

1 SCOTT F. LLEWELLYN (CA SBN 194553)
SLlewellyn@mofo.com
2 MORRISON & FOERSTER LLP
4200 Republic Plaza
3 370 Seventeenth Street
Denver, Colorado 80202-5638
4 Telephone: 303.592.1500
Facsimile: 303.592.1510

5 NATHAN B. SABRI (CA SBN 252216)
NSabri@mofo.com
6 SHAELYN K. DAWSON (CA SBN 288278)
ShaelynDawson@mofo.com
7 CAMILA A. TAPERNOUX (CA SBN 299289)
CTapernoux@mofo.com
8 JENNY LIU (CA SBN 305568)
JennyLiu@mofo.com
9 MORRISON & FOERSTER LLP
425 Market Street
10 San Francisco, California 94105
11 Telephone: 415.268.7000
Facsimile: 415.268.7522

12 Attorneys for Defendant
13 APPLE INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

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18 APPLE INC.,
19
20 Plaintiff,
21 v.
22 ZEROCLICK, LLC,
23 Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY JUDGMENT
OF INVALIDITY OF U.S.
PATENT NOS. 8,549,443 AND
7,818,691**

DEMAND FOR JURY TRIAL

1 Apple Inc. (“Apple”) hereby alleges for its Complaint against Defendant Zeroclick, LLC
2 (“Zeroclick 2”) as follows:

3 **NATURE OF THE ACTION**

4 1. This is an action for declaratory judgment of invalidity of U.S. Patent No.
5 8,549,443 (the “443 Patent”) and U.S. Patent No. 7,818,691 (the “691 Patent”) (collectively, the
6 “Zeroclick Patents”) arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and
7 the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

8 2. The Zeroclick Patents were previously asserted against Apple by a prior entity also
9 named Zeroclick (“Zeroclick 1”). Zeroclick 1 filed suit in this District on September 25, 2015,
10 accusing Apple of infringing the Zeroclick Patents directly, contributorily, and by inducement.
11 (*See Zeroclick, LLC v. Apple Inc.*, Case No. 4:15-cv-04417-JST (N.D. Cal.) (the “Zeroclick 1
12 Litigation”), ECF No. 1.)

13 3. Apple asserted in the Zeroclick 1 Litigation that it does not infringe the Zeroclick
14 Patents and that the Zeroclick Patents are invalid and/or unpatentable under one or more
15 provisions of 35 U.S.C. § 101, 102, 103, or 112, or other judicially created bases for invalidity.

16 4. Zeroclick 1 divested itself of all rights to the Zeroclick Patents in August 2017 by
17 transferring the rights to Dr. Nes Irvine, the named inventor of the Zeroclick Patents. Zeroclick 1
18 was terminated as an entity in December 2017. The Honorable Judge Jon S. Tigar found that
19 Zeroclick 1 lacked standing to sustain the Zeroclick 1 Litigation after divesting its rights to the
20 Zeroclick Patents, and ordered Zeroclick 1 to show cause why the Zeroclick 1 Litigation should
21 not be dismissed for lack of standing and subject matter jurisdiction. (*See Zeroclick 1 Litigation*,
22 ECF No. 129.) After further briefing from the parties, Judge Tigar dismissed the Zeroclick 1
23 Litigation on June 11, 2020. (*See Zeroclick 1 Litigation*, ECF No. 142.) Judge Tigar determined
24 that Zeroclick 1 lost standing to pursue the Zeroclick 1 Litigation as of December 2017, and
25 struck all proceedings in that action since December 2017. (*Id.*)

26 5. In the course of briefing in the Zeroclick 1 Litigation on the issue of standing,
27 Zeroclick 1 asserted that Dr. Irvine had transferred the rights to the Zeroclick Patents to
28 Defendant Zeroclick 2 in January 2020. Zeroclick 1 asserted that rather than dismissing the

1 Zeroclick 1 Litigation, the court should permit Zeroclick 2 to be substituted in to continue the
2 Zeroclick 1 Litigation against Apple. (*See* Zeroclick 1 Litigation, ECF No. 130.)

3 6. The course of the Zeroclick 1 Litigation has demonstrated that it is highly likely
4 that Defendant Zeroclick 2 will assert infringement of the Zeroclick Patents against Apple. As set
5 forth in the Zeroclick 1 Litigation and herein, Apple maintains that the Zeroclick Patents are
6 invalid and/or unpatentable, and that Apple does not infringe the Zeroclick Patents. Therefore, an
7 actual and justiciable controversy exists under 28 U.S.C. §§ 2201-2202 between Apple and
8 Zeroclick 2 as to whether the Zeroclick Patents are invalid and/or unpatentable. A judicial
9 declaration is necessary to determine the respective rights of the parties regarding the asserted
10 patents. Apple seeks a judicial declaration that the Zeroclick Patents are invalid and/or
11 unpatentable.

12 THE PARTIES

13 7. Plaintiff Apple is a California corporation with its principal place of business at
14 One Apple Park Way, Cupertino, California 95014.

15 8. On information and belief, Defendant Zeroclick 2 is a Texas limited liability
16 company with a business address of 3610-2 N Josey Lane #223, Carrollton, TX 75007. On
17 information and belief, Zeroclick 2 does not have any members, personnel, or employees other
18 than the named inventor of the Zeroclick Patents, Dr. Nes Irvine, who resides in the United
19 Kingdom.

20 9. On information and belief, Dr. Irvine formed Defendant Zeroclick 2 on or around
21 November 6, 2019.

22 JURISDICTION AND VENUE

23 10. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202,
24 and under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

25 11. This Court has subject matter jurisdiction over this action under 28 U.S.C.
26 §§ 1331, 1338(a), 2201(a), and 2202.

27 12. This Court has personal jurisdiction over Defendant Zeroclick 2 for purposes of
28 this specific action. On information and belief, the named inventor of the Zeroclick Patents, Dr.

1 Nes Irvine, is the sole member of Zeroclick 2, which is a patent assertion entity whose sole
2 activity is the assertion of the Zeroclick Patents in litigation against various entities. The now
3 terminated Zeroclick 1 previously asserted the Zeroclick Patents against Apple in the Zeroclick 1
4 Litigation in this District. (*See Zeroclick, LLC v Apple Inc.*, Case No. 4:15-cv-04417-JST.) Dr.
5 Irvine was ultimately the sole member of Zeroclick 1, and Zeroclick 2 sought to substitute in as
6 plaintiff to continue the Zeroclick 1 Litigation against Apple in this District, based on Dr. Irvine's
7 alleged transfer of the relevant rights to Zeroclick 2 in January 2020. Dr. Irvine previously had
8 repeated direct contacts with Apple in this District about the Zeroclick Patents, including sending
9 a fax to Apple in 2002, sending emails to Apple's litigation counsel in an unrelated case in 2014,
10 and sending emails to Apple's in-house counsel in 2014. Dr. Irvine also emailed Judge Lucy Koh
11 of this District (and others) in 2014 regarding the Zeroclick Patents, and Zeroclick 2 has also
12 purposefully availed itself of the resources of this District to enforce the Zeroclick Patents (*see*
13 *HP Inc. v. Zeroclick, LLC*, Case No. 4:19-cv-06532-JST (N.D. Cal.), ECF No. 17). Dr. Irvine
14 and Zeroclick 2 have purposefully directed their activities at Apple in this District relating to the
15 Zeroclick Patents, and this action arises out of and directly relates to their contacts with Apple
16 and this District, including their communications with Apple and this District via Dr. Irvine and
17 counsel, and their related litigation activity in this District against Apple and others.

18 13. Venue in this District is proper under 28 U.S.C. §§ 1391(b), (c), and (d) with
19 respect to Apple's declaratory judgment claims. Apple maintains its principal place of business
20 in this District. Defendant Zeroclick 2 is subject to personal jurisdiction in this District for
21 purposes of this specific action, as alleged above. This District also has familiarity with the
22 Zeroclick Patents through prior litigation, and judicial economy would be served by adjudicating
23 this action in this District.

24 14. An actual and justiciable controversy exists under 28 U.S.C. §§ 2201-2202
25 between Apple and Zeroclick 2 as to whether the Zeroclick Patents are invalid and/or
26 unpatentable.

PATENTS-IN-SUIT

15. The '443 Patent, entitled "Zeroclick," states on its face that it issued on October 1, 2013. A true and correct copy of the '443 Patent is attached as Exhibit A.

16. The '691 Patent, entitled "Zeroclick," states on its face that it issued on October 19, 2010. A true and correct copy of the '691 Patent is attached as Exhibit B.

COUNT I

(Declaratory Judgment of Invalidity of U.S. Patent No. 8,549,443)

17. Apple incorporates by reference each allegation set forth in paragraphs 1 through 16 above as if fully set forth herein.

18. The claims of the '443 Patent are invalid and/or unpatentable under one or more provisions of 35 U.S.C. § 101, 102, 103, or 112, or other judicially created bases for invalidity.

19. Zeroclick 2 has notice of the bases for Apple's invalidity claims, including the grounds identified in the following documents filed or served in discovery in the Zeroclick 1 Litigation, which Apple hereby incorporates by reference:

- (a) Apple's Amended Invalidity Contentions Pursuant to L.R. 3-3 and 3-4, served on September 24, 2019 (Zeroclick 1 Litigation, ECF No. 99-2);
- (b) Opening Expert Report of Scott Klemmer Regarding Validity of U.S. Patent Nos. 8,549,443 and 7,818,691, served on December 20, 2019 (Zeroclick 1 Litigation, ECF No. 99-3); and
- (c) Apple's Motion for Judgment on the Pleadings (Zeroclick 1 Litigation, ECF No. 88).

20. One or more of the claims of the Zeroclick Patents purport to claim subject matter ineligible for patent protection. One or more of the claims are drawn to abstract ideas without the addition of any inventive steps sufficient to qualify as a patent-eligible invention.

21. One or more of the claims of the Zeroclick Patents are anticipated or rendered obvious by the prior art.

22. One or more of the claims of the Zeroclick Patents are indefinite under the Federal Circuit's 35 U.S.C. § 112(f) precedent, and one or more of the claims of the Zeroclick Patents recite generic terms and phrases tantamount to using the word "means" in combination with

1 functions, without reciting a sufficiently definite structure and without a sufficiently definite
2 corresponding structure disclosed in the specification.

3 23. As a result of prior allegations against Apple asserting the Zeroclick Patents, an
4 actual and justiciable case or controversy exists between Apple and Zeroclick 2 as to the validity
5 of the claims of the '443 Patent.

6 24. Apple is entitled to a declaration that the claims of the '443 Patent are invalid
7 and/or unpatentable under one or more provisions of 35 U.S.C. § 101, 102, 103, or 112, or other
8 judicially created bases for invalidity. Such a declaration is necessary and appropriate at this time
9 to determine the rights and obligations of the parties.

10 **COUNT II**

11 **(Declaratory Judgment of Invalidity of U.S. Patent No. 7,818,691)**

12 25. Apple incorporates by reference each allegation set forth in paragraphs 1 through
13 24 above as if fully set forth herein.

14 26. The claims of the '691 Patent are invalid and/or unpatentable under one or more
15 provisions of 35 U.S.C. § 101, 102, 103, or 112, or other judicially created bases for invalidity.

16 27. Zeroclick 2 has notice of the bases for Apple's invalidity claims, including the
17 grounds identified in the following documents filed or served in discovery in the Zeroclick 1
18 Litigation, which Apple hereby incorporates by reference:

19 (a) Apple's Amended Invalidity Contentions Pursuant to L.R. 3-3 and 3-4, served on
20 September 24, 2019 (Zeroclick 1 Litigation, ECF No. 99-2);

21 (b) Opening Expert Report of Scott Klemmer Regarding Validity of U.S. Patent Nos.
22 8,549,443 and 7,818,691, served on December 20, 2019 (Zeroclick 1 Litigation, ECF
23 No. 99-3); and

24 (a) Apple's Motion for Judgment on the Pleadings (Zeroclick 1 Litigation, ECF No. 88).

25 28. One or more of the claims of the Zeroclick Patents purport to claim subject matter
26 ineligible for patent protection. One or more of the claims are drawn to abstract ideas without the
27 addition of any inventive steps sufficient to qualify as a patent-eligible invention.
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Dated: June 12, 2020

SCOTT F. LLEWELLYN
MORRISON & FOERSTER LLP

By: /s/ Scott F. Llewellyn
SCOTT F. LLEWELLYN

Attorneys for Plaintiff
APPLE INC.