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8 *Attorney(s) for Plaintiff Aperture Net LLC*

9 **IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 APERTURE NET LLC,
11 *Plaintiff,*

12 v.

13 KYOCERA INTERNATIONAL, INC.,
14 *Defendant.*

CASE NO.: '19CV2091 WQHKSC

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED



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Figure 1 - Defendant's Hydro VIEW phone

1 availed itself of the privileges and benefits of the laws of the State of California.

2 7. Defendant, directly and/or through intermediaries, ships, distributes, uses,
3 offers for sale, sells, and/or advertises products and services in the United States, the
4 State of California, and the Southern District of California including but not limited to
5 the products which contain the infringing '204 Patent systems and methods as detailed
6 below. Upon information and belief, Defendant has committed patent infringement in
7 the State of California and in this district; Defendant solicits and has solicited customers
8 in the State of California and in this district; and Defendant has paying customers who
9 are residents of the State of California and this district and who each use and have used
10 the Defendant's products and services in the State of California and in this district.

11 8. Venue is proper in the Southern District of California pursuant to 28
12 U.S.C. §§ 1400(b). Defendant has a regular and established place of business in this
13 district, has transacted business in this district, and has directly and/or indirectly
14 committed acts of patent infringement in this district.

15 PATENT-IN-SUIT

16 9. The Patent-in-Suit teaches systems and methods for improving a spread-
17 spectrum code-division-multiple-access ("CDMA") system, using a channel sounding
18 signal from a base station to provide initial transmitter power levels for remote stations.

19 10. The invention disclosed in the Patent-in-Suit discloses inventive concepts
20 that represent significant improvements in the art and are not mere routine or
21 conventional uses of computer components. For instance, at the time of filing, CDMA
22 systems suffered from poor power control. *See* Ex. A, '204 Patent, 1:21–2:5. Although
23 various approaches existed to address power control issues, those approaches suffered
24 from inconsistency, inefficiency, and excessive delays. *See* Ex. A, '204 Patent, 1:21–
25 2:5. The patent-in-suit addressed these concerns by "permit[ting] a remote power
26 station to have knowledge, a priori to transmitting, of a proper power level to initiate
27 transmission." *See* Ex. A, '204 Patent, 2:7-10. Further, the patent-in-suit teaches "to
28 measure and initially correct or compensate for Doppler shift in carrier frequency

1 caused by the motion of the remote station.” *See* Ex. A, ’204 Patent, 2:11-13.

2 **ACCUSED PRODUCTS**

3 11. Defendant makes, uses, offers for sale and sells in the U.S. products,
4 systems, and/or services that infringe the Patent-in-Suit, including, but not limited to
5 its DuraForce PRO 2, DuraXV LTE, DuraTR, DuraForce PRO, Hydro SHORE, Hydro
6 REACH, DuraForce XD, DuraXE, DuraForce, Brigadier, Hydro LIFE, Hydro ELITE,
7 Hydro VIEW, and Hydro XTRM products (the “Accused Products”).

8 **COUNT I**

9 **(Infringement of U.S. Patent No. 6,711,204)**

10 12. Plaintiff incorporates by reference the allegations of paragraphs 1-11, the
11 same as if set forth herein.

12 13. The ’204 Patent is valid, enforceable, and was duly and legally issued by
13 the United States Patent and Trademark Office (“USPTO”) on March 23, 2004. The
14 ’204 Patent is presumed valid and enforceable. *See* 35 U.S.C. § 282.

15 14. Plaintiff is the owner by assignment of the ’204 patent and possesses all
16 rights of recovery under the ’204 patent, including the exclusive right enforce the ’204
17 patent and pursue lawsuits against infringers.

18 15. Without a license or permission from Plaintiff, Defendant has infringed
19 and continues to infringe on one or more claims of the ’204 Patent—directly,
20 contributorily, and/or by inducement—by importing, making, using, offering for sale,
21 or selling products and devices that embody the patented invention, including, without
22 limitation, one or more of the patented ’204 systems and methods, in violation of 35
23 U.S.C. § 271.

24 **Direct Infringement**

25 16. Defendant has been and now is directly infringing by, among other things,
26 practicing all of the steps of the ’204 Patent, for example, through internal testing,
27 quality assurance, research and development, and troubleshooting. *See Joy Techs., Inc.*
28 *v. Flakt, Inc.*, 6 F.3d 770, 775 (Fed. Cir. 1993); *see also* 35 U.S.C. § 271 (2006). For

1 instance, Defendant has directly infringed the Patent-in-Suit by testing, configuring,
2 and troubleshooting the functionality of its location technology.

3 17. By way of example, Defendant has infringed and continues to infringe at
4 least one or more claims of the '204 Patent, including at least Claim 1. Attached hereto
5 as Exhibit B is an exemplary claim chart detailing representative infringement of claim
6 1 of the Patent-in-Suit.

7 **Contributory Infringement**

8 18. On information and belief, Defendant contributorily infringes on
9 Plaintiff's '204 Patent. Defendant knew or should have known, at the very least as a
10 result of its freedom to operate analyses and the filing of this complaint, that third
11 parties, such as its customers, would infringe the '204 Patent.

12 19. On information and belief, Defendant's implementation of the accused
13 functionality has no substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v.*
14 *Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009) (holding that the "substantial non-
15 infringing use" element of a contributory infringement claim applies to an infringing
16 feature or component, and that an "infringing feature" of a product does not escape
17 liability simply because the product as a whole has other non-infringing uses).

18 **Willful Infringement**

19 20. On information and belief, the infringement of the '204 Patent by
20 Defendant has been and continues to be willful. Defendant has had actual knowledge
21 of Plaintiff's rights in the '204 Patent and details of Defendant's infringement based on
22 at least the filing and service of this complaint. Additionally, Defendant had knowledge
23 of the '204 Patent and its infringement in the course of Defendant's due diligence and
24 freedom to operate analyses.

25 **Plaintiff Suffered Damages**

26 21. Defendant's acts of infringement of the '204 Patent have caused damage
27 to Plaintiff, and Plaintiff is entitled to recover from Defendant the damages sustained
28 as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant

1 to 35 U.S.C. § 271. Defendant’s infringement of Plaintiff’s exclusive rights under the
2 ’204 Patent will continue to damage Plaintiff causing it irreparable harm for which there
3 is no adequate remedy at law, warranting an injunction from the Court.

4 **REQUEST FOR RELIEF**

5 22. Plaintiff incorporates each of the allegations in the paragraphs above and
6 respectfully asks the Court to:

7 (a) enter a judgment that Defendant has directly infringed, contributorily
8 infringed, and/or induced infringement of one or more claims of each of the ’204
9 Patent;

10 (b) enter a judgment awarding Plaintiff all damages adequate to compensate
11 it for Defendant’s infringement of, direct or contributory, or inducement to
12 infringe, including all pre-judgment and post-judgment interest at the maximum
13 rate permitted by law;

14 (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for
15 Defendant’s willful infringement of the ’204 Patent;

16 (d) issue a preliminary injunction and thereafter a permanent injunction
17 enjoining and restraining Defendant, its directors, officers, agents, servants,
18 employees, and those acting in privity or in concert with it, and their subsidiaries,
19 divisions, successors, and assigns, from further acts of infringement,
20 contributory infringement, or inducement of infringement of the ’204 Patent;

21 (e) enter a judgment requiring Defendant to pay the costs of this action,
22 including all disbursements, and attorneys’ fees as provided by 35 U.S.C. § 285,
23 together with prejudgment interest; and

24 (f) award Plaintiff all other relief that the Court may deem just and proper.

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26 Dated: October 31, 2019

Respectfully submitted,

27 /s/ Kirk Anderson

28 Kirk. J. Anderson (SBN 289043)

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