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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-06652-SJO-FFM
12	Liability Company,	)	
13	Plaintiff,	)	<b>FIRST AMENDED COMPLAINT</b>
14		)	<b>FOR PATENT INFRINGEMENT</b>
15	v.	)	
16	VIRGIN AMERICA, INC., a Delaware	)	<b>TRIAL BY JURY DEMANDED</b>
17	Corporation,	)	
18	Defendant.	)	
19	_____		)

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1 Plaintiff Eclipse IP LLC (“Eclipse”), by and through counsel, complains  
2 against Virgin America, Inc. (“Virgin America”) 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**

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.7,482,952 ("the '952 patent"), entitled  
17 "Response systems and methods for notification systems for modifying future  
18 notifications" (Exhibit A).  
19

20 4. On information and belief, Virgin America is a corporation existing  
21 under the laws of Delaware.

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23 5. On information and belief, Virgin America does regular business in this  
24 Judicial District and conduct leading to Virgin America’s acts of infringement has  
25 occurred in this Judicial District.

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**JURISDICTION AND VENUE**

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

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

**FACTUAL BACKGROUND**

8. On information and belief, Virgin America is an airline that offers flights from cities across the United States, including many from Los Angeles.

9. On information and belief, Virgin America creates and maintains a timetable for every scheduled Virgin America flight, which includes a scheduled departure time and a scheduled arrival time for every Virgin America flight.

10. On information and belief, Virgin America, either on its own or through its agents, monitors the location of its various airplanes, and based at least in part on the location a given airplane, determines whether a particular flight will

1 depart from its scheduled departure city and/or whether a particular flight will arrive  
2 at its scheduled arrival city earlier than the scheduled time, at the scheduled time, or  
3 later than the scheduled time.  
4

5 11. On information and belief, Virgin America also uses the location of its  
6 various airplanes to determine whether or not to cancel flights.  
7

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

13 13. On information and belief, as one non-limiting example, the Virgin  
14 America System can automatically notify one or more individuals whether a flight is  
15 on time, delayed, or cancelled a set number of hours before the flight is scheduled to  
16 depart.  
17

18 14. On information and belief, as another non-limiting example, the Virgin  
19 America System can automatically notify one or more individuals that the departure  
20 of a scheduled flight will be delayed.  
21

22 15. On information and belief, these notifications can occur through at least  
23 one communications method, including but not limited to through email and SMS  
24 messages, and that the one or more individuals can select which of the at least one  
25 communications method should be used.  
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**VIRGIN AMERICA’S ACTS OF PATENT INFRINGEMENT**

16. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 15 above as if fully set forth herein.

17. Virgin America owns, uses, deploys, and/or operates at least one computerized service and/or system, the Virgin America System, for notifying one or more individuals regarding flight departure and/or arrival times.

18. Based at least in part on the location of a Virgin America airplane, the Virgin America System provides electronic notifications to one or more individuals regarding flight departure and/or arrival times.

**CLAIMS FOR RELIEF**

**COUNT 1**

**(Patent Infringement of U.S. Patent No. 7,482,952  
Under 35 U.S.C. § 271 et seq.)**

19. Eclipse reiterates and reincorporates the allegations set forth in paragraphs 1 through 18 above as if fully set forth herein.

20. On January 27, 2009, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,482,952, entitled "Response systems and methods for notification systems for modifying future notifications." Eclipse is the owner of the entire right, title and interest in and to the '952 patent. A true and correct copy of the '952 patent is attached as Exhibit A to this Complaint.

21. The '952 patent is valid and enforceable.

1           22. Eclipse is informed and believes, and thereupon alleges, that: (1) Virgin  
2 America has infringed and continues to infringe one or more claims of the '952  
3 patent, literally and/or under the doctrine of equivalents and additionally and/or in  
4 the alternative, (2) Virgin America has actively induced and continues to actively  
5 induce and/or has contributed to and continues to contribute to the infringement of  
6 one or more claims of the '952 patent in this District and elsewhere in the United  
7 States.  
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10           23. On information and belief, Virgin America has directly infringed and  
11 continues to directly infringe one or more claims of the '952 patent, in violation of  
12 35 U.S.C. § 271(a), by, among other things, making, using, offering for sale, and/or  
13 selling a method for a computer-based notification system to, for example: schedule  
14 a notification to a personal communications device regarding a flight; determine  
15 changes in schedule of the flight; notify one or more individuals of the change in  
16 schedule; and allow the one or more individuals to cancel the later-scheduled  
17 notification.  
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21           24. Additionally and/or in the alternative, on information and belief, Virgin  
22 America has actively induced and continues to actively induce and/or has  
23 contributed to and continues to contribute to the infringement of one or more claims  
24 of the '952 patent, in violation of 35 U.S.C. § 271(b) and/or (c), by, among other  
25 things, actively, knowingly, and intentionally encouraging, aiding, and/or abetting  
26 others to make, use, offer for sale, and/or sell portions of a computer-based  
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1 notification system that infringes one or more claims of the '952 patent, with the  
2 specific intent to encourage infringement and with the knowledge that the making,  
3 using, offering to sell, and/or selling of such a system would constitute  
4 infringement.  
5

6 25. On information and belief, Virgin America has had knowledge of the  
7 '952 patent at least as early as September 16, 2013, the day that it was served with a  
8 copy of the Complaint, which set forth factual allegations of Virgin America's  
9 infringement. *See* Dkt. No. 13. Additionally, at least as early as September 16,  
10 2013, Virgin America knew or should have known that its continued offering, use,  
11 deployment, and/or operation of the at least one flight notification service and/or  
12 system and its continued support of others, if those parties perform any limitations  
13 of one or more of the claims of the '952 patent, would induce direct infringement of  
14 the '952 patent, as it had actual knowledge of the patent and factual allegations of its  
15 infringement thereof.  
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19 26. On information and belief, Virgin America has not changed or  
20 modified its infringing behavior since September 16, 2013.  
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22 27. Virgin America's aforesaid infringing activity has directly and  
23 proximately caused damage to Plaintiff Eclipse, including loss of profits from sales  
24 and/or licensing revenues it would have made but for the infringements. Unless  
25 enjoined, the aforesaid infringing activity will continue and cause irreparable injury  
26 to Eclipse for which there is no adequate remedy at law.  
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**PRAYER FOR RELIEF**

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2 WHEREFORE, Plaintiff Eclipse asks this Court to enter judgment against  
3 Virgin America and against each of Virgin America’s respective subsidiaries,  
4 affiliates, agents, servants, employees and all persons in active concert or  
5 participation with it, granting the following relief:  
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8 1. A judgment that Virgin America has infringed each and every one of  
9 the Eclipse Patents;

10  
11 2. A permanent injunction against Virgin America, its respective officers,  
12 agents, servants, employees, attorneys, parent and subsidiary corporations, assigns  
13 and successors in interest, and those persons in active concert or participation with  
14 them, enjoining them from direct and indirect infringement of each and every one of  
15 the Eclipse Patents;

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

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21 4. A reasonable royalty for Virgin America’s use of Eclipse’s patented  
22 technology, as alleged herein;

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

26  
27 6. Such other and further relief as this Court or a jury may deem proper  
28 and just.



1 DATED: October 21, 2013

OLAVI DUNNE LLP

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By: /s/ Matt Olavi

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Matt Olavi

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Brian J. Dunne

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*Attorneys for Plaintiff*

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*Eclipse IP LLC*

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**JURY DEMAND**

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Eclipse demands a trial by jury on all issues so triable pursuant to Federal

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Rule of Civil Procedure 38.

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DATED: October 21, 2013

OLAVI DUNNE LLP

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By: /s/ Matt Olavi

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Matt Olavi

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*Attorneys for Plaintiff*

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