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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HYPERTEXT TECHNOLOGIES, LLC, Plaintiff, v. APPLE INC. and DOES 1-10, inclusive, Defendants.	Case No. 8:19-cv-02404-DOC (KESx) **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT** **DEMAND FOR JURY TRIAL** Judge: Honorable David O. Carter

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

1. Plaintiff Hypertext files this first amended complaint against defendant Apple Inc. ("Apple") and the Doe defendants, alleging direct and indirect infringement of U.S. Patent No. 7,113,801 (the "'801 Patent").

2. The accused products ("Accused Products") include Apple's devices that store and execute SMS (Short Message Service) text messaging application(s), for example, *iMessage*, that receive an SMS text message including an application protocol identifier and URL information, and use the application protocol identifier and the URL information to receive data from a web server using an application

program stored and executed by the Accused Products, such as a web browser, where the amount of such received data can significantly surpass the 140-byte size limitation of the SMS text message. ("Patented Technology").

3. A true and correct copy of the first-filed complaint and all exhibits (including the claim chart) in this matter, as filed December 12, 2019, was sent via Federal Express and email to Apple on December 13, 2019. A true and correct copy of that email and letter (without enclosures) is attached as Exhibit A.

4. A representative of Apple communicated with a representative of Hypertext regarding the first-filed complaint on December 20, 2019. Therefore, Apple had notice of that complaint (including all its exhibits) and of the '801 Patent at least as early as that date.

5. Thus, Apple was on notice as of that date not only of the '801 Patent but also of the facts necessary to understand and appreciate the manner in which the Accused Products infringe, and how the use of the Accused Products regarding SMS messaging also infringe as shown in the claim chart attached to the first-filed complaint as an exhibit. Therefore, as of that date, Apple was on notice of the manner in which it had infringed and continues to directly infringe the '801 Patent, and also how it had been contributing and inducing, and continues to contribute to and induce, others to directly infringe the '801 Patent.

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

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

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

9. Although each Accused Product may be sold only a limited number of times before making its way into the hands of the ultimate end-user customer ("Apple Customer"), the number of times that each Apple Customer engages in a use of each Accused Product that constitutes infringement of the '801 Patent is very large.

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

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

12. It has been reported that there are over 85,000,000 Apple iPhones in use in the United States. *See*, e.g., https://www.comscore.com/Insights/Blog/US-iPhone-Ownership-Reaches-All-Time-High-on-Strength-of-iPhone-7. Therefore, it is estimated that every day, 8 Billion (with a "B") SMS messages are sent on an Apple iPhone. This does not include SMS messages sent on other Apple Accused Products.

13. Of those 8 Billion SMS messages, it is a believed that a significant number of them will include an application protocol identifier and URL

information, and use the application protocol identifier and the URL information to receive data from a web server using an application program stored on and executed by the Accused Products, such as a web browser; *i.e.*, they use the Patented Technology. If even just 3% do so, that would equate to 240,000,000 (Two Hundred Forty Million) individual acts of infringement by an Apple Customer every day.

14. The majority of Apple Customers want to have the Patented Technology on their Accused Products.

15. Being able to include the Patented Technology on its Accused Products is important to Apple.

16. Apple does not want to delete or disable the Patented Technology from or on its Accused Products.

17. Being able to include the Patented Technology on its Accused Products provides a competitive advantage to Apple.

18. Deleting or disabling the Patented Technology from its Accused Products would place Apple at a competitive disadvantage as to its competitors who include the Patented Technology on their smart devices.

19. If Apple was not able to offer and include the Patented Technology on its Accused Products, Apple would lose significant sales of its products, and, on information and belief, those losses would amount to significantly more than $100,000,000.

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

PLAINTIFF HYPERTEXT AND THE ASSERTED PATENT

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

22. Hypertext is the owner of all right, title and interest in and to the '801 Patent, entitled "Method For Receiving Data Using SMS And Wireless Internet And System Thereof," which issued on September 26, 2006. A true and correct copy of the '801 Patent is attached as Exhibit B.

DEFENDANT APPLE AND THE ACCUSED PRODUCTS

23. Defendant Apple is a corporation organized and existing under the laws of the state of California, with its principal place of business in California and having regular and established places of business in this judicial district.

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

25. Apple is has been directly infringing the '801 Patent by developing, making, having made, importing, using, offering for sale, and/or selling the Accused Products into and in the United States.

26. Apple also induces, encourages, urges and instructs others, including importers, distributors, sellers, and users of the Accused Products, to engage in activities in the United States that infringe the '801 Patent. Doing so makes Apple liable for indirect infringement for each direct infringing act by each one of those importers, distributors, sellers, and users of the Accused Products.

27. The Accused Products include, but are not limited to, Apple iPhones, which include one or more web browsers and one or more SMS messaging applications, such as the *iMessage* SMS application.

28. Hypertext reserves the right to amend its infringement allegations after discovery is taken of Apple.

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NATURE OF THE ACTION, JURISDICTION, AND VENUE

29. Plaintiff Hypertext asserts claims for direct and indirect willful patent infringement against defendant Apple and the Doe defendants under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281, *et seq*. The Court has original jurisdiction over the '801 Patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a).

30. Plaintiff Hypertext's principal place of business is in this judicial district.

31. The Court has personal jurisdiction over Apple. Apple has committed and is continuing to commit acts of direct infringement in this district, including importing, offering for sale, selling and/or using infringing systems in this judicial district, and is currently committing and in the past has committed acts of indirect infringement in this district.

32. Venue is proper in this district under 28 U.S.C. § 1400(b). In addition to having committed and continuing to commit acts of direct and indirect infringement in this district, Apple has several established places of business in this district. These include numerous "Apple Store" retail locations at which Accused Products have been use, offered for sale and sold, and are still being used, offered for sale and sold, including at Apple Brea Mall, 1016C Brea Mall, Brea, CA 92821; Apple Fashion Island, 1113 Newport Center Drive, Newport Beach, CA 92660; Apple Mission Viejo, 936C Shops at Mission Viejo, CA 92691; Apple Irvine Spectrum Center, 763 Spectrum Center Drive, Irvine, CA 92618; Apple Los Cerritos, 242 Los Cerritos Center, Cerritos, CA 90703; and Apple South Coast Plaza, 333 Bear Street, Costa Mesa, CA 92626 (www.apple.com/retail), as shown in the follow graphic:

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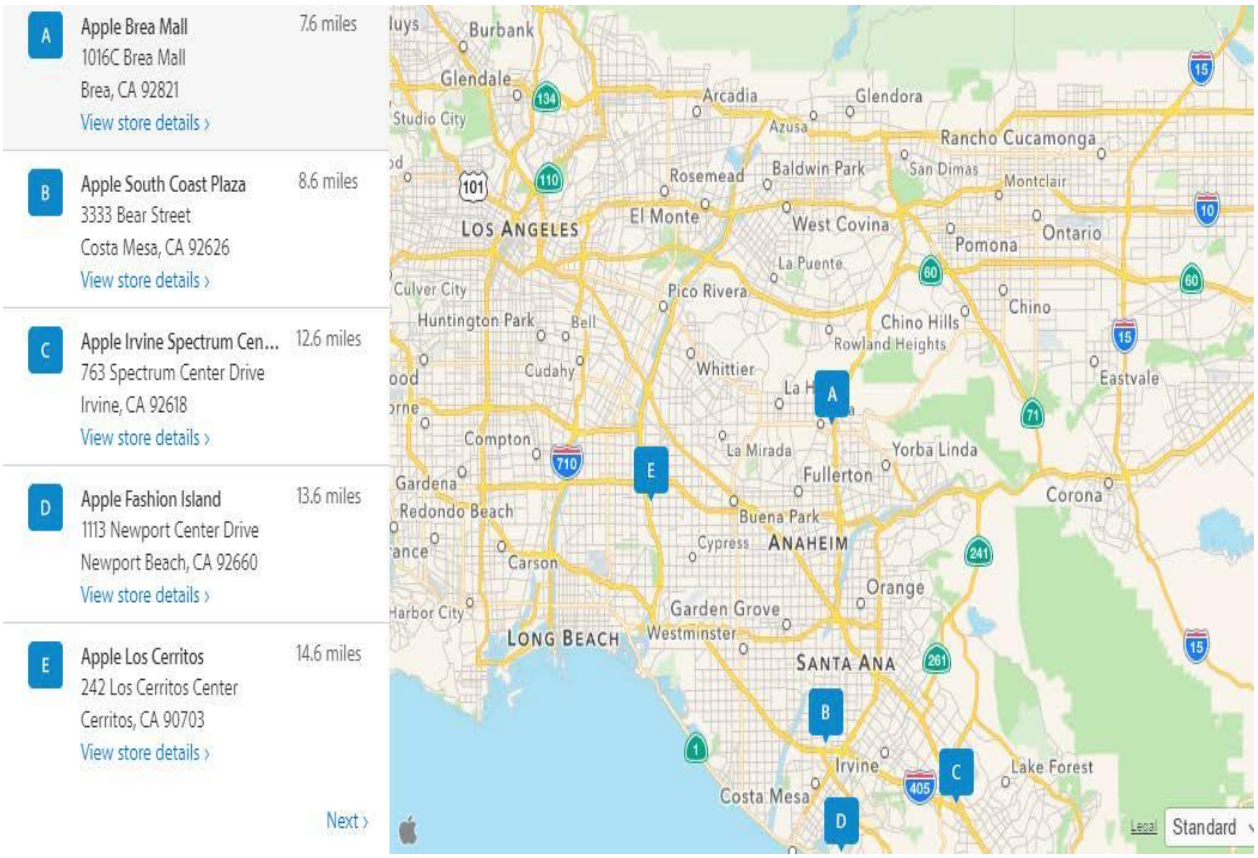

33. Each location in the graphic above: (i) is a physical place in the Central District of California (each consisting of a building or a part of a building from which business is conducted); (ii) operates the business of Apple in a regular, steady, uniform, orderly, settled, fixed, and permanent manner; and (iii) is owned or leased by Apple, and has been ratified by Apple as a place of business ("Apple Retail Stores").

34. In addition, these Apple Retail Stores are represented by Apple to the consuming public as being its places of business in this judicial district and are listed and advertised by Apple as such on its website. For example, the screenshot above was taken from the website www.apple.com/retail, in response to a search for Apple Retail Stores in "Santa Ana, California."

35. Each of these locations is therefore a regular and established place of business owned and operated by Apple for purposes of §1400(b). Collectively

these stores (along with other Apple Retail Stores in this judicial district) conclusively establish Apple's "presence" in this district, such that it can be sued here for patent infringement.

36. In addition, Apple has also repeatedly been involved in litigation in this judicial district, including bringing suit as a plaintiff in this judicial district.

37. This judicial district, in which Apples has often been sued and has itself brought suit, is an appropriate and convenient forum for this patent infringement suit against Apple.

CLAIM FOR RELIEF

FOR PATENT INFRINGEMENT

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

39. On September 26, 2006, the United States Patent and Trademark Office duly issued the '801 Patent, which has an effective filing date of February 6, 2001 ("Effective Filing Date") based upon a claim of priority to corresponding parent patent application filed on that date in the Republic of Korea. ['801 Patent, Title Page, Paragraph (30)]. The technology disclosed and claimed in the parent patent application and in the '801 Patent was invented by engineers at KTFreetel Co., Ltd. ("KTFreetel"), a (South) Korean company.

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

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

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

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

44. Therefore, neither actual nor constructive notice by Apple of the '801 Patent is required in order for Apple to be liable to Hypertext for damages for direct infringement extending back at least six years before the filing date of the first-filed complaint in this matter.

THE REVOLUTIONARY PATENTED TECHNOLOGY

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

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

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

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

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

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

51. In fact, one report from 2012 stated that even at that time there were more people in the world who sent and received SMS text messages than there were people who had electricity in their homes. *See*, https://www.ringcentral.com/blog/wp-content/uploads/2012/12/SMS_ Infographic2.jpeg.

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

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

54. These embedded SMS clickable links are an important factor in what has made SMS such a widely used technology today, and particularly with respect to mobile marketing, where the marketeer can include an embedded SMS clickable link in the SMS text message, and the potential customer recipient merely has to click or tap on that link to be "transported" to the marketeer's website.

55. It is as if the entirety of the marketeer's website (or any other website of the marketeer's choosing) is set forth in the SMS text message. This feature greatly enhanced the usability and value of SMS technology.

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

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

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

59. The Patented Technology in the '801 Patent has been commercially successful within the United States and globally.

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

61. As of the Effective Filing Date, the Patented Technology in the '801 Patent was novel and nonobvious to a person of ordinary skill in the art.

62. The Patented Technology in the '801 Patent has been incorporated in most if not all SMS messaging applications currently available on smartphones, tablet computers, and similar products today.

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

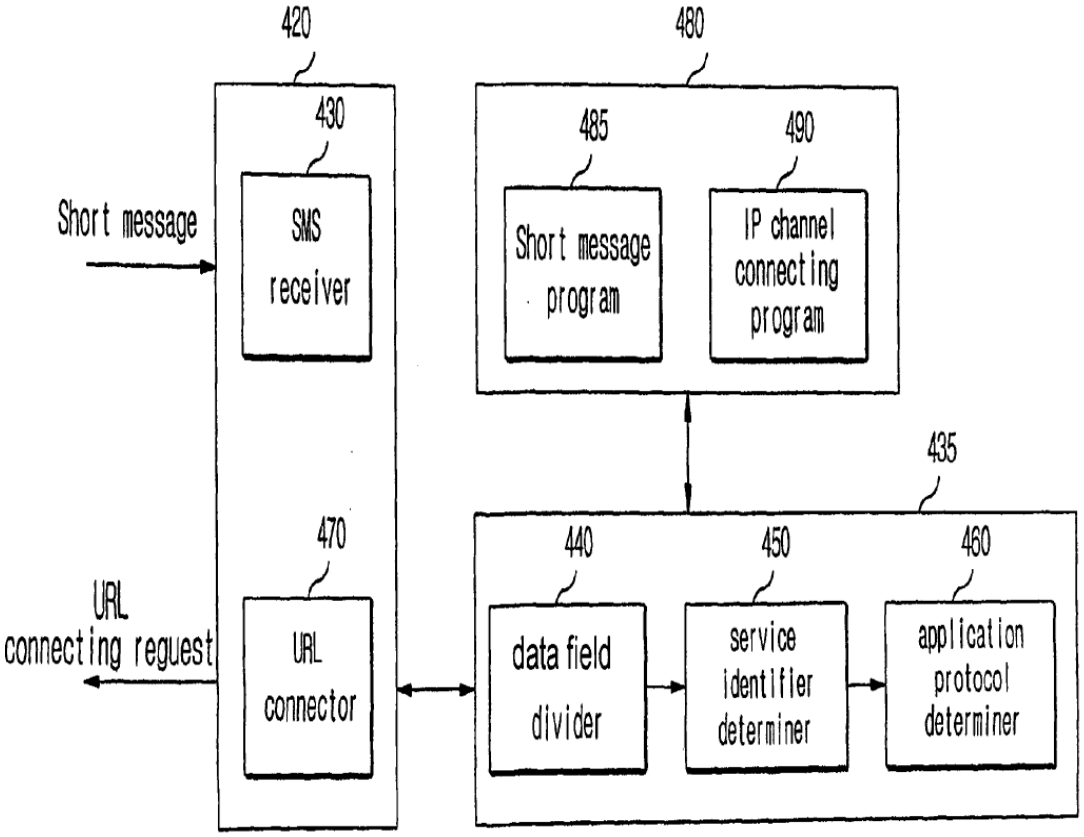

FIG. 2

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

> "FIG. 2 is a schematic illustration of a user terminal receiving data by using SMS (Short Message Service) and wireless Internet in accordance with one preferred embodiment of the present invention." [Col. 3, ln. 14-18].
>
> "Referring to FIG. 2, the user terminal 410 receives short messages transmitted from the SMS server 110. The user terminal 410 may comprise a receiver/transmitter 420 for transmitting a URL connecting request, a controller 435 for connecting the communication channel based on application protocols comprised in the received short messages, and storing device 480 for storing program which may be used for executing the controller 435 and connecting the communication channel. [Col. 4, ln. 35-43].

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

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

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

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

THE PATENTED TECHNOLOGY IS PATENT ELIGIBLE

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

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

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

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

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

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

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

APPLE'S INFRINGEMENT OF THE '801 PATENT

76. Apple has infringed and continues to infringe claims of the '801 Patent by making, having made, importing, using, offering to sell, and selling the Accused Products that infringe one or more claims of the '801 Patent, including independent claims 1 and 5.

77. Apple's infringement is both direct and indirect, as it has induced and contributed to the infringement by others after having received notice of the '801 Patent, even though it would be quick, easy and inexpensive for Apple to implement changes to its Accused Products that would avoid infringement.

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

APPLE'S INDIRECT AND WILLFUL INFRINGEMENT

79. Importers, distributors, sellers and users of the Accused Products also infringe the '801 Patent, and are enabled and induced to do so by Apple.

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

81. Apple actively induces, encourages, urges and enables users of the Accused Products to utilize SMS messaging applications and include an application protocol identifier and URL information in their SMS messages, knowing full well that those users are going to include an application protocol identifier and URL information in their SMS messages, and thus infringe.

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82. There is no substantial non-infringing use of the infringing messaging applications of the Accused Products given the limited byte size of an SMS message on the one hand, which, as discussed in the '801 Patent, severely limited the use and usefulness of SMS text messaging before the advent of the claimed technology of the '801 Patent, and continues to limit the use of SMS text messaging without an application protocol identifier and URL information, compared to the massive amount of use and exchange of data using SMS messaging, using the technology described and claimed in the '801 Patent on the other hand.

83. Upon information and belief, after Apple's receipt of notice of the '801 Patent and the referenced claim chart, Apple's importers, distributors, seller and/or users of the Accused Products continued or continue to infringe, Apple was aware that they and each of them continued to infringe, and Apple does not require, and since receiving notice of the '801 Patent, has not required its importers, distributors, sellers and users of its Accused Products immediately to stop that infringement.

84. Thus, Apple at that time became liable for indirect infringement based upon it past and continuing enabling, urging, inducing and contributing to that infringement.

85. Apple is presently able to cease infringement immediately, and can immediately cause its importers, distributors, sellers and users of the Accused Product to cease infringement, by disabling its messaging applications on the Accused Products, or disabling the ability of those messaging applications to recognize and execute any function based on application protocol identifier and URL information in the SMS messages received on the Accused Products. Apple can easily and quickly do this by sending software updates to all Accused Products currently in inventory or in use, and disabling those functions in Accused Products manufactured and/or sold in the future. Apple, however, has not done so.

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

87. Apple's refusal to delete or disable embedded SMS clickable links in its SMS messaging applications on its products, including the Accused Products that are currently in use by Apple Customers, has been a conscious, intentional decision by Apple, and continue to be so.

88. Thus, Apple has knowledge of the '801 Patent; knowledge that Apple Customers infringe the '801 Patent, and intends that they do so.

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

90. Since receiving notice of the '801 Patent and failing to cease infringement, Apple's infringement has been intentional. Given the ease with which Apple could immediately cease infringement, and could instruct its importers, distributors, sellers and users of the Accused Products to cease infringing, Apple's blatant disregard for its own infringement of the '801 Patent and the infringement of its importers, distributors, sellers and users of the Accused Products makes this an exceptional case

91. Hypertext did not allege indirect or willful infringement in the original complaint filed in this matter because at the time filed, Hypertext did not have sufficient knowledge, information or belief that Apple had notice of the '801 Patent. As alleged above, Apple received notice of the '801 Patent no later than December 20, 2019. Therefore, Apple had notice of the '801 Patent well prior to the filing of this First Amended Complaint, and has ample time to stop infringing

itself and to stop the direct infringement by those who import, distribute, sell and use the Accused Products.

92. There is a split among various districts as to whether a defendant's notice of infringement in the first-filed, original complaint is sufficient to support an allegation of induced and willful infringement that is set forth in that original complaint. For example, the court in *Kaufman v. Microsoft* Corporation, 16-cv-2880 (AKH)(S.D.N.Y.) held that it was not sufficient, thus granting summary judgment dismissing the claim for willful infringement. [*Id.*, January 22, 2020, Dkt. 166).

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

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

95. Here, Hypertext is asserting indirect and willful infringement in this First Amended Complaint based upon Apple's notice of the '801 Patent at least as early as alleged above.

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

Products.

97. Apple can quickly and easily avoid its ongoing direct infringement of the '801 Patent.

98. Apple can quickly and easily stop the ongoing direct infringement of the '801 Patent by the importers of the Accused Products.

99. Apple can quickly and easily stop the ongoing direct infringement of the '801 Patent by the distributors of the Accused Product

100. Apple can quickly and easily stop the ongoing direct infringement of the '801 Patent by the sellers of the Accused Products.

101. Apple can quickly and easily stop the ongoing direct infringement of the '801 Patent by the users of the Accused Products.

102. On information and belief, Apple has not taken or initiated any steps to stop its own infringement of the '801 Patent.

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

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

105. Notwithstanding that notice and knowledge, Apple has still not taken or initiated any steps to stop directly infringing or to stop contributing to and inducing infringement of the '801 Patent by the importers, distributors, sellers and users of the Accused Products, or to stop that direct infringement by the importers, distributors, sellers and users of the Accused Products.

106. Therefore, Apple continues to directly infringe the '801 Patent, and to contribute to and induce the direct infringement of the '801 Patent by the importers, distributors, sellers and users of the Accused Products; and that infringement is willful.

107. Therefore, Apple is liable for indirect and willful infringement for all infringing activity after it received notice of the '801 Patent, which occurred no later than December 20, 2019.

108. Whether Apple received notice of the '801 Patent before the first-filed original complaint was filed, or based upon the first-filed complaint, is a difference without justifiable or reasonable legal significance under the circumstances of this case.

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

110. Hypertext has been damaged by Apple's direct and indirect infringement of the '801 Patent and is entitled to reasonable royalty damages and, if the circumstances warrant, enhanced damages due to Apple's willful direct and indirect infringement.

111. The damages to Hypertext by Apple's direct and indirect infringement continues, and on information and belief, will continue unless and until an injunction is entered or Apple pays damages for its past and continuing infringement.

PRAYER FOR RELIEF

Plaintiff Hypertext prays for the following relief:

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

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

C. A judgment that Apple is liable for indirect infringement of the '801 Patent based upon it having induced and/or contributed to the infringement of the

'801 Patent by others.

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

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

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

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

Dated: March 6, 2020

Respectfully submitted,

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

By: *Robert W. Dickerson, Jr.*
Robert W. Dickerson, Jr.

Attorneys for Plaintiff
HYPERTEXT TECHNOLOGIES, LLC

DEMAND FOR JURY TRIAL

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

Dated: March 6, 2020

Respectfully submitted,

BURKE, WILLIAMS & SORENSEN, LLP
Robert W. Dickerson, Jr.
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