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8 *Attorneys for Plaintiff Eclipse IP LLC*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11	ECLIPSE IP LLC, a Florida Limited)	Case No. 2:13-cv-06647-SJO-FFM
12	Liability Company,)	
13	Plaintiff,)	FIRST AMENDED COMPLAINT
14)	FOR PATENT INFRINGEMENT
15	v.)	TRIAL BY JURY DEMANDED
16	DELTA AIR LINES, INC., a Delaware)	
17	Corporation,)	
18	Defendant.)	
19	_____		

1 Plaintiff Eclipse IP LLC (“Eclipse”), by and through counsel, complains
2 against Delta Air Lines, Inc. (“Delta”) as follows:

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4 **NATURE OF LAWSUIT**

5 1. This is a suit for patent infringement arising under the patent laws of
6 the United States, Title 35 of the United States Code § 1 *et seq.* This Court has
7 exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C.
8 §§ 1331 and 1338(a).
9

10 **PARTIES AND PATENTS**

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12 2. Eclipse is a company organized under the laws of Florida and having a
13 principal place of business at 115 NW 17th St, Delray Beach, Florida 33444.

14
15 3. Eclipse owns all right, title, and interest in and has standing to sue for
16 infringement of United States Patent No. 7,119,716 ("the '716 patent"), entitled
17 "Response systems and methods for notification systems for modifying future
18 notifications" (Exhibit A) and United States Patent No. 7,504,966 ("the '966
19 patent"), entitled "Response systems and methods for notification systems for
20 modifying future notifications" (Exhibit B) (collectively, "the Eclipse Patents").
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23 4. On information and belief, Delta is a corporation existing under the
24 laws of Delaware.

25
26 5. On information and belief, Delta does regular business in this Judicial
27 District and conduct leading to Delta’s acts of infringement has occurred in this
28 Judicial District.

JURISDICTION AND VENUE

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2 6. This Court has personal jurisdiction over Delta because it has engaged
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4 in continuous and systematic business in California; upon information and belief,
5 derives substantial revenues from commercial activities in California; and, upon
6 information and belief, is operating and/or supporting products or services that fall
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8 within one or more claims of Eclipse's patents in this District.

9 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and
10 28 U.S.C. § 1400(a) at least because the claim arises in this Judicial District, Delta
11 may be found and transacts business in this Judicial District, and injuries suffered by
12 Plaintiff took place in this Judicial District. Delta is subject to the general and
13 specific personal jurisdiction of this Court at least because of its contacts with the
14 State of California.
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FACTUAL BACKGROUND

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18 8. On information and belief, Delta is an airline that offers domestic and
19 international flights from cities across the United States, including many from Los
20 Angeles.
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22 9. On information and belief, Delta creates and maintains a timetable for
23 every scheduled Delta flight, which includes a scheduled departure time and a
24 scheduled arrival time for every Delta flight.
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26 10. On information and belief, Delta, either on its own or through its
27 agents, monitors the location of its various airplanes, and based at least in part on
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1 the location of a given airplane, determines whether a particular flight will depart
2 from its scheduled departure city and/or whether a particular flight will arrive at its
3 scheduled arrival city earlier than the scheduled time, at the scheduled time, or later
4 than the scheduled time.
5

6 11. On information and belief, Delta also uses the location of its various
7 planes to determine whether or not to cancel flights.
8

9 12. On information and belief, Delta uses, makes, deploys, advertises,
10 and/or operates at least one system and/or service (the “Delta System”) that can
11 automatically notify one or more individuals about the status of a flight.
12

13 13. On information and belief, as one non-limiting example, the Delta
14 System can automatically notify one or more individuals that the departure of a
15 scheduled flight will be delayed.
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17 14. On information and belief, these notifications can occur through at least
18 one communications method, including but not limited to through email and SMS
19 messages, and that the one or more individuals can select or modify which of the at
20 least one communications method should be used.
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22 **DELTA’S ACTS OF PATENT INFRINGEMENT**

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24 15. Eclipse reiterates and reincorporates the allegations set forth in
25 paragraphs 1 through 14 above as if fully set forth herein.
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1 16. Delta owns, uses, deploys, and/or operates at least one computerized
2 service and/or system, the Delta System, for notifying one or more individuals
3 regarding flight departure and/or arrival times.
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5 17. Based at least in part on the location of a Delta airplane, the Delta
6 System provides electronic notifications to one or more individuals regarding flight
7 departure and/or arrival times.
8

9 **CLAIMS FOR RELIEF**

10 **COUNT 1**

11 **(Patent Infringement of U.S. Patent No. 7,119,716**
12 **Under 35 U.S.C. § 271 *et seq.*)**

13 18. Eclipse reiterates and reincorporates the allegations set forth in
14 paragraphs 1 through 17 above as if fully set forth herein.
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16 19. On October 10, 2006, the United States Patent and Trademark Office
17 duly and legally issued United States Patent No. 7,119,716, entitled "Response
18 systems and methods for notification systems for modifying future notifications."
19 Eclipse is the owner of the entire right, title and interest in and to the '716 patent. A
20 true and correct copy of the '716 patent is attached as Exhibit A to this Complaint.
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22 20. The '716 patent is valid and enforceable.
23

24 21. Eclipse is informed and believes, and thereupon alleges, that: (1) Delta
25 has infringed and continues to infringe one or more claims of the '716 patent,
26 literally and/or under the doctrine of equivalents and additionally and/or in the
27 alternative, (2) Delta has actively induced and continues to actively induce and/or
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1 has contributed to and continues to contribute to the infringement of one or more
2 claims of the '716 patent in this District and elsewhere in the United States.

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4 22. On information and belief, Delta has directly infringed and continues to
5 directly infringe one or more claims of the '716 patent, in violation of 35 U.S.C. §
6 271(a), by, among other things, making, using, offering for sale, and/or selling a
7 method for communications in connection with a computer-based notification
8 system to, for example: store contact data in computer memory; provide electronic
9 notification communications to a personal communications device based on the
10 contact data; receive changes to the contact data; and modify if and/or how future
11 notification communications will be sent.

14 23. Additionally and/or in the alternative, on information and belief, Delta
15 has actively induced and continues to actively induce and/or has contributed to and
16 continues to contribute to the infringement of one or more claims of the '716 patent,
17 in violation of 35 U.S.C. § 271(b) and/or (c), by, among other things, actively,
18 knowingly, and intentionally encouraging, aiding, and/or abetting others to make,
19 use, offer for sale, and/or sell portions of a computer-based notification system that
20 infringes one or more claims of the '716 patent, with the specific intent to encourage
21 infringement and with the knowledge that the making, using, offering to sell, and/or
22 selling of such a system would constitute infringement.

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1 24. On information and belief, Delta has had knowledge of the '716 patent
2 at least as early as September 16, 2013, the day that it was served with a copy of the
3 Complaint, which set forth factual allegations of Delta's infringement. *See* Dkt. No.
4 9. Additionally, at least as early as September 16, 2013, Delta knew or should have
5 known that its continued offering, use, deployment, and/or operation of the at least
6 one flight notification service and/or system and its continued support of others, if
7 those parties perform any limitations of one or more of the claims of the '716 patent,
8 would induce direct infringement of the '716 patent, as it had actual knowledge of
9 the patent and factual allegations of its infringement thereof.
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13 25. On information and belief, Delta has not changed or modified its
14 infringing behavior since September 16, 2013.
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16 26. Delta's aforesaid infringing activity has directly and proximately
17 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or
18 licensing revenues it would have made but for the infringements. Unless enjoined,
19 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse
20 for which there is no adequate remedy at law.
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COUNT 2
23 (Patent Infringement of U.S. Patent No. 7,504,966
24 Under 35 U.S.C. § 271 *et seq.*)

25 27. Eclipse reiterates and reincorporates the allegations set forth in
26 paragraphs 1 through 26 above as if fully set forth herein.
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1 28. On March 17, 2009, the United States Patent and Trademark Office
2 duly and legally issued United States Patent No. 7,504,966, entitled "Response
3 systems and methods for notification systems for modifying future notifications."
4 Eclipse is the owner of the entire right, title and interest in and to the '966 patent. A
5 true and correct copy of the '966 patent is attached as Exhibit B to this Complaint.
6

7 29. The '966 patent is valid and enforceable.
8

9 30. Eclipse is informed and believes, and thereupon alleges, that: (1) Delta
10 has infringed and continues to infringe one or more claims of the '966 patent,
11 literally and/or under the doctrine of equivalents and additionally and/or in the
12 alternative, (2) Delta has actively induced and continues to actively induce and/or
13 has contributed to and continues to contribute to the infringement of one or more
14 claims of the '966 patent in this District and elsewhere in the United States.
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17 31. On information and belief, Delta has directly infringed and continues to
18 directly infringe one or more claims of the '966 patent, in violation of 35 U.S.C. §
19 271(a), by, among other things, making, using, offering for sale, and/or selling a
20 method for communications in connection with a computer-based notification
21 system to, for example: monitor the location of a plane; send a notification
22 communication to a personal communications device when appropriate; receive a
23 response from the personal communications device; and based upon the response,
24 initiate one or more future notifications to one or more different individuals and/or
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1 initiate one or more future notifications using one or more different communications
2 methods.

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4 32. Additionally and/or in the alternative, on information and belief, Delta
5 has actively induced and continues to actively induce and/or has contributed to and
6 continues to contribute to the infringement of one or more claims of the '966 patent,
7 in violation of 35 U.S.C. § 271(b) and/or (c), by, among other things, actively,
8 knowingly, and intentionally encouraging, aiding, and/or abetting others to make,
9 use, offer for sale, and/or sell portions of a computer-based notification system that
10 infringes one or more claims of the '966 patent, with the specific intent to encourage
11 infringement and with the knowledge that the making, using, offering to sell, and/or
12 selling of such a system would constitute infringement.
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16 33. On information and belief, Delta has had knowledge of the '966 patent
17 at least as early as September 16, 2013, the day that it was served with a copy of the
18 Complaint, which set forth factual allegations of Delta's infringement. *See* Dkt. No.
19 9. Additionally, at least as early as September 16, 2013, Delta knew or should have
20 known that its continued offering, use, deployment, and/or operation of the at least
21 one flight notification service and/or system and its continued support of others, if
22 those parties perform any limitations of one or more of the claims of the '966 patent,
23 would induce direct infringement of the '966 patent, as it had actual knowledge of
24 the patent and factual allegations of its infringement thereof.
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34. On information and belief, Delta has not changed or modified its infringing behavior since September 16, 2013.

35. Delta’s aforesaid infringing activity has directly and proximately caused damage to Plaintiff Eclipse, including loss of profits from sales and/or licensing revenues it would have made but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to Eclipse for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against Delta and against each of Delta’s respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

1. A judgment that Delta has infringed each and every one of the Eclipse Patents;
2. A permanent injunction against Delta, its respective officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from direct and indirect infringement of each and every one of the Eclipse Patents;

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3. An award of damages adequate to compensate Eclipse for the infringement that has occurred, together with prejudgment interest from the date infringement of the Eclipse Patents began;

4. A reasonable royalty for Delta’s use of Eclipse’s patented technology, as alleged herein;

5. An award to Eclipse of all remedies available under 35 U.S.C. §§ 284 and 285; and,

6. Such other and further relief as this Court or a jury may deem proper and just.

DATED: October 21, 2013

OLAVI DUNNE LLP

By: /s/ Matt Olavi

Matt Olavi
Brian J. Dunne
Attorneys for Plaintiff
Eclipse IP LLC

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JURY DEMAND

Eclipse demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

DATED: October 21, 2013

OLAVI DUNNE LLP

By: /s/ Matt Olavi

Matt Olavi
Brian J. Dunne
Attorneys for Plaintiff
Eclipse IP LLC