

1 Robert W. Dickerson, Jr. (SBN 89367)
2 E-mail: rdickerson@bwslaw.com
3 BURKE, WILLIAMS & SORESENSEN, LLP
4 444 South Flower Street, Suite 2400
5 Los Angeles, CA 90071-2953
6 Tel: 213.236.0600
7 Fax: 213.236.2700

8 Attorneys for Plaintiff
9 HYPertext TECHNOLOGIES, LLC

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

13 HYPertext TECHNOLOGIES,
14 LLC,

15 Plaintiff,

16 v.

17 ONEPLUS TECHNOLOGY
18 (SHENZEN) CO., LTD and DOES 1-
19 10, inclusive,

20 Defendants.

Case No. 8:19-cv-02358-DOC-ADS

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Judge David O. Carter

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

23 1. Plaintiff Hypertext files this first amended complaint against defendant
24 OnePlus Technology (Shenzen) Co., Ltd (“OnePlus”) and the Doe defendants
25 alleging direct and indirect willful infringement of U.S. Patent No. 7,113,801 (the
26 “801 Patent”). The accused products (“Accused Products”) include OnePlus’s
27 devices that store and execute SMS (Short Message Service) text messaging
28 application(s), for example, the OnePlus smartphones, that receive an SMS text
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 OnePlus's
3 Accused Products, such as a web browser, where the amount of such received data
4 can significantly surpass the 140-byte size limitation of the SMS text message
5 ("Patented Technology").

6 2. 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 OnePlus on December 10, 2019. A true and correct
9 copy of that Letter (without enclosures) is attached as Exhibit A.

10 3. A representative of OnePlus communicated with a representative of
11 Hypertext regarding the first-filed complaint on January 15, 2020. Therefore,
12 OnePlus had notice of that complaint (including all its exhibits) and of the '801
13 Patent at least as early as that date.

14 4. Thus, OnePlus 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, OnePlus 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 5. As of the date that OnePlus was on notice of the '801 Patent, OnePlus
23 became indirectly liable for each of those acts of infringement by OnePlus
24 Customers as herein alleged in more detail.

25 6. Hypertext is informed and believes that notwithstanding the fact that
26 OnePlus has received a copy of the first-filed complaint and its attached claim chart
27 and had thus been put on notice of not only the '801 Patent but also of the facts
28 necessary to understand and appreciate that the '801 Patent is infringed by making,

1 importing, offering for sale, selling and/or using the Accused Products, OnePlus has
2 not taken or initiated any steps to modify the Accused Products to avoid
3 infringement; or any steps to advise the importers, distributors, sellers and users of
4 the Accused Products to cease infringement; or instructed any of them on how to
5 avoid infringement.

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

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

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

17 10. The Pew Research Center has reported that at least 97% of all
18 smartphone owners send SMS text messages regularly. And on average, each
19 person in the United States who uses text messaging sends and receives 94 SMS
20 text messages per day (33,834 text messages per year). *See, e.g.*,
21 <https://www.textrequest.com/blog/texting-statistics-answer-questions/> (January 24,
22 2019).

23 11. Therefore, for every 100,000 Accused Products in use in the United
24 States today, on average those Accused Products will send and receive nearly
25 10,000,000 (Ten Million) SMS text messages every day.

26 12. Of those 10,000,000 daily SMS messages, it is believed that a
27 significant number of them will include an application protocol identifier and URL
28 information, and use the application protocol identifier and the URL information to

1 receive data from a web server using an application program stored on and executed
2 by the Accused Products, such as a web browser; *i.e.*, they use the Patented
3 Technology. If even just 3% do so, that would equate to 300,000 individual acts of
4 infringement by a OnePlus Customer every day.

5 13. The majority of OnePlus Customers want to have the Patented
6 Technology on their Accused Products.

7 14. Being able to include the Patented Technology on its Accused
8 Products is important to OnePlus.

9 15. OnePlus does not want to delete or disable the Patented Technology
10 from or on its Accused Products.

11 16. Being able to include the Patented Technology on its Accused
12 Products provides a competitive advantage to OnePlus.

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

16 18. If OnePlus was not able to offer and include the Patented Technology
17 on its Accused Products, OnePlus would lose significant sales of its products, and,
18 on information and belief, those losses would amount to significantly more than
19 \$10,000,000 through the remaining lifetime of the '801 Patent.

20 19. There is no commercially viable "design around" alternative to the
21 Patented Technology.

22 **PLAINTIFF HYPERTEXT AND THE ASSERTED PATENT**

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

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

1 Exhibit B, and incorporated herein by reference.

2 **DEFENDANT ONEPLUS AND THE ACCUSED PRODUCTS**

3 22. Defendant OnePlus is, on information and belief, a corporation
4 organized and existing under the laws of the People's Republic of China, having an
5 address of 18F Tairan Building, Block C, Tairan Eight Road, Chegongmiao, Futian
6 District, Shenzhen, Guangdong 518048 China.

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

13 24. OnePlus has been developing, making, having made, using, importing,
14 offering for sale, and/or selling the Accused Products that infringe the '801 Patent.
15 OnePlus also induces, encourages, urges and instructs others, including importers,
16 distributors, sellers, and users of the Accused Products, to engage in activities that
17 infringe the '801 Patent. Doing so makes OnePlus liable for indirect infringement
18 for each direct infringing act by each one of those importers, distributors, sellers,
19 and users of the Accused Products.

20 25. The Accused Products include, but are not limited to, one or more of
21 the OnePlus 3, OnePlus 3T, OnePlus 5, OnePlus 5T, OnePlus 6, OnePlus 6T and
22 OnePlus 7 Pro smartphones which include one or more web browsers and one or
23 more SMS messaging applications.

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

26 27. Hypertext reserves the right to amend its infringement allegations after
27 discovery is taken of OnePlus.

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

2 28. Plaintiff Hypertext asserts claims for direct and indirect willful patent
3 infringement against defendant OnePlus under the patent laws of the United States,
4 including under 35 U.S.C. §§ 271 and 281, *et seq.* This Court has original
5 jurisdiction over the '801 Patent infringement claims under 28 U.S.C. §§ 1331 and
6 1338(a).

7 29. Plaintiff Hypertext's principal place of business is in this judicial
8 district.

9 30. The Court has personal jurisdiction over defendant OnePlus.

10 31. Defendant OnePlus is subject to this Court's specific personal
11 jurisdiction pursuant to due process and the California Long Arm Statute
12 [California Code of Civil Procedure, §410], which authorizes California courts to
13 exercise jurisdiction on any basis that is not inconsistent with the Constitution of
14 the United States or the Constitution of California. *See, e.g., Luberski, Inc. v.*
15 *Olefiacial F.LLi Amato S.R.L.*, 171 Cal.App.4th 409, 413 (2009).

16 32. Defendant OnePlus is subject to this Court's specific personal
17 jurisdiction because, among other reasons, of OnePlus' substantial business
18 contacts within the state of California and within this judicial district. For example,
19 one or more of the Accused Products are available and have long been available for
20 purchase at Best Buy stores throughout this Judicial District (*see* Exhibit C
21 attached) and also at T-Mobile retail locations throughout this Judicial District (*see*
22 Exhibit D attached).

23 33. In addition, OnePlus has committed and is committing acts of direct
24 infringement in this district, including currently and in the past using, making,
25 having made, importing, selling and/or offering for sale the Accused Products in
26 this District, and is currently committing and in the past has committed acts of
27 indirect infringement in this district, such that it would be reasonable for this Court
28 to exercise jurisdiction over defendant OnePlus with respect to a claim of patent

1 infringement which is directly related to defendant OnePlus’ commercial activities
2 in this State and in this Judicial District.

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

4 35. The Federal Circuit has ruled, in *In re HTC Corp.*, 889 F.3rd 1349,
5 1354 (Fed. Cir. 2018), that the Supreme Court’s ruling in *TC Heartland LLC v.*
6 *Kraft Foods Group Brands LLC*, 137 S.Ct. 1514 (2017) did not apply to a foreign
7 (alien) corporation. In so doing, the Federal Circuit reaffirmed the longstanding
8 rule that suits against a foreign (alien) defendant “are wholly outside the operation
9 of all the federal venue laws, general and specific.”

10 36. In addition to its infringing Accused Products being purposefully sold
11 throughout the United States and in this Judicial District, defendant OnePlus is also
12 actively recruiting employees through the United States, including in California.
13 (*See* Exhibit E, which is a copy of a portion of the OnePlus.com website that lists
14 its job openings throughout the world, which includes many job openings whose
15 “location” is within the United States, including in California.

16 37. As a result of the foregoing, OnePlus, a foreign (alien) corporation, is
17 “present” in this Judicial District, and can be sued in this Judicial District.

18 38. This Judicial District is an appropriate and convenient forum for this
19 patent infringement suit against OnePlus. It would unreasonable and unfair for
20 defendant OnePlus to be able to freely take advantage of and purposefully target the
21 vast market within this Judicial District for its infringing Accused Products on the
22 one hand, and then contend that it cannot be sued here because a court in this State
23 and this Judicial District cannot exercise personal jurisdiction over it, or that this
24 Judicial District would not be an appropriate venue for the present patent
25 infringement suit. This is precisely the situation which California’s Long Arm
26 Statute and the venue rules as to foreign (alien) corporations are intended to
27 address, and do address by allowing for personal jurisdiction by this Court over this
28 Defendant and in this venue under these circumstances.

1 39. Notwithstanding the fact that defendant OnePlus is selling its products,
2 committing acts of direct and indirect willful infringement, and actively recruiting
3 employees throughout the United States, including in California and this Judicial
4 District, Plaintiff has been unable to locate a state within the United States where
5 defendant OnePlus has registered to do business, and not a single agent for service
6 of process on defendant OnePlus within the United States.

7 40. Based upon its search for agents for service of process on defendant
8 OnePlus, Plaintiff is informed and believes that there does not exist such an agent
9 anywhere within the United States, notwithstanding the fact that OnePlus does
10 substantial business throughout the United States, and in particular in the state of
11 California. Plaintiff is informed and believes that OnePlus may be in violation of
12 state law by not having registered to do business in the state of California (among
13 other states).

14 41. Defendant OnePlus may assert that it is amenable to service only
15 through the Hague Convention. Plaintiff is informed and believes that this is
16 inaccurate and unreasonable, and would unreasonably prejudice plaintiff. *See,*
17 article attached as Exhibit F dated May 18, 2018 entitled *Suing a Chinese entity in*
18 *the United States? Expect a two year wait to serve process.* The article points out
19 that as of 2018 a wait of up to two years was typical, and the time may be
20 lengthening. That would be unduly prejudicial to Plaintiff, and reward defendant
21 OnePlus for its failure to register to do business in any state in the United States or
22 to appoint an agent for process here, even though it is doing extensive business
23 here.

24 42. Under these circumstances, substitute service on defendant OnePlus
25 through the California Secretary of State is appropriate.

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**CLAIM FOR RELIEF
FOR PATENT INFRINGEMENT**

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

44. 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 Korean company.

45. 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.

46. 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 G, attached).

47. The chain of title for the '801 Patent as listed in the United States Patent and Trademark Office database is attached as Exhibit H. 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 for and collect damages for past, present and future infringement of the '801 Patent.

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1 48. To the best of Hypertext’s knowledge, information and belief,
2 Hypertext is not aware of any prior owner or any licensee of the ‘801 Patent that
3 has ever offered for sale or sold a product that included the Patented Technology,
4 such that there has never existed a requirement for “marking” of the ‘801 Patent’s
5 number on any product in accordance with the Patent Laws, and there is no
6 requirement to “mark” as to a patented “process” in any event *See, generally*, 35
7 U.S.C. § 287.

8 49. Therefore, neither actual nor constructive notice by OnePlus of the
9 ‘801 Patent is required in order for OnePlus to be liable to Hypertext for damages
10 for direct infringement extending back at least six years before the filing date of the
11 first-filed complaint in this matter.

12 **THE REVOLUTIONARY PATENTED TECHNOLOGY**

13 50. The claimed inventions in the ‘801 Patent improved the SMS
14 technology for communication of SMS text messages between computing devices,
15 such as the Accused Products.

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

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

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

26 54. Computer files that are routinely transmitted today using personal
27 computing devices, such as an image file, a video file and the like, could not have
28 been sent using the SMS technology as of the Effective Filing Date. [’801 Patent,

1 Col. 1, ln. 43-46]. The SMS technology then was too limited for widespread use
2 with a wide array of information and data, and could not be used to transmit
3 anything other than “short messages” as of the Effective Filing Date.

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

10 56. In fact, one report from 2012 stated that even at that time there were
11 more people in the world who sent and received SMS text messages than there were
12 people who had electricity in their homes. *See*,
13 [https://www.ringcentral.com/blog/wp-content/uploads/2012/12/SMS_](https://www.ringcentral.com/blog/wp-content/uploads/2012/12/SMS_Infographic2.jpeg)
14 [Infographic2.jpeg](https://www.ringcentral.com/blog/wp-content/uploads/2012/12/SMS_Infographic2.jpeg).

15 57. Today, much of the use of the SMS technology is in mobile marketing,
16 a type of direct marketing. Indeed, according to one market research report, as of
17 2014 the global SMS messaging business was estimated to be worth over \$100
18 billion, accounting for almost 50 % of all revenue generated by mobile marketing.
19 [*Id.* citing to Portio Research, *Mobile Messaging Futures 2014-2018*; *see also*
20 [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)
21 [Mobile-Messaging-Futures-2014-2018-Key](https://www.businesswire.com/news/home/20150212006013/en/Research-Markets-Mobile-Messaging-Futures-2014-2018-Key)].

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

26 59. These embedded SMS clickable links are an important factor in what
27 has made SMS such a widely used technology today, and particularly with respect
28 to mobile marketing, where the marketer can include an embedded SMS clickable

1 link in the SMS text message, and the potential customer recipient merely has to
2 click or tap on that link to be “transported” to the marketer’s website.

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

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

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

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

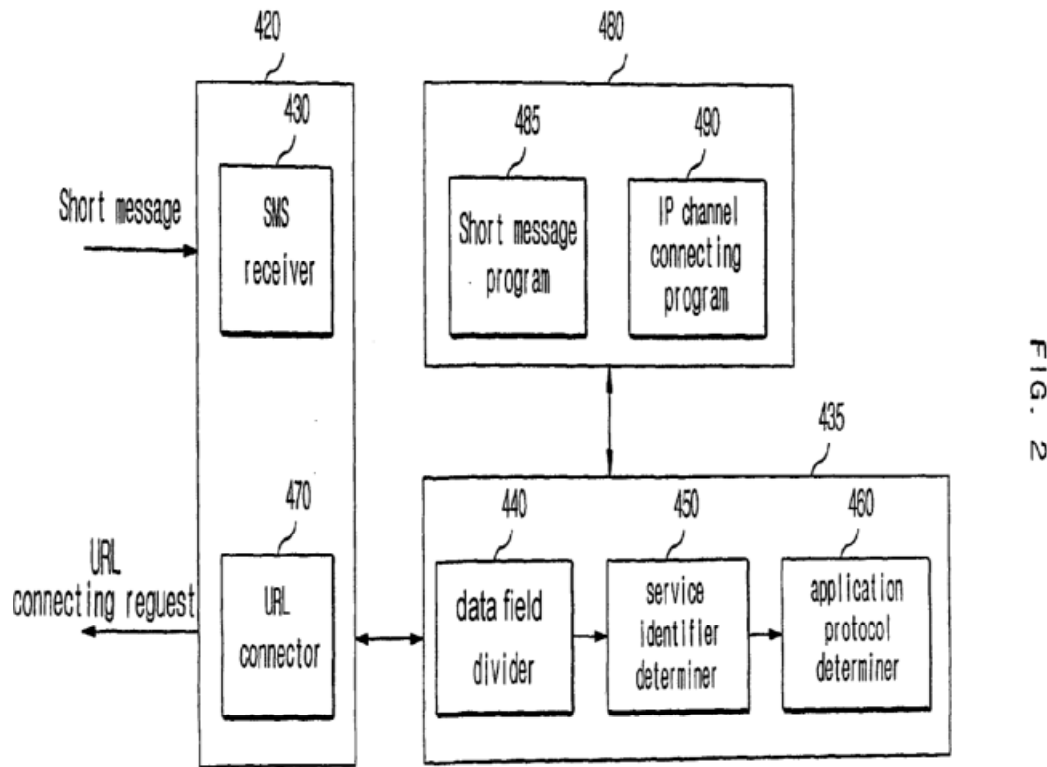
20 64. The Patented Technology in the ‘801 Patent has been commercially
21 successful within the United States and globally.

22 65. The Patented Technology has been incorporated in the vast majority of
23 all smart devices such as the Accused Products on the market today.

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

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

1 68. 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:



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

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

24 “Referring to FIG. 2, the user terminal 410 receives short
 25 messages transmitted from the SMS server 110. The user
 26 terminal 410 may comprise a receiver/transmitter 420 for
 27 transmitting a URL connecting request, a controller 435 for
 28

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

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

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

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

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

20 **THE PATENTED TECHNOLOGY IS PATENT ELIGIBLE**

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

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

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

27 77. The claimed invention here is patent eligible for reasons similar to why
28 the claimed invention in *Enfish, LLC v. Microsoft Corp.* 822 F.3d 1327, 1336 (Fed.

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

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

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

20 **ONEPLUS' INFRINGEMENT OF THE '801 PATENT**

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

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

1 82. An example of the way in which the Accused Products infringe claim
2 1 of the '801 Patent is provided in the claim chart shown in Exhibit I attached
3 hereto, which is incorporated herein by reference as if fully set forth.

4 **ONEPLUS' INDIRECT AND WILLFUL INFRINGEMENT**

5 83. Importers, distributors, sellers and users of the Accused Products also
6 infringe the '801 Patent and are instructed, urged, enabled and induced to do so by
7 OnePlus.

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

12 85. OnePlus actively induces, encourages, enables and urges users of the
13 Accused Products to utilize SMS messaging applications and include an application
14 protocol identifier and URL information in their SMS messages, knowing full well
15 that those users are going to include an application protocol identifier and URL
16 information in their SMS messages, and thus infringe the '801 Patent.

17 86. There is no substantial non-infringing use of the infringing messaging
18 applications of the Accused Products given the limited byte size of an SMS
19 message on the one hand, which, as discussed in the '801 Patent, severely limited
20 the use and usefulness of SMS text messaging before the advent of the claimed
21 technology of the '801 Patent, and continues to limit the use of SMS text messaging
22 without an application protocol identifier and URL information, compared to the
23 massive amount of use and exchange of data using SMS messaging, using the
24 technology described and claimed in the '801 Patent on the other hand. *See*
25 Paragraphs 50 to 73 above.

26 87. Upon information and belief, after OnePlus' receipt of notice of the
27 '801 Patent and the referenced claim chart, OnePlus' importers, distributors, seller
28 and/or users of the Accused Products continued or continue to infringe, OnePlus

1 was aware that they and each of them continued to infringe, and OnePlus does not
2 require, and since receiving notice of the '801 Patent, has not required its importers,
3 distributors, sellers and users of its Accused Products immediately to stop that
4 infringement.

5 88. Thus, OnePlus at that time became liable for indirect infringement
6 based upon its past and continuing enabling, urging, inducing and contributing to
7 that infringement.

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

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

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

25 92. Thus, OnePlus has knowledge of the '801 Patent; knowledge that
26 OnePlus Customers infringe the '801 Patent, and intends that they do so.

27 93. OnePlus may have had either actual or constructive knowledge and/or
28 notice of, or was willfully blind to, the '801 Patent before having received a copy of

1 the original complaint in this matter. Discovery in this matter may disclose that
2 OnePlus had notice of the ‘801 Patent prior to that date. Hypertext reserves the
3 right to amend its complaint in this regard after taking discovery of OnePlus. As
4 alleged above, OnePlus had knowledge of the ‘801 Patent no later than January 15,
5 2020.

6 94. Since receiving notice of the ‘801 Patent and failing to cease
7 infringement, OnePlus’ infringement has been intentional. Given the ease with
8 which OnePlus could immediately cease infringement, and could instruct its
9 importers, distributors, sellers and users of the Accused Products to cease
10 infringing, OnePlus’ blatant disregard for its own infringement of the ‘801 Patent
11 and the infringement of its importers, distributors, sellers and users of the Accused
12 Products makes this an exceptional case.

13 95. Hypertext did not allege indirect or willful infringement in the original
14 complaint filed in this matter because at the time filed, Hypertext did not have
15 sufficient knowledge, information or belief that OnePlus had notice of the ‘801
16 Patent. As alleged above, OnePlus received notice of the ‘801 Patent no later than
17 January 15, 2020. Therefore, OnePlus had notice of the ‘801 Patent well prior to
18 the filing of this First Amended Complaint, and has had ample time to stop
19 infringing itself and to stop the direct infringement by those who import, distribute,
20 sell and use the Accused Products.

21 96. There is a split among various districts as to whether a defendant’s
22 notice of infringement in the first-filed, original complaint is sufficient to support
23 an allegation of induced and willful infringement that is set forth in that original
24 complaint. For example, the court in *Kaufman v. Microsoft Corporation*, 16-cv-
25 2880 (AKH) (S.D.N.Y.) held that it was not sufficient, thus granting summary
26 judgment dismissing the claim for willful infringement. [*Id.*, January 22, 2020,
27 Dkt. 166).

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

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

13 99. Here, Hypertext is asserting indirect and willful infringement in this
14 First Amended Complaint based upon OnePlus’s notice of the ‘801 Patent at least
15 as early as alleged above.

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

21 101. OnePlus can quickly and easily avoid its ongoing direct infringement
22 of the ‘801 Patent.

23 102. OnePlus can quickly and easily stop the ongoing direct infringement of
24 the ‘801 Patent by the importers of the Accused Products.

25 103. OnePlus can quickly and easily stop the ongoing direct infringement of
26 the ‘801 Patent by the distributors of the Accused Product

27 104. OnePlus can quickly and easily stop the ongoing direct infringement of
28 the ‘801 Patent by the sellers of the Accused Products.

1 105. OnePlus can quickly and easily stop the ongoing direct infringement of
2 the '801 Patent by the users of the Accused Products.

3 106. On information and belief, OnePlus has not taken or initiated any steps
4 to stop its own infringement of the '801 Patent.

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

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

11 109. Notwithstanding that notice and knowledge, OnePlus has still not
12 taken or initiated any steps to stop directly infringing or to stop contributing to and
13 inducing infringement of the '801 Patent by the importers, distributors, sellers and
14 users of the Accused Products, or to stop that direct infringement by the importers,
15 distributors, sellers and users of the Accused Products.

16 110. Therefore, OnePlus continues to directly infringe the '801 Patent, and
17 to contribute to and induce the direct infringement of the '801 Patent by the
18 importers, distributors, sellers and users of the Accused Products; and that
19 infringement is willful.

20 111. Therefore, OnePlus is liable for indirect and willful infringement for
21 all infringing activity after it received notice of the '801 Patent, which occurred no
22 later than January 15, 2020.

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

27 113. OnePlus may have had either actual or constructive knowledge and/or
28 notice of, or was willfully blind to, the '801 Patent before receiving knowledge of

1 this Complaint. Hypertext reserves the right to amend its Complaint in this regard
2 after taking discovery of OnePlus.

3 114. Hypertext has been damaged by OnePlus' direct and indirect
4 infringement of the '801 Patent and is entitled to reasonable royalty damages and, if
5 the circumstances warrant, enhanced damages due to OnePlus' willful direct and
6 indirect infringement of the '801 Patent.

7 115. The damages to Hypertext by OnePlus' direct and indirect
8 infringement continues, and on information and belief, will continue unless and
9 until an injunction is entered or OnePlus pays damages for its past and continuing
10 direct and indirect willful infringement of the '801 Patent.

11 **PRAYER FOR RELIEF**

12 Hypertext prays for the following relief:

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

16 B. A judgment that OnePlus' importers, distributors, sellers and users of
17 the Accused Products have directly infringed the '801 Patent

18 C. A judgment that OnePlus is liable for indirect infringement of the '801
19 Patent based upon it having induced and/or contributed to the infringement of the
20 '801 Patent by others.

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

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

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

3 G. Any and all other relief to which Hypertext may be entitled.
4

5 Dated: May 29, 2020

Respectfully submitted,

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

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

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Attorneys for Plaintiff
HYPERTEXT TECHNOLOGIES, LLC

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DEMAND FOR JURY TRIAL

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

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Dated: May 29, 2020

Respectfully submitted,

18

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

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20

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

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Attorneys for Plaintiff
HYPERTEXT TECHNOLOGIES, LLC

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