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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 ADAPTIX, INC.,
14 Plaintiff,
15 v.
16 DELL, INC., CELLCO PARTNERSHIP
17 d/b/a VERIZON WIRELESS, AND JOHN
18 DOE NOS. 1-10,
19 Defendants.

Case No. 5:15-cv-00971

**ORIGINAL COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL REQUESTED

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

23 **THE PARTIES**

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

26 2. Dell Incorporated is a Delaware corporation with its principal place of business at One
27 Dell Way, Round Rock, Texas 78682 and regularly does business in this judicial district by, among
28 other things, committing the infringing acts giving rise to this Complaint.

1 this judicial district and elsewhere in the United States by, among other things, making and using its
2 4G LTE Wireless Network (“Verizon’s LTE network”).

3 12. Verizon supplies cellular communication devices, including without limitation the Dell
4 Latitude Series, which together with the base stations that Verizon operates create Verizon’s LTE
5 Network. Verizon’s LTE Network infringes at least claim 18 of the ’212 patent. Verizon is thereby
6 liable for infringement of the ’212 Patent, pursuant to 35 U.S.C. § 271(a).

7 13. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 1 of the
8 ’212 patent in this judicial district and elsewhere in the United States by, among other things, using
9 cellular communication devices, including without limitation the Dell Latitude Series, on Verizon’s
10 4G LTE Wireless Network.

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

14 **Indirect Infringement**

15 15. Dell has induced infringement of and continues to induce infringement of at least
16 Claims 1 and 18 of the ’212 Patent in this judicial district and elsewhere in the United States by,
17 among other things, providing, offering for sale, selling, and/or importing cellular communication
18 devices, including without limitation the Dell Latitude Series, for use on Verizon’s LTE network.
19 Dell knowingly encourages and intends for its customers to use those devices in a manner that
20 infringes the ’212 patent. Dell’s customers who operate such devices in accordance with Dell’s
21 instructions, as well as Verizon, directly infringe one or more claims of the ’212 Patent in violation of
22 35 U.S.C § 271. Dell’s inducement of such infringement creates liability under 35 U.S.C. § 271(b).

23 16. Verizon 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 the Dell Latitude Series, for use on Verizon’s LTE network, and
27 using its LTE network to operate those devices. Verizon knowingly encourages and intends for its
28 customers to use those devices in a manner that infringes the ’212 patent. Verizon’s customers who

1 operate such devices in accordance with Verizon's instructions directly infringe one or more claims of
2 the '212 Patent in violation of 35 U.S.C § 271. Verizon's inducement of such infringement creates
3 liability under 35 U.S.C. § 271(b).

4 17. Dell has contributed, and continues to contribute, to the direct infringement of at least
5 claim 18 by others, such as Verizon and end users of its cellular communication devices, including
6 without limitation the Dell Latitude Series, to be used on Verizon's LTE network, by offering to sell,
7 selling within, and/or importing into the United States a component of a patented system or an
8 apparatus for use in practicing a patented process, that constitutes a material part of the invention,
9 knowing the same to be especially made or especially adapted for use in infringement of the '212
10 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.
11 Dell's conduct creates liability under 35 U.S.C. § 271(c).

12 18. Verizon has contributed, and continues to contribute, to the direct infringement of at
13 least claims 1 and 18 by others, such as end users of its LTE network and of cellular communication
14 devices, including without limitation the Dell Latitude Series, to be used on its LTE network, by
15 making, offering to sell, selling within, and/or importing into the United States a component of a
16 patented system or an apparatus for use in practicing a patented process, that constitutes a material
17 part of the invention, knowing the same to be especially made or especially adapted for use in
18 infringement of the '212 Patent and not a staple article or commodity of commerce suitable for
19 substantial non-infringing use. Verizon's conduct creates liability under 35 U.S.C. § 271(c).

20 19. Dell and Verizon have been on notice of the '212 Patent since September 23, 2013, at
21 the latest, when they were served with the Complaint in the 14-cv-1259 litigation. Dell and Verizon
22 will thus have known and intended (since receiving such notice) that their continued actions would
23 induce or contribute to direct infringement of at least Claims 1 and 18 of the '212 Patent.

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

1 U.S.C. § 283.

2 **COUNT II**

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

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

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

7 23. ADAPTIX is the owner by assignment of United States patent number 6,947,748,
8 entitled “OFDMA With Adaptive Subcarrier-Cluster Configuration And Selective Loading” (“the
9 ’748 Patent”) with ownership of all substantial rights in the ’748 Patent, including the right to exclude
10 others and to sue and recover damages for the past and future infringement thereof. A true and correct
11 copy of the ’748 Patent is attached as Exhibit A.

12 **Direct Infringement**

13 24. Verizon has infringed, and continues to infringe, at least claim 21 of the ’748 patent in
14 this judicial district and elsewhere in the United States by, among other things, making and using its
15 4G LTE Wireless Network (“Verizon’s LTE network”).

16 25. Verizon supplies cellular communication devices, including without limitation the Dell
17 Latitude Series, which together with the base stations that Verizon operate create Verizon’s LTE
18 Network. Verizon’s LTE Network infringes at least claim 21 of the ’748 patent. Verizon is thereby
19 liable for infringement of the ’748 Patent, pursuant to 35 U.S.C. § 271(a).

20 26. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 21 of the
21 ’748 patent in this judicial district and elsewhere in the United States by, among other things, using
22 cellular communication devices, including without limitation the Dell Latitude Series, on Verizon’s
23 4G LTE Wireless Network.

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

Indirect Infringement

1
2 28. Dell has induced infringement of and continues to induce infringement of at least
3 Claim 21 of the '748 Patent in this judicial district and elsewhere in the United States by, among other
4 things, providing, offering for sale, selling, and/or importing cellular communication devices,
5 including without limitation the Dell Latitude Series, for use on Verizon's LTE network. Dell
6 knowingly encourages and intends for its customers to use those devices in a manner that infringes the
7 '748 patent. Dell's customers who operate such devices in accordance with Dell's instructions, as
8 well as Verizon, directly infringe one or more claims of the '748 Patent in violation of 35 U.S.C §
9 271. Dell's inducement of such infringement creates liability under 35 U.S.C. § 271(b).

10 29. Verizon has induced infringement of and continues to induce infringement of at least
11 Claim 21 of the '748 Patent in this judicial district and elsewhere in the United States by, among other
12 things providing, offering for sale, selling, and/or importing cellular communication devices,
13 including without limitation the Dell Latitude Series, for use on Verizon's LTE network, and using its
14 LTE network to operate those devices. Verizon knowingly encourages and intends for its customers
15 to use those devices in a manner that infringes the '748 patent. Verizon's customers who operate such
16 devices in accordance with Verizon's instructions directly infringe one or more claims of the '748
17 Patent in violation of 35 U.S.C § 271. Verizon's inducement of such infringement creates liability
18 under 35 U.S.C. § 271(b).

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

27 31. Verizon has contributed, and continues to contribute, to the direct infringement of at
28 least claim 21 by others, such as end users of its LTE network and of cellular communication devices,

1 including without limitation the Dell Latitude Series, to be used on its LTE network, by making,
2 offering to sell, selling within, and/or importing into the United States a component of a patented
3 system or an apparatus for use in practicing a patented process, that constitutes a material part of the
4 invention, knowing the same to be especially made or especially adapted for use in infringement of the
5 '748 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing
6 use. Verizon's conduct creates liability under 35 U.S.C. § 271(c).

7 32. Dell and Verizon have been on notice of the '748 Patent since September 23, 2013, at
8 the latest, when they were served with the Complaint in the 14-cv-1259 litigation. Dell and Verizon
9 will thus have known and intended (since receiving such notice) that their continued actions would
10 induce or contribute to direct infringement of at least Claim 21 of the '748 Patent.

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

17 **PRAYER FOR RELIEF**

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

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

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

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

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

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

28

DEMAND FOR JURY TRIAL

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

Dated: March 2, 2015

Respectfully submitted,

By: /s/ James J. Foster

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