C § 271. Apple's inducement of such infringement creates liability
2 under 35 U.S.C. § 271(b).

3 16. AT&T has induced infringement of and continues to induce infringement of at least
4 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,
5 among other things, providing, offering for sale, selling, and/or importing cellular communication
6 devices, including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini,
7 iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s,
8 for use on AT&T's LTE network, and using its LTE network to operate those devices. AT&T
9 knowingly encourages and intends for its customers to use those devices in a manner that infringes the
10 '212 patent. AT&T's customers who operate such devices in accordance with AT&T's instructions
11 directly infringe one or more claims of the '212 Patent in violation of 35 U.S.C § 271. AT&T's
12 inducement of such infringement creates liability under 35 U.S.C. § 271(b).

13 17. Apple has contributed, and continues to contribute, to the direct infringement of at least
14 claim 18 by others, such as AT&T and end users of its cellular communication devices, including
15 without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini, iPad Mini 3, iPad
16 Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, to be used on
17 AT&T's LTE network, by offering to sell, selling within, and/or importing into the United States a
18 component of a patented system or an apparatus for use in practicing a patented process, that
19 constitutes a material part of the invention, knowing the same to be especially made or especially
20 adapted for use in infringement of the '212 Patent and not a staple article or commodity of commerce
21 suitable for substantial non-infringing use. Apple's conduct creates liability under 35 U.S.C. § 271(c).

22 18. AT&T has contributed, and continues to contribute, to the direct infringement of at
23 least claims 1 and 18 by others, such as end users of its LTE network and of cellular communication
24 devices, including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini,
25 iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s,
26 to be used on its LTE network, by making, offering to sell, selling within, and/or importing into the
27 United States a component of a patented system or an apparatus for use in practicing a patented
28 process, that constitutes a material part of the invention, knowing the same to be especially made or

1 especially adapted for use in infringement of the '212 Patent and not a staple article or commodity of
2 commerce suitable for substantial non-infringing use. AT&T's conduct creates liability under 35
3 U.S.C. § 271(c).

4 19. Apple and AT&T have been on notice of the '212 Patent since March 16, 2012, at the
5 latest, when they were served with the Complaint in the 13-cv-1777 litigation. Apple and AT&T will
6 thus have known and intended (since receiving such notice) that their continued actions would induce
7 or contribute to direct infringement of at least Claims 1 and 18 of the '212 Patent.

8 20. ADAPTIX has been reparably and irreparably damaged as a result of Defendants'
9 infringing conduct described in this Count. Defendants are thus liable to ADAPTIX for an amount
10 that adequately compensates ADAPTIX for Defendants' infringement, which, by law, cannot be less
11 than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §
12 284. Additionally, such irreparable damage will continue until Defendants are enjoined pursuant to 35
13 U.S.C. § 283.

14 COUNT II

15 (INFRINGEMENT OF U.S. PATENT NO. 6,947,748)

16 21. ADAPTIX incorporates by reference paragraphs 1 through 7 herein.

17 22. This cause of action arises under the patent laws of United States of America and, in
18 particular, 35 U.S.C. §§ 271, *et seq.*

19 23. ADAPTIX is the owner by assignment of United States patent number 6,947,748,
20 entitled "OFDMA With Adaptive Subcarrier-Cluster Configuration And Selective Loading" ("the
21 '748 Patent") with ownership of all substantial rights in the '748 Patent, including the right to exclude
22 others and to sue and recover damages for the past and future infringement thereof. A true and correct
23 copy of the '748 Patent is attached as Exhibit A.

24 **Direct Infringement**

25 24. AT&T has infringed, and continues to infringe, at least claim 21 of the '748 patent in
26 this judicial district and elsewhere in the United States by, among other things, making and using its
27 4G LTE Wireless Network ("AT&T's LTE network").

28 25. AT&T supplies cellular communication devices, including without limitation the

1 iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini, iPad Mini 3, iPad Mini with Retina
2 Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, which together with the base
3 stations that AT&T operate create AT&T's LTE Network. AT&T's LTE Network infringes at least
4 claim 21 of the '748 patent. AT&T is thereby liable for infringement of the '748 Patent, pursuant to
5 35 U.S.C. § 271(a).

6 26. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 21 of the
7 '748 patent in this judicial district and elsewhere in the United States by, among other things, using
8 cellular communication devices, including without limitation the iPhone 6, iPhone 6 Plus, iPad with
9 Retina display, iPad mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5,
10 iPhone 5c and iPhone 5s, on AT&T's 4G LTE Wireless Network.

11 27. AT&T's and John Doe Nos. 1-10's infringement has caused damage to ADAPTIX,
12 which infringement by AT&T and John Doe Nos. 1-10's and damage to ADAPTIX will continue
13 unless and until AT&T and John Doe Nos. 1-10 are enjoined.

14 **Indirect Infringement**

15 28. Apple has induced infringement of and continues to induce infringement of at least
16 Claim 21 of the '748 Patent in this judicial district and elsewhere in the United States by, among other
17 things, providing, offering for sale, selling, and/or importing cellular communication devices,
18 including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini, iPad
19 Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, for
20 use on AT&T's LTE network. Apple knowingly encourages and intends for its customers to use those
21 devices in a manner that infringes the '748 patent. Apple's customers who operate such devices in
22 accordance with Apple's instructions, as well as AT&T, directly infringe one or more claims of the
23 '748 Patent in violation of 35 U.S.C § 271. Apple's inducement of such infringement creates liability
24 under 35 U.S.C. § 271(b).

25 29. AT&T has induced infringement of and continues to induce infringement of at least
26 Claim 21 of the '748 Patent in this judicial district and elsewhere in the United States by, among other
27 things providing, offering for sale, selling, and/or importing cellular communication devices,
28 including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini, iPad

1 Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, for
2 use on AT&T's LTE network, and using its LTE network to operate those devices. AT&T knowingly
3 encourages and intends for its customers to use those devices in a manner that infringes the '748
4 patent. AT&T's customers who operate such devices in accordance with AT&T's instructions directly
5 infringe one or more claims of the '748 Patent in violation of 35 U.S.C § 271. AT&T's inducement of
6 such infringement creates liability under 35 U.S.C. § 271(b).

7 30. Apple has contributed, and continues to contribute, to the direct infringement of at least
8 claim 21 by others, such as AT&T and end users of its cellular communication devices, including
9 without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini, iPad Mini 3, iPad
10 Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, to be used on
11 AT&T's LTE network, by offering to sell, selling within, and/or importing into the United States a
12 component of a patented system or an apparatus for use in practicing a patented process, that
13 constitutes a material part of the invention, knowing the same to be especially made or especially
14 adapted for use in infringement of the '748 Patent and not a staple article or commodity of commerce
15 suitable for substantial non-infringing use. Apple's conduct creates liability under 35 U.S.C. § 271(c).

16 31. AT&T has contributed, and continues to contribute, to the direct infringement of at
17 least claim 21 by others, such as end users of its LTE network and of cellular communication devices,
18 including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad mini, iPad
19 Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, to be
20 used on its LTE network, by making, offering to sell, selling within, and/or importing into the United
21 States a component of a patented system or an apparatus for use in practicing a patented process, that
22 constitutes a material part of the invention, knowing the same to be especially made or especially
23 adapted for use in infringement of the '748 Patent and not a staple article or commodity of commerce
24 suitable for substantial non-infringing use. AT&T's conduct creates liability under 35 U.S.C. §
25 271(c).

26 32. Apple and AT&T have been on notice of the '748 Patent since March 16, 2012, at the
27 latest, when they were served with the Complaint in the 13-cv-1777 litigation. Apple and AT&T will
28 thus have known and intended (since receiving such notice) that their continued actions would induce

1 or contribute to direct infringement of at least Claim 21 of the '748 Patent.

2 33. ADAPTIX has been reparably and irreparably damaged as a result of Defendants'
3 infringing conduct described in this Count. Defendants are thus liable to ADAPTIX for an amount
4 that adequately compensates ADAPTIX for Defendants' infringement, which, by law, cannot be less
5 than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §
6 284. Additionally, such irreparable damage will continue until Defendants are enjoined pursuant to 35
7 U.S.C. § 283.

8 **PRAYER FOR RELIEF**

9 For the above reasons, ADAPTIX respectfully requests that this Court enter judgment:

10 A. That each Defendant has infringed the '212 and '748 patents;

11 B. Enjoining each Defendant, its officers, directors, agents, servants, affiliates,
12 employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or
13 privity with it from infringement of the '212 and '748 patents, under 35 U.S.C. § 283;

14 C. That each Defendant pay ADAPTIX damages with interest and costs, under 35
15 U.S.C. § 284;

16 D. Declaring this case exceptional under 35 U.S.C. § 285 and awarding attorneys' fees;
17 and

18 E. Granting any further relief that the Court may deem appropriate.

19 **DEMAND FOR JURY TRIAL**

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

22
23 Dated: January 26, 2015

Respectfully submitted,

24 By: /s/ James J. Foster

25 Paul J. Hayes

James J. Foster

Kevin Gannon

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