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Attorneys for the Plaintiff, ADAPTIX, Inc.

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

13 ADAPTIX, INC.,
14 Plaintiff,
15 v.
16 AMAZON.COM, INC. and AT&T
17 MOBILITY, LLC, AND JOHN DOE NOS.
18 1-10,
19 Defendants.

Case No. 5:15-cv-00962

**ORIGINAL COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL REQUESTED

21
22 This is an action for patent infringement in which Plaintiff, ADAPTIX, Inc. (“ADAPTIX”),
23 complains against Defendants Amazon.com, Inc. (“Amazon”), AT&T Mobility, LLC (“AT&T”), and
24 John Doe Nos. 1-10 (collectively “the Defendants”), as follows:

25 **THE PARTIES**

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

28 2. Amazon is a Delaware corporation with a principal place of business at 1200 12th

1 Avenue, Suite 1200, Seattle, WA 98144, and does business in this judicial district by, among other
2 things, committing the infringing acts giving rise to this Complaint.

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 Amazon and AT&T who have
7 purchased or have been provided and have used the Amazon Fire Phone, Amazon Kindle Fire HDX 7,
8 and Amazon Kindle Fire HDX 8.9, and whose identities are not currently known to ADAPTIX.

9 **JURISDICTION AND VENUE**

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

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

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

19 **COUNT I**

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

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

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

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

Direct Infringement

1
2 12. AT&T has infringed, and continues to infringe, at least claim 18 of the '212 patent in
3 this judicial district and elsewhere in the United States by, among other things, making and using its
4 4G LTE Wireless Network ("AT&T's LTE network").

5 13. AT&T supplies cellular communication devices, including without the Amazon Fire
6 Phone, Amazon Kindle Fire HDX 7, and Amazon Kindle Fire HDX 8.9, which together with the base
7 stations that AT&T operates create AT&T's LTE Network. AT&T's LTE Network infringes at least
8 claim 18 of the '212 patent. AT&T is thereby liable for infringement of the '212 Patent, pursuant to
9 35 U.S.C. § 271(a).

10 14. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 1 of the
11 '212 patent in this judicial district and elsewhere in the United States by, among other things, using
12 cellular communication devices, including without limitation the Amazon Fire Phone, Amazon Kindle
13 Fire HDX 7, and Amazon Kindle Fire HDX 8.9, on AT&T's 4G LTE Wireless Network.

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

Indirect Infringement

17
18 16. Amazon has induced infringement of and continues to induce infringement of at least
19 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,
20 among other things, providing, offering for sale, selling, and/or importing cellular communication
21 devices, including without limitation the Amazon Fire Phone, Amazon Kindle Fire HDX 7, and
22 Amazon Kindle Fire HDX 8.9, for use on AT&T's LTE network. Amazon knowingly encourages and
23 intends for its customers to use those devices in a manner that infringes the '212 patent. Amazon's
24 customers who operate such devices in accordance with Amazon's instructions, as well as AT&T,
25 directly infringe one or more claims of the '212 Patent in violation of 35 U.S.C § 271. Amazon's
26 inducement of such infringement creates liability under 35 U.S.C. § 271(b).

27 17. AT&T has induced infringement of and continues to induce infringement of at least
28 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,

1 among other things, providing, offering for sale, selling, and/or importing cellular communication
2 devices, including without limitation the Amazon Fire Phone, Amazon Kindle Fire HDX 7, and
3 Amazon Kindle Fire HDX 8.9, for use on AT&T's LTE network, and using its LTE network to
4 operate those devices. AT&T knowingly encourages and intends for its customers to use those
5 devices in a manner that infringes the '212 patent. AT&T's customers who operate such devices in
6 accordance with AT&T's instructions directly infringe one or more claims of the '212 Patent in
7 violation of 35 U.S.C § 271. AT&T's inducement of such infringement creates liability under 35
8 U.S.C. § 271(b).

9 18. Amazon has contributed, and continues to contribute, to the direct infringement of at
10 least claim 18 by others, such as AT&T and end users of its cellular communication devices, including
11 without the Amazon Fire Phone, Amazon Kindle Fire HDX 7, and Amazon Kindle Fire HDX 8.9, to
12 be used on AT&T's LTE network, by offering to sell, selling within, and/or importing into the United
13 States a component of a patented system or an apparatus for use in practicing a patented process, that
14 constitutes a material part of the invention, knowing the same to be especially made or especially
15 adapted for use in infringement of the '212 Patent and not a staple article or commodity of commerce
16 suitable for substantial non-infringing use. Amazon's conduct creates liability under 35 U.S.C. §
17 271(c).

18 19. AT&T has contributed, and continues to contribute, to the direct infringement of at
19 least claims 1 and 18 by others, such as end users of its LTE network and of cellular communication
20 devices, including without limitation the Amazon Fire Phone, Amazon Kindle Fire HDX 7, and
21 Amazon Kindle Fire HDX 8.9, to be used on its LTE network, by making, offering to sell, selling
22 within, and/or importing into the United States a component of a patented system or an apparatus for
23 use in practicing a patented process, that constitutes a material part of the invention, knowing the same
24 to be especially made or especially adapted for use in infringement of the '212 Patent and not a staple
25 article or commodity of commerce suitable for substantial non-infringing use. AT&T's conduct
26 creates liability under 35 U.S.C. § 271(c).

27 20. Amazon and AT&T have been on notice of the '212 Patent since August 22, 2013, at
28 the latest, when they were served with the Complaint in the 14-cv-1379 litigation. Amazon and

1 AT&T will thus have known and intended (since receiving such notice) that their continued actions
2 would induce or contribute to direct infringement of at least Claims 1 and 18 of the '212 Patent.

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

9 **COUNT II**

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

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

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

14 24. ADAPTIX is the owner by assignment of United States patent number 6,947,748,
15 entitled "OFDMA With Adaptive Subcarrier-Cluster Configuration And Selective Loading" ("the
16 '748 Patent") with ownership of all substantial rights in the '748 Patent, including the right to exclude
17 others and to sue and recover damages for the past and future infringement thereof. A true and correct
18 copy of the '748 Patent is attached as Exhibit A.

19 **Direct Infringement**

20 25. AT&T has infringed, and continues to infringe, at least claim 21 of the '748 patent in
21 this judicial district and elsewhere in the United States by, among other things, making and using its
22 4G LTE Wireless Network ("AT&T's LTE network").

23 26. AT&T supplies cellular communication devices, including without limitation the
24 Amazon Fire Phone, Amazon Kindle Fire HDX 7, and Amazon Kindle Fire HDX 8.9, which together
25 with the base stations that AT&T operate create AT&T's LTE Network. AT&T's LTE Network
26 infringes at least claim 21 of the '748 patent. AT&T is thereby liable for infringement of the '748
27 Patent, pursuant to 35 U.S.C. § 271(a).

28 27. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 21 of the

1 '748 patent in this judicial district and elsewhere in the United States by, among other things, using
2 cellular communication devices, including without limitation the Amazon Fire Phone, Amazon Kindle
3 Fire HDX 7, and Amazon Kindle Fire HDX 8.9, on AT&T's 4G LTE Wireless Network.

4 28. AT&T's and John Doe Nos. 1-10's infringement has caused damage to ADAPTIX,
5 which infringement by AT&T and John Doe Nos. 1-10's and damage to ADAPTIX will continue
6 unless and until AT&T and John Doe Nos. 1-10 are enjoined.

7 **Indirect Infringement**

8 29. Amazon has induced infringement of and continues to induce infringement of at least
9 Claim 21 of the '748 Patent in this judicial district and elsewhere in the United States by, among other
10 things, providing, offering for sale, selling, and/or importing cellular communication devices,
11 including without limitation the Amazon Fire Phone, Amazon Kindle Fire HDX 7, and Amazon
12 Kindle Fire HDX 8.9, for use on AT&T's LTE network. Amazon knowingly encourages and intends
13 for its customers to use those devices in a manner that infringes the '748 patent. Amazon's customers
14 who operate such devices in accordance with Amazon's instructions, as well as AT&T, directly
15 infringe one or more claims of the '748 Patent in violation of 35 U.S.C § 271. Amazon's inducement
16 of such infringement creates liability under 35 U.S.C. § 271(b).

17 30. AT&T 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 Amazon Fire Phone, Amazon Kindle Fire HDX 7, and Amazon
21 Kindle Fire HDX 8.9, for use on AT&T's LTE network, and using its LTE network to operate those
22 devices. AT&T knowingly encourages and intends for its customers to use those devices in a manner
23 that infringes the '748 patent. AT&T's customers who operate such devices in accordance with
24 AT&T's instructions directly infringe one or more claims of the '748 Patent in violation of 35 U.S.C §
25 271. AT&T's inducement of such infringement creates liability under 35 U.S.C. § 271(b).

26 31. Amazon has contributed, and continues to contribute, to the direct infringement of at
27 least claim 21 by others, such as AT&T and end users of its cellular communication devices, including
28 without limitation the Amazon Fire Phone, Amazon Kindle Fire HDX 7, and Amazon Kindle Fire

1 HDX 8.9, to be used on AT&T's LTE network, by offering to sell, selling within, and/or importing
2 into the United States a component of a patented system or an apparatus for use in practicing a
3 patented process, that constitutes a material part of the invention, knowing the same to be especially
4 made or especially adapted for use in infringement of the '748 Patent and not a staple article or
5 commodity of commerce suitable for substantial non-infringing use. Amazon's conduct creates
6 liability under 35 U.S.C. § 271(c).

7 32. AT&T has contributed, and continues to contribute, to the direct infringement of at
8 least claim 21 by others, such as end users of its LTE network and of cellular communication devices,
9 including without limitation the Amazon Fire Phone, Amazon Kindle Fire HDX 7, and Amazon
10 Kindle Fire HDX 8.9, to be used on its LTE network, by making, offering to sell, selling within,
11 and/or importing into the United States a component of a patented system or an apparatus for use in
12 practicing a patented process, that constitutes a material part of the invention, knowing the same to be
13 especially made or especially adapted for use in infringement of the '748 Patent and not a staple
14 article or commodity of commerce suitable for substantial non-infringing use. AT&T's conduct
15 creates liability under 35 U.S.C. § 271(c).

16 33. Amazon and AT&T have been on notice of the '748 Patent since August 22, 2013, at
17 the latest, when they were served with the Complaint in the 14-cv-1379 litigation. Amazon and
18 AT&T will thus have known and intended (since receiving such notice) that their continued actions
19 would induce or contribute to direct infringement of at least Claim 21 of the '748 Patent.

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

26 **PRAYER FOR RELIEF**

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

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

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

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

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

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

9 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: March 2, 2015

Respectfully submitted,

14 By: /s/ James J. Foster

15 Christopher D. Banys

16 Richard C Lin

Jennifer L. Gilbert

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**ATTORNEYS FOR PLAINTIFF
ADAPTIX, INC.**

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