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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

APPLE INC.,

Plaintiff,

vs.

TRAXCELL TECHNOLOGIES, LLC,

Defendant.

) Case No. [_____]____

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**APPLE'S COMPLAINT FOR
DECLARATORY JUDGMENT OF NON-
INFRINGEMENT OF U.S. PATENT NO.
10,820,147**

JURY TRIAL DEMANDED

1 Plaintiff Apple Inc. (“Apple”) files this Complaint for Declaratory Judgment of Non-
2 Infringement against Defendant Traxcell Technologies, LLC (“Traxcell” or “Defendant”) and in
3 support of its Complaint alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an action for a declaratory judgment of non-infringement arising under the
6 patent laws of the United States, Title 35 of the United States Code.

7 2. Apple has pioneered the design and manufacture of industry-defining consumer
8 electronics for more than four decades. Apple’s commitment to innovation has led to some of the
9 most popular products on the market during that span, including, for example, the Macintosh PC,
10 iPod, MacBook, iPhone, iPad, Apple Watch, and AirPods. As a result of Apple’s dedication to
11 innovation, the U.S. Patent and Trademark Office has awarded Apple thousands of patents
12 protecting the technologies underlying its groundbreaking inventions.

13 3. Defendant Traxcell, on the other hand, is a patent assertion entity formed for the sole
14 purpose of generating revenue by asserting patents against other companies’ products. Traxcell’s
15 prior actions and statements have created a substantial controversy of sufficient immediacy and
16 reality to warrant the issuance of a declaratory judgment of non-infringement as to whether Apple
17 products infringe U.S. Patent No. 10,820,147 (“the ‘147 patent” or “Asserted Patent”).

18 4. On January 26, 2021, Traxcell filed a complaint for patent infringement against Apple
19 in the Western District of Texas. *See Traxcell Techs., LLC v. Apple, Inc.*, Case No. 6:21-cv-00074
20 (Dkt. 1) (hereinafter “Texas Complaint”).

21 5. In the Texas Complaint, Traxcell alleges that Apple products that support the Apple
22 Maps application platform infringe U.S. Patent No. 9,918,196 (“the ‘196 patent”) and U.S. Patent
23 No. 9,549,388 (“the ‘388 patent”). The Texas Complaint does not assert that Apple infringes the
24 ‘147 patent.

25 6. On June 24, 2021, Traxcell served Apple with its preliminary infringement
26 contentions related to the allegations in the Texas Complaint. *See Ex. A.* However, even though
27 Traxcell did not assert the ‘147 patent in the Texas Complaint or identify the ‘147 patent as an
28 asserted patent in the cover pleading for its contentions, Traxcell nonetheless included contentions

1 and claim charts that mapped 19 claims from the ‘147 patent against Apple products. *See* Ex. B.

2 7. Traxcell has not amended the Texas Complaint to assert the ‘147 patent as of the filing
3 of this action.

4 8. On July 15, 2021, Traxcell directed communications to Apple in California, through
5 Apple’s counsel, that Traxcell intends to assert the ‘147 patent against Apple’s products consistent
6 with the claim charts it served Apple in connection with the allegations in the Texas Complaint. On
7 August 4, 2021, Traxcell sent Apple a draft complaint for the Western District of Texas asserting
8 that Apple infringes the ‘147 patent. Ex. C.

9 9. Apple thus brings this action to obtain a declaratory judgment that Apple’s products
10 do not infringe the ‘147 patent, directly or indirectly, literally, or under the doctrine of equivalents.

11 10. This Court should not allow the threat of a future lawsuit and uncertainty surrounding
12 Traxcell’s allegations to harm and cause unpredictability to Apple’s business.

13 **THE PARTIES**

14 11. Plaintiff Apple is a California corporation having its principal place of business at
15 One Apple Park Way, Cupertino, California 95014. Apple has over 20,000 employees who work in
16 or near its headquarters in Cupertino, California.

17 12. On information and belief, Defendant Traxcell is a limited liability company
18 organized under the laws of the State of Texas, with a principal place of business at 103 Country
19 Club Drive, #508, Marshall, Texas 75672.

20 13. On information and belief, including Traxcell’s allegations in co-pending litigations
21 filed in Texas, Traxcell is the owner by assignment of the ‘147 patent.

22 **JURISDICTION AND VENUE**

23 14. This action arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
24 *seq.*, and under the patent laws of the United States, Title 35 of the United States Code.

25 15. The Court has subject matter jurisdiction over the claims alleged in this action
26 pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201 because this action involves claims arising under
27 the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Federal Declaratory
28 Judgment Act, 28 U.S.C. §§ 2201 and 2202. Jurisdiction is also proper because Traxcell is a citizen

1 of a different state than Apple, and the value of the controversy exceeds \$75,000.

2 16. Traxcell is subject to personal jurisdiction in this Court at least because Traxcell
3 engaged in actions in this District that form the basis of Apple's claims against Traxcell and that
4 have created a real, live, immediate and justiciable case or controversy between Traxcell and Apple.

5 17. Traxcell has purposefully directed and continues to direct acts to this District,
6 including acts specifically pertaining to the '147 patent. For instance, even though Traxcell did not
7 assert the '147 patent in its allegations in the Texas Complaint, Traxcell nevertheless served Apple
8 with contentions that mapped Apple products, such as Apple Maps running on Apple mobile devices
9 (the "Accused Apple Products"), that are developed, designed, marketed, and sold or offered for
10 sale in this District, against 19 claims in the '147 patent. Then, after serving these infringement
11 contentions, Traxcell's counsel sent correspondence to Apple on August 4, 2021 informing Apple
12 that Traxcell intended to assert the '147 patent against Apple. Traxcell's communication with Apple
13 included a draft complaint with allegations pertaining to Apple's alleged infringement of the '147
14 patent.

15 18. Traxcell's ongoing and amplified threats of enforcement against Apple in this District,
16 which have included numerous communications spanning more than a month such as its service of
17 claim charts, identification of the counsel it retained to assert the '147 patent and the venue in which
18 it plans to assert the '147 patent, and its service of the draft complaint it intends to file, all
19 demonstrate Traxcell's conscious and purposeful contacts with this District. This District is also the
20 most convenient District for the present declaratory judgment claims because, among other things,
21 relevant witnesses and evidence concerning Apple's products are located in this District.

22 19. Furthermore, on information and belief, Traxcell has directed other communications
23 to companies in this District related to enforcing the '147 patent. For example, on January 12, 2021,
24 Traxcell served a patent infringement complaint against Google LLC ("Google") in the Western
25 District of Texas. *See Traxcell Techs. LLC v. Google LLC*, Case No. 6:21-cv-00023-ADA (W.D.
26 Tex.) (hereinafter "the Google Complaint"). In the Google Complaint, Traxcell asserted the same
27 two patents it asserted against Apple in the Texas Complaint—the '196 patent and the '388 patent.
28 Following the same pattern, Traxcell subsequently served infringement contentions on Google that

1 mapped Google products against the ‘147 patent claims even though it had not asserted that patent
2 in the original Google Complaint. Just like with Apple, following those contentions, Traxcell sent
3 communications and a draft amended complaint to Google that included allegations of infringement
4 for the ‘147 patent.

5 20. On information and belief, Google is a Delaware corporation with a principal place
6 of business located in this District at 1600 Amphitheatre Parkway, Mountain View, California
7 94043. Thus, Traxcell has directed relevant and repeated communications regarding the threat of
8 litigation for the ‘147 patent to residents of this District other than Apple.

9 21. Additionally, Traxcell is subject to personal jurisdiction in this District because one
10 of the named inventors of the ‘147 patent, Stephen Palik, participated in prosecution activities from
11 his residence in Redondo Beach, California. His significant prosecution activities, including, on
12 information and belief, the conception and constructive reduction to practice of the ‘147 patent,
13 occurred in California. Stephen Palik and the co-inventor assigned all rights to the parent patent to
14 the ‘147 patent and all continuation applications for related patents, including the ‘147 patent, on
15 October 3, 2016. Therefore, at the time Stephen Palik participated in prosecution of the ‘147 patent
16 from California, he was operating in concert with (and for the benefit of) Traxcell who was assigned
17 the application as of October 3, 2016.

18 22. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) because
19 a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this
20 District and Defendants are subject to the Court’s personal jurisdiction with respect to this civil
21 action.

22 23. For these reasons and the reasons set forth below, a substantial controversy exists
23 between the parties which is of sufficient immediacy and reality to warrant declaratory relief.

24 **INTRADISTRICT ASSIGNMENT**

25 24. This is an intellectual property action subject to district-wide assignment pursuant to
26 Local Rules 3-2(c) and 3-5(b).

27 **THE ASSERTED PATENT**

28 25. On October 27, 2020, the United States Patent and Trademark Office (the “Patent

Office”) issued the ‘147 patent, entitled “Mobile Wireless Device Providing Off-Line and On-Line Geographic Navigation Information” to Mark Jefferson Reed and Stephen Michael Palik. A true and correct copy of the ‘147 patent is attached as Exhibit D. On information and belief, Traxcell is the owner by assignment of the ‘147 patent resulting from an October 2016 assignment of all future patent applications from Messrs. Reed and Palik to Traxcell.

26. The ‘147 patent issued from U.S. Patent Application No. 16/788,498 (“the ‘498 Application”) filed on February 12, 2020.

27. On information and belief, as of the filing date of the ‘147 patent and through its issuance, Stephen Palik was a resident of California. For instance, a February 11, 2020 Application Data Sheet filed by Traxcell in connection with its prosecution of the ‘147 patent lists Mr. Palik’s address in Redondo Beach, CA.

COUNT ONE

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 10,820,147)

28. Apple repeats and realleges Paragraphs 1 through 27 of this Complaint.

29. Apple has not infringed and does not infringe any claims of the ‘147 patent either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, including through its making, use, importation into the United States, sale, and/or offer for sale of any Apple products.

30. Claim 1 of the ‘147 patent is directed to:

A wireless communication system including:

a first radio-frequency transceiver within a wireless mobile communications device and an associated first antenna to which the first radio-frequency transceiver is coupled, wherein the first radio-frequency transceiver is configured for radio-frequency communication with a wireless communication network;

a first processor within the wireless mobile communications device couples to the at least one first radio-frequency transceiver programmed to receive information indicative of a location of the wireless mobile communications device and generate an indication of a location of the wireless mobile communications device with respect to geographic features according to mapping information stored within the wireless mobile communications device, and wherein the first processor determines user navigation information according to the location of the wireless mobile

communications device with respect to the geographic features and a destination specified at the wireless mobile communications device, wherein the first processor further sends the user navigation information to the network as a number of segments, wherein at least one other processor outside the network updates the user navigation information in conformity with traffic congestion information accessible to the at least one other processor outside the network by computing a numerical value for the segments corresponding to the expected time to travel through the segments, updates the user navigation information in conformity with the numerical values for the segments, and sends the updated user navigation information to the wireless mobile communications device;

at least one second radio-frequency transceiver and an associated at least one second antenna of the wireless communication network to which the second radio-frequency transceiver is coupled; and

a second processor coupled to the at least one second radio-frequency transceiver coupled to the at least one second radio-frequency transceiver programmed to acquire the information indicative of a location of the wireless mobile communications device, wherein the second processor selectively acquires the information indicative of a location of the wireless mobile communications device dependent on the setting of preference flags, wherein the second processor acquires the information indicative of a location of the wireless mobile communications device if the preference flags are set to a state that permits tracking of the wireless mobile communications device, and wherein the second processor does not acquire the information indicative of the location of the wireless mobile communications device if the preference flags are set to a state that prohibits tracking of the wireless mobile communications device. (Exhibit D, '147 Patent, at Claim 1).

31. The Accused Apple Products do not infringe claim 1 of the '147 patent because the products do not include every limitation required by claim 1. As one example, claim 1, like each claim in the '147 patent, requires at least one component (and sometimes more than one) to reside in a "communication network" to perform certain steps. Specifically, claim 1 requires "at least **one second radio frequency transceiver** and an associated at least **one second antenna of the wireless communications network**" (Ex. D, '147 Patent at Claim 1). Apple cannot infringe these limitations because the accused network components are owned and operate by third-party cellular network operators.

32. Traxcell cannot and does not dispute this fact, and admits in its own preliminary infringement contentions it served on Apple that cellular towers and base stations in the communications network include the radio-frequency transceivers and antennas required by claim 1:

1 **A communication network includes cell sites or towers** (examples of different
 2 types of access points or towers, which provide radio communication to and from
 3 wireless communication devices (specifically one or more of the mobile wireless
 4 communications devices identified on Exhibit-B). Thus, **the cell sites (base
 5 stations) include the radio frequency transceiver coupled with antenna in any
 6 communication network.** Towers and base stations include radio-frequency
 7 transceivers designed and used for radio-frequency communication with at least
 8 one antenna. (*See* Ex. D, '147 Claim Chart at 39 (emphasis added)).

9 33. Traxcell's claim charts do not attribute the cell sites, base stations, towers,
 10 transceivers, or antennas to Apple. This is because Apple does not design, develop, manufacture,
 11 own or operate any such elements in a communication network.

12 34. Separately and additionally, other claims of the '147 patent suffer the same defect.
 13 Claim 11 recites:

14 A method of providing navigation information within a wireless communications
 15 network, the method comprising:

16 at a wireless mobile communications device coupled to the wireless
 17 communications network and having a first radio-frequency transceiver coupled to
 18 an associated first antenna, receiving information indicative of a location of the
 19 mobile wireless communications device;

20 within the wireless mobile communications device, a first processor within the
 21 wireless mobile communications device coupled to the first radio-frequency
 22 transceiver generating an indication of a location of the at least one wireless mobile
 23 communications device with respect to geographic features according to mapping
 24 information retrieved from a storage within the wireless mobile communications
 25 device;

26 the first processor determining user navigation information;

27 sending the user navigation information to the at least one other processor outside
 28 the network as a number of segments;

 at a remote location within the at least one other processor outside the network,
 updating the user navigation information in conformity with traffic congestion
 information accessible to the remote location within the network by computing a
 numerical value for the segments corresponding to the expected time to travel
 through the segments, and wherein the updating is performed in conformity with
 the numerical values for the number of segments;

 sending the updated user navigation information to the wireless mobile
 communications device;

 the first processor displaying the user navigation information according to the

1 location of the wireless mobile communications device with respect to the
2 geographic features and a destination specified by the wireless mobile
communications device;

3 within the wireless communications network, a second processor coupled to at least
4 one second radio-frequency transceiver coupled to an associated second antenna
5 selectively acquiring the information indicative of a location of the wireless mobile
6 communication device in dependence on a setting of preference flags, wherein the
7 selectively acquiring the information indicative of a location of the wireless mobile
8 communications device if the preference flags are set to a state that permits tracking
9 of the user of the wireless mobile communications device, and wherein the
selectively determining does not acquire the information indicative of a location of
the wireless mobile communications device if the preference flags are set to a state
that prohibits tracking of the wireless mobile communications device. (Exhibit D,
'147 Patent, at Claim 11).

10 35. In particular, claim 11 requires: **“within the wireless communication network, a**
11 **second processor coupled to at least one second radio-frequency transceiver coupled to an**
12 **associated second antenna** selectively acquiring the information indicative of a location of the
13 wireless mobile communication device.” (Ex. D, '147 Patent at Claim 11 (emphasis added)).
14 Similar to claim 1, Apple cannot infringe this limitation because Apple does not design, develop,
15 manufacture, own or operate the cell sites, base stations, towers, transceivers, or antennas in the
16 accused wireless communication network.

17 36. Similarly, Claim 22 recites:

18 A wireless mobile communications device including:

19 a radio-frequency transceiver and an associated antenna to which the radio-
20 frequency transceiver is coupled, wherein the radio-frequency transceiver is
21 configured for radio-frequency communication with a wireless communications
network; and

22 a first processor coupled to the at least one radio-frequency transceiver programmed
23 to receive a location of the wireless mobile communications device and generate
24 an indication of a location of the at least one wireless mobile communications
25 device with respect to geographic features according to mapping information stored
26 within the wireless mobile communications device, wherein the first processor
27 determines whether or not the mapping information stored within the wireless
28 mobile communications device is sufficient to display the navigation information
to the user, responsive to the first processor determining that the mapping
information is not sufficient, the first processor requesting additional mapping
information from at least one other processor outside the wireless communications
network and responsive to the first processor requesting additional mapping

information from the at least one other processor outside the wireless communications network, receiving the additional mapping information from the at least one other processor outside the wireless communications network and updating the mapping information stored within the wireless mobile communications device, wherein the first processor determines and displays the navigation information to the user using the additional mapping information, the location of the wireless mobile communications device with respect to the geographic features and a destination specified by the user at the wireless mobile communications device, and wherein the first processor communicates to the mobile communications network a setting of preference flags, wherein the first processor further sends the user navigation information to the at least one other processor outside of the network, wherein the at least one other processor outside of the network updates the user navigation information in conformity with traffic congestion information accessible to the other processor coupled to the network and transmits the updated user navigation information to the mobile device, wherein the first processor further sends the user navigation information to the at least one other processor outside of the network as a number of segments, and wherein the at least one other processor outside of the network computes a numerical value for each segment corresponding to the expected time to travel through the segment and wherein the user navigation information is updated in conformity with the numerical values for the number of segments, wherein the mobile communications network selectively acquires information indicative of a location of the mobile communications device and communicates the information indicative of a location of the wireless mobile communications device to the wireless mobile communications device dependent on the setting of the preference flags, wherein if the preference flags are set to a state that permits tracking of the user of the wireless mobile communications device the at least one other processor outside the wireless communications network receives the location of the wireless mobile communications device, and wherein if the preference flags are set to a state that prohibits tracking of the wireless mobile communications device, the at least one other processor outside the wireless communications network does not receive the location of the wireless mobile communications device. (Exhibit D, ‘147 Patent, at Claim 22).

37. In particular, claim 22 requires: “**the mobile communications network** selectively acquires information indicative of a location of the mobile communications device and **communicates the information indicative of a location of the wireless mobile communications device** to the wireless mobile communications device.” (*Id.* at Claim 22 (emphasis added)). Just as in claims 1 and 11, Apple does not design, develop, manufacture, own, or operate any such elements that would satisfy this limitation.

38. Accordingly, at least for the above reasons, the Accused Apple Products do not infringe independent claims 1, 11, and 22 of the ‘147 patent and all dependent claims either literally or under the doctrine of equivalents.

39. Apple also does not induce infringement of the ‘147 patent, or otherwise indirectly infringe the ‘147 patent, for at least the reasons stated above with respect to no underlying direct infringement of the ‘147 patent, because Apple has not acted with specific intent necessary for induced infringement, and because Apple does not own or operate components required by the claims.

40. Apple also does not contributorily infringe claims 1, 11, and 22 of the ‘147 patent and all dependent claims for at least the reasons stated above with respect to no underlying direct infringement of the ‘147 patent, because Apple has not acted with specific intent necessary for contributory infringement, and because Apple does not own or operate components required by the claims.

41. As set forth above, there exists an actual controversy between Apple and Traxcell with respect to alleged infringement of the ‘147 patent of sufficient immediacy and reality to warrant the issuance of a declaratory judgment as to whether the asserted claims of the ‘147 patent are infringed. Accordingly, Apple desires a judicial determination and declaration of the respective rights and duties of the parties with respect to the ‘147 patent.

42. Apple is entitled to a judicial determination that Apple has not directly infringed, induced others to infringe, or contributed to the infringement of the asserted claims of the ‘147 patent.

43. A judicial declaration is necessary and appropriate so that Apple may ascertain its rights regarding the claims of the ‘147 patent.

PRAYER FOR RELIEF

WHEREFORE, Apple respectfully requests that judgment be entered:

- A. Declaring that judgment be entered in favor of Apple and against Traxcell;
- B. Declaring that Apple has not and does not infringe, either directly, contributorily, by inducement, or willfully, any claim of the '147 patent by making, using, selling, offering to sell, and/or importing the Accused Apple Products;
- C. Finding this to be an exceptional case under 35 U.S.C. § 285, and awarding Apple its reasonable attorney's fees;

1 D. Awarding Apple its costs associated with this case;

2 E. Awarding Apple any other remedy or relief to which Apple may be entitled and which
3 the Court deems just, proper, and equitable.

4 **JURY DEMAND**

5 Apple demands a trial by jury on all claims and issues so triable.

6 August 5, 2021

Respectfully Submitted

7 SHOOK, HARDY & BACON L.L.P.

8 By: /s/ Jason M. Richardson

9 Jason M. Richardson
10 Attorney for Apple Inc.