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

17 ADAPTIX, INC.,
 18
 Plaintiff,
 19
 v.
 20 APPLE, INC., CELLCO PARTNERSHIP
 21 d/b/a VERIZON WIRELESS, AND JOHN
 DOE NOS. 1-10,
 22
 Defendants.

Case No. 5:15-cv-00365

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL REQUESTED

23
 24 This is an action for patent infringement in which Plaintiff, ADAPTIX, Inc. (“ADAPTIX”),
 25 complains against Defendants Apple, Inc. (“Apple”), Cellco Partnership *d/b/a* Verizon Wireless
 26 (“Verizon”), and John Doe Nos. 1-10 (collectively “the Defendants”), as follows:

THE PARTIES

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

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

5 3. Verizon is a Delaware corporation with its principal place of business at 1 Verizon
6 Way, Basking Ridge, New Jersey 07920, and regularly does business in this judicial district by,
7 among other things, committing the infringing acts giving rise to this Complaint.

8 4. Defendants John Doe Nos. 1-10 are customers of Apple and Verizon who have
9 purchased or have been provided and have used the iPhone 6, iPhone 6 Plus, iPad with Retina display,
10 iPad3, iPad mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone
11 5c and iPhone 5s, and whose identities are not currently known to ADAPTIX.

12 **JURISDICTION AND VENUE**

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

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

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

22 **COUNT I**

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

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

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

27 10. ADAPTIX is the owner by assignment of United States patent number 7,454,212,
28 entitled “OFDMA With Adaptive Subcarrier-Cluster Configuration And Selective Loading” (“the

1 '212 Patent”), with ownership of all substantial rights in the '212 Patent, including the right to exclude
2 others and to sue and recover damages for the past and future infringement thereof. A true and correct
3 copy of the '212 Patent is attached as Exhibit A.

4 **Direct Infringement**

5 11. Verizon has infringed, and continues to infringe, at least claim 18 of the '212 patent in
6 this judicial district and elsewhere in the United States by, among other things, making and using its
7 4G LTE Wireless Network (“Verizon’s LTE network”).

8 12. Verizon supplies cellular communication devices, including without limitation the
9 iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad mini, iPad Mini 3, iPad Mini with
10 Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, which together with the base
11 stations that Verizon operates create Verizon’s LTE Network. Verizon’s LTE Network infringes at
12 least claim 18 of the '212 patent. Verizon is thereby liable for infringement of the '212 Patent,
13 pursuant to 35 U.S.C. § 271(a).

14 13. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 1 of the
15 '212 patent in this judicial district and elsewhere in the United States by, among other things, using
16 cellular communication devices, including without limitation iPhone 6, iPhone 6 Plus, iPad with
17 Retina display, iPad3, iPad mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2,
18 iPhone 5, iPhone 5c and iPhone 5s, on Verizon’s 4G LTE Wireless Network.

19 14. Verizon’s and John Doe Nos. 1-10’s infringement has caused damage to ADAPTIX,
20 which infringement by Verizon and John Doe Nos. 1-10 and damage to ADAPTIX will continue
21 unless and until Verizon and John Doe Nos. 1-10 are enjoined.

22 **Indirect Infringement**

23 15. Apple has induced infringement of and continues to induce infringement of at least
24 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,
25 among other things, providing, offering for sale, selling, and/or importing cellular communication
26 devices, including without limitation iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad
27 mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and
28 iPhone 5s, for use on Verizon’s LTE network. Apple knowingly encourages and intends for its

1 customers to use those devices in a manner that infringes the '212 patent. Apple's customers who
2 operate such devices in accordance with Apple's instructions, as well as Verizon, directly infringe one
3 or more claims of the '212 Patent in violation of 35 U.S.C § 271. Apple's inducement of such
4 infringement creates liability under 35 U.S.C. § 271(b).

5 16. Verizon has induced infringement of and continues to induce infringement of at least
6 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,
7 among other things, providing, offering for sale, selling, and/or importing cellular communication
8 devices, including without limitation iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad
9 mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and
10 iPhone 5s, for use on Verizon's LTE network, and using its LTE network to operate those devices.
11 Verizon knowingly encourages and intends for its customers to use those devices in a manner that
12 infringes the '212 patent. Verizon's customers who operate such devices in accordance with
13 Verizon's instructions directly infringe one or more claims of the '212 Patent in violation of 35 U.S.C
14 § 271. Verizon's inducement of such infringement creates liability under 35 U.S.C. § 271(b).

15 17. Apple has contributed, and continues to contribute, to the direct infringement of at least
16 claim 18 by others, such as Verizon and end users of its cellular communication devices, including
17 without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad mini, iPad Mini
18 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, to be used
19 on Verizon's LTE network, by offering to sell, selling within, and/or importing into the United States
20 a component of a patented system or an apparatus for use in practicing a patented process, that
21 constitutes a material part of the invention, knowing the same to be especially made or especially
22 adapted for use in infringement of the '212 Patent and not a staple article or commodity of commerce
23 suitable for substantial non-infringing use. Apple's conduct creates liability under 35 U.S.C. § 271(c).

24 18. Verizon has contributed, and continues to contribute, to the direct infringement of at
25 least claims 1 and 18 by others, such as end users of its LTE network and of cellular communication
26 devices, including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3,
27 iPad mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and
28 iPhone 5s, to be used on its LTE network, by making, offering to sell, selling within, and/or importing

1 into the United States a component of a patented system or an apparatus for use in practicing a
2 patented process, that constitutes a material part of the invention, knowing the same to be especially
3 made or especially adapted for use in infringement of the '212 Patent and not a staple article or
4 commodity of commerce suitable for substantial non-infringing use. Verizon's conduct creates
5 liability under 35 U.S.C. § 271(c).

6 19. Apple and Verizon have been on notice of the '212 Patent since March 16, 2012, at the
7 latest, when they were served with the Complaint in the 13-cv-1776 litigation. Apple and Verizon will
8 thus have known and intended (since receiving such notice) that their continued actions would induce
9 or contribute to direct infringement of at least Claims 1 and 18 of the '212 Patent.

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

16 **COUNT II**

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

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

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

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

26 **Direct Infringement**

27 24. Verizon has infringed, and continues to infringe, at least claim 21 of the '748 patent in
28 this judicial district and elsewhere in the United States by, among other things, making and using its

1 4G LTE Wireless Network (“Verizon’s LTE network”).

2 25. Verizon supplies cellular communication devices, including without limitation the
3 iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad mini, iPad Mini 3, iPad Mini with
4 Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, which together with the base
5 stations that Verizon operate create Verizon’s LTE Network. Verizon’s LTE Network infringes at
6 least claim 21 of the ’748 patent. Verizon is thereby liable for infringement of the ’748 Patent,
7 pursuant to 35 U.S.C. § 271(a).

8 26. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 21 of the
9 ’748 patent in this judicial district and elsewhere in the United States by, among other things, using
10 cellular communication devices, including without limitation the iPhone 6, iPhone 6 Plus, iPad with
11 Retina display, iPad3, iPad mini, iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2,
12 iPhone 5, iPhone 5c and iPhone 5s, on Verizon’s 4G LTE Wireless Network.

13 27. Verizon’s and John Doe Nos. 1-10’s infringement has caused damage to ADAPTIX,
14 which infringement by Verizon and John Doe Nos. 1-10’s and damage to ADAPTIX will continue
15 unless and until Verizon and John Doe Nos. 1-10 are enjoined.

16 **Indirect Infringement**

17 28. Apple has induced infringement of and continues to induce infringement of at least
18 Claim 21 of the ’748 Patent in this judicial district and elsewhere in the United States by, among other
19 things, providing, offering for sale, selling, and/or importing cellular communication devices,
20 including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad mini,
21 iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s,
22 for use on Verizon’s LTE network. Apple knowingly encourages and intends for its customers to use
23 those devices in a manner that infringes the ’748 patent. Apple’s customers who operate such devices
24 in accordance with Apple’s instructions, as well as Verizon, directly infringe one or more claims of
25 the ’748 Patent in violation of 35 U.S.C § 271. Apple’s inducement of such infringement creates
26 liability under 35 U.S.C. § 271(b).

27 29. Verizon has induced infringement of and continues to induce infringement of at least
28 Claim 21 of the ’748 Patent in this judicial district and elsewhere in the United States by, among other

1 things providing, offering for sale, selling, and/or importing cellular communication devices,
2 including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad mini,
3 iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s,
4 for use on Verizon's LTE network, and using its LTE network to operate those devices. Verizon
5 knowingly encourages and intends for its customers to use those devices in a manner that infringes the
6 '748 patent. Verizon's customers who operate such devices in accordance with Verizon's instructions
7 directly infringe one or more claims of the '748 Patent in violation of 35 U.S.C § 271. Verizon's
8 inducement of such infringement creates liability under 35 U.S.C. § 271(b).

9 30. Apple has contributed, and continues to contribute, to the direct infringement of at least
10 claim 21 by others, such as Verizon and end users of its cellular communication devices, including
11 without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad mini, iPad Mini
12 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s, to be used
13 on Verizon's LTE network, by offering to sell, selling within, and/or importing into the United States
14 a component of a patented system or an apparatus for use in practicing a patented process, that
15 constitutes a material part of the invention, knowing the same to be especially made or especially
16 adapted for use in infringement of the '748 Patent and not a staple article or commodity of commerce
17 suitable for substantial non-infringing use. Apple's conduct creates liability under 35 U.S.C. § 271(c).

18 31. Verizon has contributed, and continues to contribute, to the direct infringement of at
19 least claim 21 by others, such as end users of its LTE network and of cellular communication devices,
20 including without limitation the iPhone 6, iPhone 6 Plus, iPad with Retina display, iPad3, iPad mini,
21 iPad Mini 3, iPad Mini with Retina Display, iPad Air, iPad Air 2, iPhone 5, iPhone 5c and iPhone 5s,
22 to be used on its LTE network, by making, offering to sell, selling within, and/or importing into the
23 United States a component of a patented system or an apparatus for use in practicing a patented
24 process, that constitutes a material part of the invention, knowing the same to be especially made or
25 especially adapted for use in infringement of the '748 Patent and not a staple article or commodity of
26 commerce suitable for substantial non-infringing use. Verizon's conduct creates liability under 35
27 U.S.C. § 271(c).

28 32. Apple and Verizon have been on notice of the '748 Patent since March 16, 2012, at the

1 latest, when they were served with the Complaint in the 13-cv-1776 litigation. Apple and Verizon will
2 thus have known and intended (since receiving such notice) that their continued actions would induce
3 or contribute to direct infringement of at least Claim 21 of the '748 Patent.

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

10 **PRAYER FOR RELIEF**

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

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

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

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

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

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

21 **DEMAND FOR JURY TRIAL**

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

24
25 Dated: January 26, 2015

Respectfully submitted,

26 By: /s/ James J. Foster

Paul J. Hayes

James J. Foster

Kevin Gannon

27 **HAYES MESSINA GILMAN & HAYES LLC**
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