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HYPERTEXT TECHNOLOGIES, LLC

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

13 HYPERTEXT TECHNOLOGIES,  
14 LLC,

15 Plaintiff,

16 v.

17 GOOGLE LLC and DOES 1-10,  
18 inclusive,

19 Defendants.

Case No. 8:19-cv-02356-JLS-KES

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

District  
Judge: Hon. Josephine L. Staton

20 For its first amended complaint against Defendants, plaintiff Hypertext  
21 Technologies, LLC (“Hypertext” or “Plaintiff”) alleges as follows:

22 1. Plaintiff Hypertext files this first amended complaint against defendant  
23 Google LLC (“Google”) and the Doe defendants alleging direct and indirect willful  
24 infringement of U.S. Patent No. 7,113,801 (the “801 Patent”).

25 2. The accused products (“Accused Products”) include Google’s devices  
26 that store and execute SMS (Short Message Service) text messaging application(s),  
27 for example, *Google Hangout* and *Google Messenger*, that receive an SMS text  
28 message including an application protocol identifier and URL information, and use

1 the application protocol identifier and the URL information to receive data from a  
2 web server using an application program stored and executed by Google’s Accused  
3 Products, such as a web browser, where the amount of such received data can  
4 significantly surpass the 140-byte size limitation of the SMS text message  
5 (“Patented Technology”).

6 3. A true and correct copy of the first-filed complaint and all exhibits  
7 (including the claim chart) in this matter, as filed December 6, 2019, was sent via  
8 Federal Express and email to Google on December 10, 2019. A true and correct  
9 copy of that Letter (without enclosures) is attached as Exhibit A.

10 4. A representative of Google communicated with a representative of  
11 Hypertext regarding the first-filed complaint on December 19, 2019. Therefore,  
12 Google had notice of that complaint (including all its exhibits) and of the ‘801  
13 Patent at least as early as that date.

14 5. Thus, Google was on notice as of that date not only of the ‘801 Patent  
15 but also of the facts necessary to understand and appreciate the manner in which the  
16 Accused Products infringe, and how the use of the Accused Products regarding  
17 SMS messaging also infringe as shown on in the claim chart attached to the  
18 Complaint as an exhibit. Therefore, as of that date, Google was on notice of the  
19 manner in which it had infringed and continues to directly infringe the ‘801 Patent,  
20 and also how it had been contributing and inducing, and continues to contribute to  
21 and induce, others to directly infringe the ‘801 Patent.

22 6. Hypertext is informed and believes that notwithstanding the fact that  
23 Google has received a copy of the first-filed complaint and its attached claim chart  
24 and has thus been put on notice of not only the ‘801 Patent but also of the facts  
25 necessary to understand and appreciate that the ‘801 Patent is infringed by making,  
26 importing, offering for sale, selling and/or using the Accused Products, Google has  
27 not taken or initiated any steps to modify the Accused Products to avoid  
28 infringement; or any steps to advise the importers, distributors, sellers and users of

1 the Accused Products to cease infringement; or instructed any of them on how to  
2 avoid infringement.

3 7. The modifications necessary to avoid infringement can be quickly,  
4 easily and inexpensively implemented by Google, even on Accused Products in the  
5 hands of end users.

6 8. Therefore, every manufacture, importation, offering for sale, sale or  
7 use of the Accused Products within the United States is an act of infringement for  
8 which Google is liable directly and/or indirectly.

9 9. Although each Accused Product may be sold only a limited number of  
10 times before making its way into the hands of the ultimate end-user customer  
11 (“Google Customer”), the number of times that each Google Customer engages in a  
12 use of each Accused Product that constitutes infringement of the ‘801 Patent is very  
13 large.

14 10. The Pew Research Center has reported that at least 97% of all  
15 smartphone owners send SMS text messages regularly. And on average, each  
16 person in the United States who uses text messaging sends and receives 94 SMS  
17 text messages per day (33,834 text messages per year). *See, e.g.*,  
18 <https://www.textrequest.com/blog/texting-statistics-answer-questions/> (January 24,  
19 2019).

20 11. Therefore, for every 1,000,000 Accused Products in use in the United  
21 States today, on average those Accused Products will send and receive  
22 approximately 100,000,000 (One Hundred Million) SMS text messages every day.

23 12. Of those 100,000,000 daily SMS messages, it is believed that a  
24 significant number of them will include an application protocol identifier and URL  
25 information, and use the application protocol identifier and the URL information to  
26 receive data from a web server using an application program stored on and executed  
27 by the Accused Products, such as a web browser; *i.e.*, they use the Patented

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1 Technology. If even just 3% do so, that would equate to 3,000,000 individual acts  
2 of infringement by a Google Customer every day.

3 13. The majority of Google Customers want to have the Patented  
4 Technology on their Accused Products.

5 14. Being able to include the Patented Technology on its Accused  
6 Products is important to Google.

7 15. Google does not want to delete or disable the Patented Technology  
8 from or on its Accused Products.

9 16. Being able to include the Patented Technology on its Accused  
10 Products provides a competitive advantage to Google.

11 17. Deleting or disabling the Patented Technology from its Accused  
12 Products would place Google at a competitive disadvantage as to its competitors  
13 who include the Patented Technology on their smart devices.

14 18. If Google was not able to offer and include the Patented Technology  
15 on its Accused Products, Google would lose significant sales of its products, and,  
16 on information and belief, those losses would amount to significantly more than  
17 \$10,000,000 per year.

18 19. As of the date that Google was on notice of the '801 Patent, Google  
19 became indirectly liable for each of those acts of infringement by the Google  
20 Customers as herein alleged in more detail.

21 **PLAINTIFF HYPERTEXT AND THE ASSERTED PATENT**

22 20. Plaintiff Hypertext is a limited liability company organized and  
23 existing under the laws of the state of Delaware, having its principal place of  
24 business in Mission Viejo, California.

25 21. Hypertext is the owner of all right, title and interest in and to the '801  
26 Patent, entitled "Method For Receiving Data Using SMS And Wireless Internet  
27 And System Thereof." A true and correct copy of the '801 Patent is attached as  
28 Exhibit B, and incorporated herein by reference.

1                   **DEFENDANT GOOGLE AND THE ACCUSED PRODUCTS**

2           22. Defendant Google LLC (formerly known as Google Inc.) is, on  
3 information and belief, a limited liability company organized and existing under the  
4 laws of the state of Delaware, having its principal place of business in California  
5 and having business offices in this judicial district. On information and belief,  
6 defendant Google is a wholly owned subsidiary of XXVI Holdings Inc., which is a  
7 wholly owned subsidiary of Alphabet Inc.

8           23. There may be other individuals and entities besides Google who have  
9 some involvement and liability for the wrongful acts alleged herein. Therefore, as  
10 their true names or capacities are at this time unknown to Plaintiff, they are sued  
11 herein under the fictitious names Does 1 through 10, inclusive. Plaintiff reserves  
12 the right to amend this Complaint as appropriate to specifically identify such Doe  
13 defendant(s).

14           24. Google is and has been directly infringing the '801 Patent by  
15 developing, making, having made, using, importing, offering for sale, and/or selling  
16 the Accused Products.

17           25. Google also induces, encourages, urges and instructs others, including  
18 importers, distributors, sellers, and users of the Accused Products, to engage in  
19 activities that directly infringe the '801 Patent. Doing so makes Google liable for  
20 indirect infringement for each direct infringing act by each one of those importers,  
21 distributors, sellers, and users of the Accused Products.

22           26. The Accused Products include, but are not limited to, Google Pixel 4  
23 XL and Google Pixelbook Go, which include one or more web browsers and one or  
24 more SMS messaging applications, such as the *Google Hangout* and *Google*  
25 *Messenger* SMS applications.

26           27. Plaintiff is informed and believes that some or all of the Accused  
27 Products use the Android operating system.

28           28. Hypertext reserves the right to amend its infringement allegations after

1 discovery is taken of Google.

2 **NATURE OF THE ACTION, JURISDICTION, AND VENUE**

3 29. Plaintiff Hypertext asserts claims for patent infringement against  
4 defendant Google under the patent laws of the United States, including under 35  
5 U.S.C. §§ 271 and 281, *et seq.* The Court has original jurisdiction over the ‘801  
6 Patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a). Plaintiff  
7 Hypertext’s principal place of business is in this judicial district.

8 30. The Court has personal jurisdiction over Google. Google has  
9 committed and is committing acts of direct infringement in this district, including  
10 currently and in the past using, making, having made, importing, selling and/or  
11 offering for sale the Accused Products in this district, and is currently committing  
12 and in the past has committed acts of indirect infringement in this district. .

13 31. Venue is proper in this district under 28 U.S.C. § 1400(b).

14 32. In addition to having committed and continuing to commit direct and  
15 indirect willful acts of infringement in this district, Google has several established  
16 places of business in this district. These include business locations at 19510  
17 Jamboree Road, Irvine, CA 92612; at 340 Main Street, Los Angeles, CA 90291 and  
18 at 12422 W. Bluff Creek Drive, Playa Vista, CA 90094. The location in Playa  
19 Vista is a significant presence for Google in this judicial district. *See, e.g.*, L.A.  
20 Times article dated Dec 3, 2014, entitled “*Google Buys 12 Acres in Playa Vista,*  
21 *Vastly Expands Presence in L.A.*” ([https://www.latimes.com/business/realstate/la-  
22 fi-playa-property-sale-20141203-story.html#null](https://www.latimes.com/business/realstate/la-fi-playa-property-sale-20141203-story.html#null)).

23 33. Google’s Accused Products are also sold through various retail  
24 locations within this judicial district; for example, through Verizon and Best Buy  
25 stores located in this judicial district. *See, e.g.*,  
26 <https://www.verizonwireless.com/stores/california/los-angeles/#/city>; and  
27 [https://www.bestbuy.com/site/google-pixel-4-xl-64gb-just-black-  
28 verizon/6382491.p?skuId=6382491&ref=212&loc=1&&msslkid=a837b45e599315](https://www.bestbuy.com/site/google-pixel-4-xl-64gb-just-black-verizon/6382491.p?skuId=6382491&ref=212&loc=1&&msslkid=a837b45e599315)

1 bf13a4e988f7514840&gclid=CIye6cPR--UCFcLtDQodR0IB4g&gclsrc=ds.

2 34. Each Google location listed above: (i) is a physical place in the Central  
3 District of California (each consisting of a building or a part of a building at which  
4 Google-related business is conducted); (ii) operates Google-related business in a  
5 regular, steady, uniform, orderly, settled, fixed, and permanent manner; and (iii) is  
6 owned or leased by Google, and has been ratified by Google as a place of business  
7 (“Google Offices”).

8 35. In addition, these Google Offices are represented by Google to the  
9 public as being its places of business in this judicial district and are listed and  
10 advertised by Google as such on its website. *See, e.g.*,  
11 <https://careers.google.com/locations/los-angeles/>.

12 36. Each of these Google Offices is therefore a regular and established  
13 place of business owned and operated by Google for purposes of §1400(b).

14 37. Google has also repeatedly been involved in litigation in this judicial  
15 district, including bringing suit as a plaintiff in this judicial district.

16 38. As a result, Google is “present” in this judicial district, and can be sued  
17 in this judicial district.

18 39. This judicial district, in which Google has often been sued and has  
19 itself brought suit, is an appropriate and convenient forum for this patent  
20 infringement suit against Google.

21 **CLAIM FOR RELIEF**

22 **FOR PATENT INFRINGEMENT**

23 40. Hypertext incorporates by reference each of the allegations in the  
24 foregoing paragraphs and further alleges as follows:

25 41. On September 26, 2006, the United States Patent and Trademark  
26 Office duly issued the ‘801 Patent, which has an effective filing date of February 6,  
27 2001 (“Effective Filing Date”) based upon a claim of priority to corresponding  
28 parent patent application filed on that date in the Republic of Korea. [’801 Patent,



1 Title Page, Paragraph (30)]. The technology disclosed and claimed in the parent  
2 patent application and in the '801 Patent was invented by engineers at KTFreetel  
3 Co., Ltd. ("KTFreetel"), a (South) Korean company.

4 42. KTFreetel was, both before and after the Effective Filing Date, a  
5 global leader in research and technology relating to telecommunications, including  
6 cellular communications and messaging. The parent patent application and the  
7 '801 Patent were initially assigned to KTFreetel. KTFreetel was later merged into  
8 Korea Telecom, which was and is the largest telecommunications company in  
9 (South) Korea.

10 43. All maintenance fees on the '801 Patent have been paid timely and  
11 fully to the United States Patent and Trademark Office (as shown on Exhibit C,  
12 attached).

13 44. The chain of title for the '801 Patent as listed in the United States  
14 Patent and Trademark Office database is attached as Exhibit D. To the best of  
15 Hypertext's knowledge, information and belief, this chain of title as to its  
16 predecessors-in-interest is complete and accurate, such that Hypertext is now the  
17 legal owner of all right, title and interest in and to the '801 Patent, including the  
18 right to sue for and collect damages for past, present and future infringement of the  
19 '801 Patent.

20 45. To the best of Hypertext's knowledge, information and belief,  
21 Hypertext is not aware of any prior owner or any licensee of the '801 Patent that  
22 has ever offered for sale or sold a product that included the patented technology,  
23 such that there has never existed a requirement for "marking" of the '801 Patent's  
24 number on any product in accordance with the Patent Laws, and there is no  
25 requirement to "mark" as to a patented "process" in any event. *See, generally*, 35  
26 U.S.C. § 287.

27 46. Therefore, neither actual nor constructive notice by Google of the '801  
28 Patent is required in order for Google to be liable to Hypertext for direct



1 infringement damages extending back at least six years before the filing date of the  
2 original complaint in this matter.

### 3 **THE REVOLUTIONARY PATENTED TECHNOLOGY**

4 47. The claimed inventions in the '801 Patent improved the SMS  
5 technology for communication of SMS text messages between computing devices,  
6 such as the Accused Products.

7 48. The acronym SMS stands for Short Message Service. The adjective  
8 "Short" refers to the noun "Message" and accurately describes the small or "short"  
9 size of a message that can be sent via SMS. Indeed, as of the Effective Filing Date,  
10 each SMS message was limited to 140 bytes of data. That is still the case today.

11 49. This small maximum byte size of an SMS message was a significant  
12 problem and drawback to the widespread use of SMS messages.

13 50. Because of this restricted size, the use of SMS messaging technology  
14 was similarly restricted, being used as of the Effective Filing Date mainly for  
15 providing small amounts of information, such as weather information, stock pricing  
16 information, and other similarly truncated data. ['801 Patent, Col. 1, ln. 39 - 42].

17 51. Computer files that are routinely transmitted today using personal  
18 computing devices, such as an image file, a video file and the like, could not have  
19 been sent using the SMS technology as of the Effective Filing Date. ['801 Patent,  
20 Col. 1, ln. 43-46]. The SMS technology then was too limited for widespread use  
21 with a wide array of information and data, and could not be used to transmit  
22 anything other than "short messages" as of the Effective Filing Date.

23 52. Today, however, that is no longer the case. It has been estimated that  
24 by the end of 2010, the SMS technology was the most widely used data  
25 communications technology, with an estimated 3.5 billion users, or about 80% of  
26 all mobile subscribers. See <https://en.wikipedia.org/wiki/SMS>, citing to Ahonen,  
27 Tomi T. (January 13, 2011) *Time to Confirm Some Mobile User Numbers: SMS,*  
28 *MMS, Mobile Internet, M-News, Communities Dominate Brands.*

1           53. In fact, one report from 2012 stated that even at that time there were  
2 more people in the world who sent and received SMS text messages than there were  
3 people who had electricity in their homes. *See*,  
4 [https://www.ringcentral.com/blog/wp-content/uploads/2012/12/SMS\\_](https://www.ringcentral.com/blog/wp-content/uploads/2012/12/SMS_Infographic2.jpeg)  
5 [Infographic2.jpeg](https://www.ringcentral.com/blog/wp-content/uploads/2012/12/SMS_Infographic2.jpeg).

6           54. Today, much of the use of the SMS technology is in mobile marketing,  
7 a type of direct marketing. Indeed, according to one market research report, as of  
8 2014 the global SMS messaging business was estimated to be worth over \$100  
9 billion, accounting for almost 50% of all revenue generated by mobile marketing.  
10 [*Id.* citing to Portio Research, *Mobile Messaging Futures 2014-2018*; *see also*  
11 [https://www.businesswire.com/news/home/20150212006013/en/Research-Markets-](https://www.businesswire.com/news/home/20150212006013/en/Research-Markets-Mobile-Messaging-Futures-2014-2018-Key)  
12 [Mobile-Messaging-Futures-2014-2018-Key](https://www.businesswire.com/news/home/20150212006013/en/Research-Markets-Mobile-Messaging-Futures-2014-2018-Key)].

13           55. A vitally important feature of the mobile marketing using the SMS  
14 technology is the ability to include within the SMS text message a URL link, which  
15 a recipient of the SMS text message can simply “click on” or “tap on” to be  
16 transported to that URL website (“embedded SMS clickable links”).

17           56. These embedded SMS clickable links are an important factor in what  
18 has made SMS such a widely used technology today, and particularly with respect  
19 to mobile marketing, where the marketer can include an embedded SMS clickable  
20 link in the SMS text message, and the potential customer recipient merely has to  
21 click or tap on that link to be “transported” to the marketer’s website.

22           57. It is as if the entirety of the marketer’s website (or any other website  
23 of the marketer’s choosing) is set forth in the SMS text message. This feature  
24 greatly enhanced the usability and value of SMS technology.

25           58. Being able to circumvent the small-size restriction on the maximum  
26 number of bytes (and in turn, characters) that can be included in an SMS message  
27 opened the door to modern SMS mobile marketing.

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1           59. But the embedded SMS clickable links are not just useful in mobile  
2 marketing. Embedded SMS clickable links can be used to “transport” the SMS text  
3 message recipient to literally anything that is accessible via the Internet, such as a  
4 photo album from an important event (such as wedding or anniversary party),  
5 music, videos, restaurant locations, menus and reviews, store locations and hours of  
6 operation, hospital locations, etc. The list is almost if not virtually endless.

7           60. This advance in the art of SMS technology was revolutionary. It has  
8 allowed the use of SMS technology to expand way beyond its 140-byte limitations.  
9 Without it, the use of SMS messaging would still be limited to things like the  
10 weather and stock price reports, “how-are-you” and “where-are-you” messages  
11 between friends and family members, and other short messages.

12           61. The Patented Technology in the ‘801 Patent has been commercially  
13 successful within the United States and globally.

14           62. The Patent Technology has been incorporated in the vast majority of  
15 all smart devices such as the Accused Products on the market today.

16           63. As of the Effective Filing Date, the Patented Technology in the ‘801  
17 Patent was novel and nonobvious to a person of ordinary skill in the art.

18           64. The Patented Technology in the ‘801 Patent has been incorporated in  
19 most if not all SMS messaging applications currently available on smartphones,  
20 tablet computers, and similar products today and over the prior six years.

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1           65. The infringed claims of the '801 Patent are directed, among other  
2 things, to an improvement in the implementation and use of SMS messaging  
3 systems that allow for embedding URL information in SMS messages that has been  
4 a key factor in making use of SMS messages very popular. Figure 2 of the '801  
5 Patent, reproduced here, is illustrative:

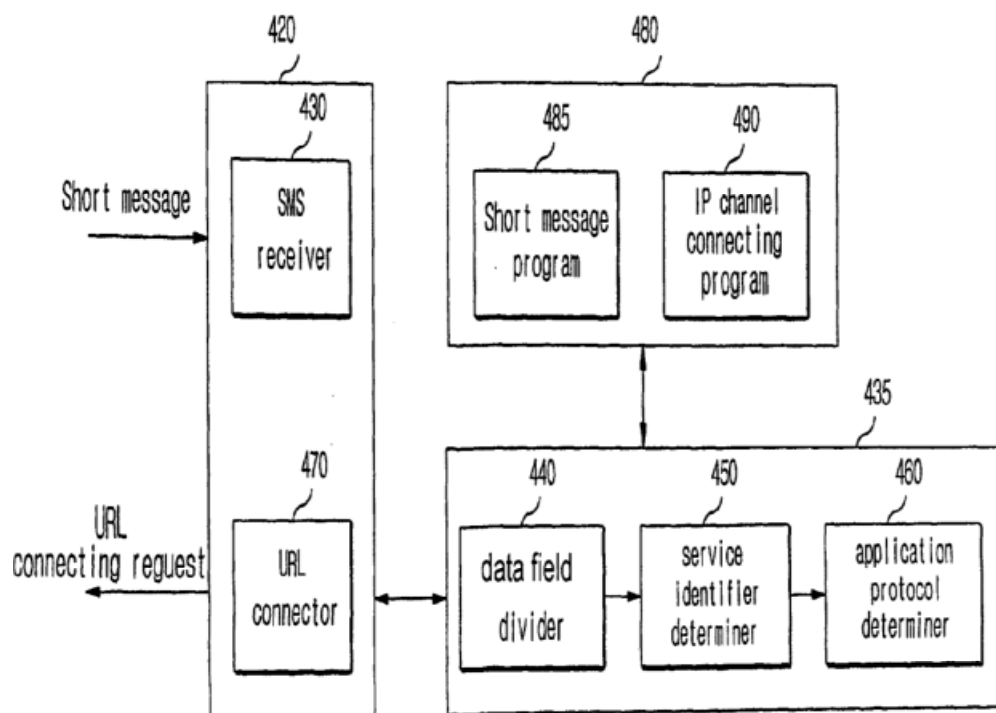


FIG. 2

18           66. The '801 Patent describes this Figure, in part, as follows:

19           “FIG. 2 is a schematic illustration of a user terminal  
20 receiving data by using SMS (Short Message Service) and  
21 wireless Internet in accordance with one preferred  
22 embodiment of the present invention.” [Col. 3, ln. 14-18].

23           “Referring to FIG. 2, the user terminal 410 receives  
24 short messages transmitted from the SMS server 110. The  
25 user terminal 410 may comprise a receiver/transmitter  
26 420 for transmitting a URL connecting request, a  
27 controller 435 for connecting the communication channel  
28 based on application protocols comprised in the received

1 short messages, and storing device 480 for storing  
2 program which may be used for executing the controller  
3 435 and connecting the communication channel. [Col. 4,  
4 ln. 35-43].

5 67. Also, the '801 Patent states that Figure 4 of the '801 Patent "is a flow  
6 chart flowchart illustrating an automatically connecting process to a web site by  
7 using the URL in correspondence with the application protocol comprised in the  
8 short message received by the data receiving system in accordance with one  
9 preferred embodiment of the present invention." [Col. 3, ln. 23-27].

10 68. These and other Figures in the '801 Patent are further discussed and  
11 described in the '801 Patent. [*See also, e.g.*, Col. 5, ln. 57 to Col. 6, ln. 58].

12 69. The Figures and the discussion and description of them in the '801  
13 Patent fully describe the solution to the byte size limitation in SMS text messaging,  
14 and how to implement that solution, to a person of ordinary skill in the art as of the  
15 Effective Filing Date.

16 70. The claimed technology in the '801 Patent eloquently solved the  
17 problem of the number-of-bytes limitation in SMS text messaging that had  
18 theretofore limited its use to short weather reports and the like.

19 **THE PATENTED TECHNOLOGY IS PATENT ELIGIBLE**

20 71. Each claim of the '801 Patent is directed to and is rooted in computer  
21 technology, improves the operation of the Accused Products, and is not directed to  
22 merely an abstract idea.

23 72. Each claim of the '801 Patent does not merely recite and is not limited  
24 to a previously well known, understood, and used system or process that has merely  
25 been replicated on a computer.

26 73. There is no "pen and paper" equivalent to the Patented Technology.

27 74. The building blocks in the '801 Patent are clearly integrated into  
28 something more than an "abstract idea."

1           75. The claimed inventions here are patent eligible for reasons similar to  
2 why the claimed invention in *Enfish, LLC v. Microsoft Corp.* 822 F.3d 1327, 1336  
3 (Fed. Cir. 2016) was deemed patent eligible. The claims of the '801 Patent are  
4 directed to a particular improvement to a "device" (in *Enfish*, a computer, here, a  
5 computing device, such as a smartphone, with SMS text messaging capability).  
6 The claimed invention here is also patent eligible for reasons similar to those relied  
7 upon in *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir.  
8 2017), where the claims directed to an improved computer system that provided  
9 flexibility in use which was not present in the prior art were held patent eligible.

10           76. The claimed inventions here are patent eligible also for reasons similar  
11 to those relied upon in *Core Wireless Licensing S.A.R.L v. LG Electronics, Inc. et.*  
12 *al.*, 880 F.3d 1356, 1362 (Fed. Cir. 2018), where the Federal Circuit found patent  
13 eligible an asserted claim that required "an application summary that can be  
14 reached directly from the menu" and "wherein each of the data in the list being  
15 selectable to launch the respective application and enable the selected data to be  
16 seen within the respective application." Here, according to the claimed technology  
17 of the '801 Patent, the URL "can be reached directly from" the received SMS text  
18 message.

19           77. Each claim of the '801 Patent recites numerous additional  
20 unconventional technical steps, each of which is independently sufficient to confer  
21 patent-eligibility.

### 22                           **GOOGLE'S INFRINGEMENT OF THE '801 PATENT**

23           78. Google has infringed and continues to directly infringe claims of the  
24 '801 Patent by making, having made, importing, using, offering to sell, and selling  
25 the Accused Products that infringe one or more claims of the '801 Patent, including  
26 independent claims 1 and 5. Google's infringement is both direct and indirect, as it  
27 has induced and contributed to the infringement by others after having received  
28 notice of the '801 Patent, even though it would be quick, easy and inexpensive for

1 Google to implement changes to its Accused Products that would avoid  
2 infringement.

3 79. An example of the way in which the Accused Products infringe claim  
4 1 of the '801 Patent is provided in the claim chart shown in Exhibit E attached  
5 hereto, which is incorporated herein by reference as if fully set forth.

### 6 **GOOGLE'S INDIRECT INFRINGEMENT**

7 80. Importers, distributors, sellers and users of the Accused Products also  
8 infringe the '801 Patent, and are induced to do so by Google.

9 81. Google has taken, and on information and belief will continue to take,  
10 action during the time the '801 Patent is in force intending to cause and enable the  
11 acts by those importers, distributors, sellers and users of the Accused Products that  
12 infringe the '801 Patent.

13 82. Google actively induces, encourages, urges and enables users of the  
14 Accused Products to utilize SMS messaging applications and to include an  
15 application protocol identifier and URL information in their SMS messages,  
16 knowing full well that those users are going to include an application protocol  
17 identifier and URL information in their SMS messages, and thus infringe. *See, e.g.*  
18 <https://messages.google.com/>.

19 83. There is no substantial non-infringing use of the infringing messaging  
20 applications of the Accused Products given the limited byte size of an SMS  
21 message on the one hand, which, as discussed in the '801 Patent, severely limited  
22 the use and usefulness of SMS text messaging before the advent of the claimed  
23 technology of the '801 Patent, and continues to limit the use of SMS text messaging  
24 without an application protocol identifier and URL information, compared to the  
25 massive amount of use and exchange of data using SMS messaging, using the  
26 technology described and claimed in the '801 Patent on the other hand. *See*  
27 Paragraphs 27 to 41 above.

28 84. Upon information and belief, after Google's receipt of notice of the



1 '801 Patent and the referenced claim chart, Google's importers, distributors, sellers  
2 and/or users of the Accused Products continued or continue to infringe, Google was  
3 aware that they and each of them continued to infringe, and Google does not require  
4 and, since receiving notice of the '801 Patent, has not required its importers,  
5 distributors, sellers and users of its Accused Products immediately to stop that  
6 infringement.

7 85. Thus, Google at that time became liable for indirect infringement  
8 based upon its past and continuing enabling, urging, inducing and contributing to  
9 that infringement.

### 10 **GOOGLE'S WILLFUL INFRINGEMENT**

11 86. Google has been able, since receiving notice of the '801 Patent and the  
12 reference claim chart, to cease infringement immediately and easily, and can  
13 immediately cause its importers, distributors, sellers and users of the Accused  
14 Product to cease infringement, by disabling its messaging applications on the  
15 Accused Products, or disabling the ability of those messaging applications to  
16 recognize and execute any function based on application protocol identifier and  
17 URL information in the SMS messages received on the Accused Products. Google  
18 can easily and quickly do this by sending software updates to all Accused Products  
19 currently in inventory or in use, and disabling those functions in Accused Products  
20 manufactured and/or sold in the future. Google, however, has not done so.

21 87. Google has the ability to delete or disable embedded SMS clickable  
22 links in its SMS messaging applications on its products, including the Accused  
23 Products that are currently in use by Google Customers.

24 88. Google is able to quickly, easily and inexpensively delete or disable  
25 embedded SMS clickable links in its SMS messaging applications on its products,  
26 including the Accused Products that are currently in use by Google Customers.

27 89. Google's refusal to delete or disable embedded SMS clickable links in  
28 its SMS messaging applications on its products, including the Accused Products

1 that are currently in use by Google Customers, has been a conscious, intentional  
2 decision by Google, and continue to be so. Thus, Google has knowledge of the  
3 ‘801 Patent; knowledge that Google Customers infringe the ‘801 Patent, and  
4 intends that they do so.

5 90. Google may have had either actual or constructive knowledge and/or  
6 notice of, or was willfully blind to, the ‘801 Patent before having received a copy of  
7 the original complaint in this matter. Discovery in this matter may disclose that  
8 Google had notice of the ‘801 Patent prior to that date. Hypertext reserves the right  
9 to amend its complaint in this regard after taking discovery of Google. As alleged  
10 above, Google had knowledge of the ‘801 Patent no later than December 20, 2019.

11 91. Since receiving notice of the ‘801 Patent and failing to cease  
12 infringement, Google’s infringement has been intentional. Given the ease with  
13 which Google could immediately cease infringement, and could instruct its  
14 importers, distributors, sellers and users of the Accused Products to cease  
15 infringing, Google’s blatant disregard for its own infringement of the ‘801 Patent  
16 and the infringement of its importers, distributors, sellers and users of the Accused  
17 Products makes this an exceptional case

18 92. Hypertext did not allege indirect or willful infringement in the original  
19 complaint filed in this matter because at the time filed, Hypertext did not have  
20 sufficient knowledge, information or belief that Google had notice of the ‘801  
21 Patent. As alleged above, Google received notice of the ‘801 Patent no later than  
22 December 19, 2019. Therefore, Google had notice of the ‘801 Patent well prior to  
23 the filing of this First Amended Complaint, and has ample time to stop infringing  
24 itself and to stop the direct infringement by those who import, distribute, sell and  
25 use the Accused Products.

26 93. There is a split among various districts as to whether a defendant’s  
27 notice of infringement in the first-filed, original complaint is sufficient to support  
28 an allegation of induced and willful infringement that is set forth in that original

1 complaint. For example, the court in *Kaufman v. Microsoft Corporation*, 16-cv-  
2 2880 (AKH)(S.D.N.Y.) held that it was not sufficient, thus granting summary  
3 judgment dismissing the claim for willful infringement. [*Id.*, January 22, 2020,  
4 Dkt. 166).

5 94. Other courts have held otherwise; for example, *Finjin, Innc. v ESET*,  
6 LLC, 3:17-cv-0183-CAV (BGS), 2017 WL 1063475 (S.D. Cal., March 21, 2017,  
7 Dkt. 105; *Huawei Technologies Co. Ltd. v T-Mobile US, Inc.*, 2:16-CV-00052 –  
8 JRG-RSP (February 21, 2017, Dkt. 147); and *Bascom Research LLC v Facebook*,  
9 *Inc.*, 3:12-cv-06293-SI; 2013 WL 968210 (N.D. Cal. March 12, 2013, Dkt. 71).

10 95. In the *Kaufman* case, plaintiff had alleged willful infringement in the  
11 original complaint (April 16, 2016, Dkt. 1). Plaintiff in *Kaufman* did not file an  
12 amended complaint, and the issue of whether the claim for willful infringement  
13 should be dismissed related entirely to the claim as alleged in the first-filed, original  
14 complaint, and not in an amended complaint. Also, there were no allegations in  
15 *Kaufman* relating to the ease or difficulty with which defendant could stop  
16 infringing, and stop infringement by its importers, distributors, sellers and users.

17 96. Here, Hypertext is asserting indirect and willful infringement in this  
18 First Amended Complaint based upon Google’s notice of the ‘801 Patent at least as  
19 early as alleged above.

20 97. More than enough time has elapsed since Google received notice of  
21 the ‘801 Patent (and the detailed claim chart showing that the Accused Products  
22 infringe) for it to have taken or initiated steps to stop infringing itself, and to stop  
23 infringement by its importers, distributors, sellers and users of the Accused  
24 Products.

25 98. Google can quickly and easily avoid its ongoing direct infringement of  
26 the ‘801 Patent.

27 99. Google can quickly and easily stop the ongoing direct infringement of  
28 the ‘801 Patent by the importers of the Accused Products.

1 100. Google can quickly and easily stop the ongoing direct infringement of  
2 the '801 Patent by the distributors of the Accused Product

3 101. Google can quickly and easily stop the ongoing direct infringement of  
4 the '801 Patent by the sellers of the Accused Products.

5 102. Google can quickly and easily stop the ongoing direct infringement of  
6 the '801 Patent by the users of the Accused Products.

7 103. On information and belief, Google has not taken or initiated any steps  
8 to stop its own infringement of the '801 Patent.

9 104. On information and belief, Google has not taken or initiated any steps  
10 to stop infringement of the '801 Patent by any of the importers, distributors, sellers  
11 and users of the Accused Products.

12 105. Prior to the filing of this First Amended Complaint, Google has had  
13 knowledge and notice of the '801 Patent, and has received and reviewed the first-  
14 filed original complaint and the infringement claim chart attached thereto.

15 106. Notwithstanding that notice and knowledge, Google has still not taken  
16 or initiated any steps to stop directly infringing or to stop contributing to and  
17 inducing infringement of the '801 Patent by the importers, distributors, sellers and  
18 users of the Accused Products, or to stop that direct infringement by the importers,  
19 distributors, sellers and users of the Accused Products.

20 107. Therefore, Google continues to directly infringe the '801 Patent, and to  
21 contribute to and induce the direct infringement of the '801 Patent by the importers,  
22 distributors, sellers and users of the Accused Products; and that infringement is  
23 willful.

24 108. Therefore, Google is liable for indirect and willful infringement for all  
25 infringing activity after it received notice of the '801 Patent, which occurred no  
26 later than December 19, 2019.

27 109. Whether Google received notice of the '801 Patent before the first-  
28 filed original complaint was filed, or based upon the first-filed complaint, is a

1 difference without justifiable or reasonable legal significance under the  
2 circumstances of this case.

3 110. Google may have had either actual or constructive knowledge and/or  
4 notice of, or was willfully blind to, the '801 Patent before receiving knowledge of  
5 this Complaint. Hypertext reserves the right to amend its Complaint in this regard  
6 after taking discovery of Google.

7 111. Hypertext has been damaged by Google's direct and indirect  
8 infringement of the '801 Patent and is entitled to reasonable royalty damages and  
9 enhanced damages due to Google's willful direct and indirect infringement.

10 112. The damages to Hypertext by Google's direct and indirect  
11 infringement continues, and on information and belief, will continue unless and  
12 until an injunction is entered or Google pays damages for its past and continuing  
13 infringement.

#### 14 **PRAYER FOR RELIEF**

15 Plaintiff Hypertext prays for the following relief:

16 A. A judgment in favor of Hypertext that Google has directly infringed  
17 the '801 Patent and that the '801 Patent is not invalid, is enforceable, and is patent-  
18 eligible;

19 B. A judgment that Google's importers, distributors, sellers and users of  
20 the Accused Products have directly infringed the '801 Patent

21 C. A judgment that Google is liable for indirect infringement of the '801  
22 Patent based upon it having induced and/or contributed to the infringement of the  
23 '801 Patent by others.

24 D. A judgment that Google's direct and indirect infringement have been  
25 willful, justifying the award of enhanced damages.

26 E. A judgment and order requiring Google to pay Hypertext  
27 compensatory damages, costs, expenses, and pre- and post-judgment interest for its  
28 infringement of the '801 Patent, as provided under 35 U.S.C. §284;

1 F. A judgment that sets a reasonable royalty rate and licensing terms for  
2 Google’s ongoing post-judgment infringement if Google does not cease such  
3 infringement, or in the alternative, imposes a permanent injunction against further  
4 infringement by Google of the ‘801 Patent; and

5 G. Any and all other relief to which Hypertext may be entitled.

6 Dated: March 4, 2020

Respectfully submitted,  
BURKE, WILLIAMS & SORENSEN, LLP  
Robert W. Dickerson, Jr.  
Matthew D. Murphey

9

10 By: /s/ Robert W. Dickerson, Jr.  
Robert W. Dickerson, Jr.

11 Attorneys for Plaintiff  
12 HYPERTEXT TECHNOLOGIES, LLC

13

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15 **DEMAND FOR JURY TRIAL**

16 Plaintiff Hypertext hereby demands trial by jury of all issues which are so  
17 triable in this action and on this complaint.

18 Dated: March 4, 2020

BURKE, WILLIAMS & SORENSEN, LLP  
Robert W. Dickerson, Jr.  
Matthew D. Murphey

20

21 By: /s/ Robert W. Dickerson, Jr.  
Robert W. Dickerson, Jr.

22 Attorneys for Plaintiff  
23 HYPERTEXT TECHNOLOGIES, LLC

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