

1 Matt Olavi, Esq. (Bar No. 265945)  
molavi@olavidunne.com  
2 Brian J. Dunne, Esq. (Bar No. 275689)  
3 bdunne@olavidunne.com  
4 **OLAVI DUNNE LLP**  
800 Wilshire Blvd., Suite 320  
5 Los Angeles, California 90017  
6 Telephone: (213) 516-7900  
7 Facsimile: (213) 516-7910

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-06649-SJO-FFM  
12 Liability Company, )  
13 Plaintiff, ) **FIRST AMENDED COMPLAINT**  
14 ) **FOR PATENT INFRINGEMENT**  
15 v. ) **TRIAL BY JURY DEMANDED**  
16 )  
17 SOUTHWEST AIRLINES CO., a )  
18 Texas Corporation, )  
19 Defendant. )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

1 Plaintiff Eclipse IP LLC (“Eclipse”), by and through counsel, complains  
2 against Southwest Airlines Co. (“Southwest”) as follows:

3  
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**

11  
12 2. Eclipse is a company organized under the laws of Florida and having a  
13 principal place of business at 115 NW 17<sup>th</sup> 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").  
21

22  
23 4. On information and belief, Southwest is a corporation existing under  
24 the laws of Texas.

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

**JURISDICTION AND VENUE**

1  
2           6.       This Court has personal jurisdiction over Southwest because it has  
3 engaged in continuous and systematic business in California; upon information and  
4 belief, derives substantial revenues from commercial activities in California; and,  
5 upon information and belief, is operating and/or supporting products or services that  
6 fall within one or more claims of Eclipse's patents in this District.  
7

8  
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,  
11 Southwest may be found and transacts business in this Judicial District, and injuries  
12 suffered by Plaintiff took place in this Judicial District. Southwest is subject to the  
13 general and specific personal jurisdiction of this Court at least because of its  
14 contacts with the State of California.  
15  
16

17                               **FACTUAL BACKGROUND**

18           8.       On information and belief, Southwest is an airline that offers domestic  
19 and international flights from cities across the United States, including many from  
20 Los Angeles.  
21

22           9.       On information and belief, Southwest creates and maintains a timetable  
23 for every scheduled Southwest flight, which includes a scheduled departure time and  
24 a scheduled arrival time for every Southwest flight.  
25

26           10.      On information and belief, Southwest, either on its own or through its  
27 agents, monitors the location of its various airplanes, and based at least in part on  
28

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, Southwest also uses the location of its  
7 various planes to determine whether or not to cancel flights.  
8

9 12. On information and belief, Southwest uses, makes, deploys, advertises,  
10 and/or operates at least one system and/or service (the “Southwest 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 Southwest  
14 System can automatically notify one or more individuals whether a flight is on time,  
15 delayed, or cancelled a set number of hours before the flight is scheduled to depart.  
16

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.  
21

22 **SOUTHWEST’S ACTS OF PATENT INFRINGEMENT**  
23

24 15. Eclipse reiterates and reincorporates the allegations set forth in  
25 paragraphs 1 through 14 above as if fully set forth herein.  
26  
27  
28



1 and/or has contributed to and continues to contribute to the infringement of one or  
2 more claims of the '716 patent in this District and elsewhere in the United States.

3  
4 22. On information and belief, Southwest has directly infringed and  
5 continues to directly infringe one or more claims of the '716 patent, in violation of  
6 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or  
7  
8 selling a method for communications in connection with a computer-based  
9 notification system to, for example: store contact data in computer memory; provide  
10 electronic notification communications to a personal communications device based  
11 on the contact data; receive changes to the contact data; and modify if and/or how  
12 future notification communications will be sent.

14 23. Additionally and/or in the alternative, on information and belief,  
15 Southwest has actively induced and continues to actively induce and/or has  
16 contributed to and continues to contribute to the infringement of one or more claims  
17 of the '716 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other  
18 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting  
19 others to make, use, offer for sale, and/or sell portions of a computer-based  
20 notification system that infringes one or more claims of the '716 patent, with the  
21 specific intent to encourage infringement and with the knowledge that the making,  
22 using, offering to sell, and/or selling of such a system would constitute  
23 infringement.  
24  
25  
26  
27  
28



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

9           30.     Eclipse is informed and believes, and thereupon alleges, that:  
10 (1) Southwest has infringed and continues to infringe one or more claims of the '966  
11 patent, literally and/or under the doctrine of equivalents and additionally and/or in  
12 the alternative, (2) Southwest has actively induced and continues to actively induce  
13 and/or has contributed to and continues to contribute to the infringement of one or  
14 more claims of the '966 patent in this District and elsewhere in the United States.  
15  
16

17           31.     On information and belief, Southwest has directly infringed and  
18 continues to directly infringe one or more claims of the '966 patent, in violation of  
19 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or  
20 selling a method for communications in connection with a computer-based  
21 notification system to, for example: monitor the location of a plane; send a  
22 notification communication to a personal communications device when appropriate;  
23 receive a response from the personal communications device; and based upon the  
24 response, initiate one or more future notifications using one or more different  
25  
26  
27  
28



1 communications methods and/or change the time at which a future notification is to  
2 be sent.

3  
4 32. Additionally and/or in the alternative, on information and belief,  
5 Southwest has actively induced and continues to actively induce and/or has  
6 contributed to and continues to contribute to the infringement of one or more claims  
7 of the '966 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other  
8 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting  
9 others to make, use, offer for sale, and/or sell portions of a computer-based  
10 notification system that infringes one or more claims of the '966 patent, with the  
11 specific intent to encourage infringement and with the knowledge that the making,  
12 using, offering to sell, and/or selling of such a system would constitute  
13 infringement.  
14  
15  
16

17 33. On information and belief, Southwest has had knowledge of the '966  
18 patent at least as early as September 16, 2013, the day that it was served with a copy  
19 of the Complaint, which set forth factual allegations of Southwest's infringement.  
20 *See* Dkt. No. 10. Additionally, at least as early as September 16, 2013, Southwest  
21 knew or should have known that its continued offering, use, deployment, and/or  
22 operation of the at least one flight notification service and/or system and its  
23 continued support of others, if those parties perform any limitations of one or more  
24 of the claims of the '966 patent, would induce direct infringement of the '966 patent,  
25  
26  
27  
28

1 as it had actual knowledge of the patent and factual allegations of its infringement  
2 thereof.

3  
4 34. On information and belief, Southwest has not changed or modified its  
5 infringing behavior since September 16, 2013.

6 35. Southwest's aforesaid infringing activity has directly and proximately  
7 caused damage to Plaintiff Eclipse, including loss of profits from sales and/or  
8 licensing revenues it would have made but for the infringements. Unless enjoined,  
9 the aforesaid infringing activity will continue and cause irreparable injury to Eclipse  
10 for which there is no adequate remedy at law.  
11  
12

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against  
15 Southwest and against each of Southwest's respective subsidiaries, affiliates, agents,  
16 servants, employees and all persons in active concert or participation with it,  
17 granting the following relief:  
18

19  
20 1. A judgment that Southwest has infringed each and every one of the  
21 Eclipse Patents;

22 2. A permanent injunction against Southwest, its respective officers,  
23 agents, servants, employees, attorneys, parent and subsidiary corporations, assigns  
24 and successors in interest, and those persons in active concert or participation with  
25 them, enjoining them from direct and indirect infringement of each and every one of  
26 the Eclipse Patents;  
27  
28

1           3.     An award of damages adequate to compensate Eclipse for the  
2 infringement that has occurred, together with prejudgment interest from the date  
3 infringement of the Eclipse Patents began;  
4

5           4.     A reasonable royalty for Southwest’s use of Eclipse’s patented  
6 technology, as alleged herein;  
7

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

10           6.     Such other and further relief as this Court or a jury may deem proper  
11 and just.  
12

13 DATED: October 21, 2013

OLAVI DUNNE LLP

14  
15  
16 By:   /s/ Matt Olavi  

17                   Matt Olavi  
18                   Brian J. Dunne  
19                   Attorneys for Plaintiff  
20                   Eclipse IP LLC

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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*