l	Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page1 of 11
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	Case5:12-cv-02885-LHK Document45 File	ed10/24/12 Page2 of 11	
1 2	UNITED STATES DIS NORTHERN DISTRICT SAN JOSE DI	<b>OF CALIFORNIA</b>	
3	GPNE CORP.,		
4	Plaintiff,	Case No. 5:12-cv-02885-LHK	
5	VS.	JURY TRIAL DEMANDED	
6	APPLE INC.,		
7	Defendant.		
8	Derendant.		
9	FIRST AMENDED COMPLAINT FO	DR PATENT INFRINGEMENT	
10	Pursuant to the Court's Case Management C	rder (Dkt. No. 41), Plaintiff GPNE Corp.	
11	submits this First Amended Complaint as follows:		
12	PARTI	ES	
13	1. Plaintiff GPNE is a corporation orga	nized and existing under the laws of the state	
14	of Delaware with its principal place of business in Honolulu, Hawai'i.		
15	2. Defendant Apple Inc. ("Apple" or "Defendant") is a corporation organized and		
16	existing under the laws of the state of California with its principal place of business in Cupertino,		
17	California. Apple has been served with process and has appeared.		
18	3. On information and belief, this Cour	has personal jurisdiction over Apple because	
19	Apple has committed, and continues to commit, act	s of infringement in this judicial district, has	
20	conducted business in this judicial district and/or ha	s engaged in continuous and systematic	
21	activities in this judicial district. Apple's cellular pl	none and tablet products are sold and offered	
22	for sale throughout this judicial district.		
23	JURISDICTION A	AND VENUE	
24	4. This action arises under the patent la	ws of the United States, Title 35 of the United	
25	States Code. This Court has subject matter jurisdict	ion pursuant to 28 U.S.C. §§ 1331 and	
26	1338(a).		
27	5. Venue is proper in this judicial distri	ct pursuant to 28 U.S.C. §§ 1391(c) and	
28	1400(b). On information and belief, Defendant is d	eemed to reside in this judicial district, has	

	Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page3 of 11
1	committed acts of infringement in this judicial district, has purposely transacted business in this
2	judicial district and/or has regular and established places of business in this judicial district.
3	6. Defendant is subject to this Court's specific and general personal jurisdiction
4	pursuant to due process and/or the California Long Arm Statute, due at least to its substantial
5	business in this State and judicial district, including: (A) at least part of its infringing activities
6	alleged herein; and (B) regularly doing or soliciting business and, accordingly, deriving
7	substantial revenue from goods and services provided to California residents.
8	FACTUAL BACKGROUND AND ALLEGATIONS
9	7. On June 30, 2009, United States Patent No. 7,555,267 ("the '267 patent") was
10	duly and legally issued for a "Network Communication System Wherein A Node Obtains
11	Resources For Transmitting Data By Transmitting Two Reservation Requests." A true and
12	correct copy of the '267 patent is attached hereto as Exhibit "A."
13	8. The '267 patent is valid, enforceable and was duly issued in full compliance with
14	Title 35 of the United States Code.
15	9. On August 4, 2009, United States Patent No. 7,570,954 ("the '954 patent") was
16	duly and legally issued for a "Communication System Wherein A Clocking Signal From A
17	Controller, A Request From A Node, Acknowledgement Of The Request, And Data Transferred
18	From The Node Are All Provided On Different Frequencies, Enabling Simultaneous
19	Transmission Of These Signals." A true and correct copy of the '954 patent is attached hereto as
20	Exhibit "B."
21	10. The '954 patent is valid, enforceable and was duly issued in full compliance with
22	Title 35 of the United States Code.
23	11. On September 7, 2010, United States Patent No. 7,792,492 ("the '492 patent")
24	was duly and legally issued for a "Network Communication System With An Alignment Signal
25	To Allow A Controller To Provide Messages To Nodes And Transmission Of The Messages
26	Over Four Independent Frequencies." A true and correct copy of the '492 patent is attached
27	hereto as Exhibit "C."
28	

	Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page4 of 11		
1	12. The '492 patent is valid, enforceable and was duly issued in full compliance with		
2	Title 35 of the United States Code.		
3	13. GPNE owns all right, title, and interest in and to the '267, '954, and '492 patents		
4	(collectively, "the Asserted Patents"), including the right to prosecute this action and recover		
5	damages for the infringements alleged herein.		
6	APPLE PRODUCTS		
7	14. Apple's iPhone is advertised as having the ability to operate with General Packet		
8	Radio Service ("GPRS") networks.		
9	15. Apple's iPhone can transmit and receive data over GPRS networks, such as those		
10	operated by AT&T or T-Mobile in the United States.		
11	16. Apple's iPhone 3G is advertised as having the ability to operate with GPRS		
12	networks.		
13	17. Apple's iPhone 3G can transmit and receive data over GPRS networks, such as		
14	those operated by AT&T or T-Mobile in the United States.		
15	18. Apple's iPhone 3 GS is advertised as having the ability to operate with GPRS		
16	networks.		
17	19. Apple's iPhone 3 GS can transmit and receive data over GPRS networks, such as		
18	those operated by AT&T or T-Mobile in the United States.		
19	20. Apple's iPhone 4 is advertised as having the ability to operate with GPRS		
20	networks.		
21	21. Apple's iPhone 4 can transmit and receive data over GPRS networks, such as		
22	those operated by AT&T or T-Mobile in the United States.		
23	22. Apple's iPhone 4S is advertised as having the ability to operate with GPRS		
24	networks.		
25	23. Apple's iPhone 4S can transmit and receive data over GPRS networks, such as		
26	those operated by AT&T or T-Mobile in the United States.		
27	24. Apple's iPhone 5 is advertised as having the ability to operate with GPRS		
28	networks.		

	Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page5 of 11		
1	25. Apple's iPhone 5 can transmit and receive data over GPRS networks, such as		
2	those operated by AT&T or T-Mobile in the United States.		
3	26. Apple's iPhone 5 is advertised as having the ability to operate with Long Term		
4	Evolution ("LTE") networks.		
5	27. Apple's iPhone 5 can transmit and receive data over LTE networks, such as those		
6	operated by AT&T or Verizon in the United States.		
7	28. Apple's iPad WiFi + 3G is advertised as having the ability to operate with GPRS		
8	networks.		
9	29. Apple's iPad WiFi + 3G can transmit and receive data over GPRS networks, such		
10	as those operated by AT&T or T-Mobile in the United States.		
11	30. Apple's iPad 2 WiFi + 3G is advertised as having the ability to operate with GPRS		
12	networks.		
13	31. Apple's iPad 2 WiFi + 3G can transmit and receive data over GPRS networks,		
14	such as those operated by AT&T or T-Mobile in the United States.		
15	32. Apple's iPad WiFi + 4G ( $3^{rd}$ Generation) (announced on March 7, 2012 and		
16	released on or about March 16, 2012) is advertised as having the ability to operate with GPRS		
17	networks.		
18	33. Apple's iPad WiFi + 4G (3rd Generation) (announced on March 7, 2012 and		
19	released on or about March 16, 2012) can transmit and receive data over GPRS networks, such as		
20	those operated by AT&T or T-Mobile in the United States.		
21	34. Apple's iPad WiFi + 4G (3rd Generation) (announced on March 7, 2012 and		
22	released on or about March 16, 2012) is advertised as having the ability to operate with LTE		
23	networks.		
24	35. Apple's iPad WiFi + 4G ( $3^{rd}$ Generation) (announced on March 7, 2012 and		
25	released on or about March 16, 2012) can transmit and receive data over LTE networks, such as		
26	those operated by AT&T or Verizon in the United States.		
27	36. Apple's iPad WiFi + 4G ( $4^{th}$ Generation) (announced on October 23, 2012) is		
28	advertised as having the ability to operate with GPRS networks.		

	Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page6 of 11				
1	37. Apple's iPad WiFi + 4G (4 <sup>th</sup> Generation) (announced on October 23, 2012) can				
2	transmit and receive data over GPRS networks, such as those operated by AT&T or T-Mobile in				
3	the United States.				
4	38. Apple's iPad WiFi + 4G (4 <sup>th</sup> Generation) (announced on October 23, 2012) is				
5	advertised as having the ability to operate with LTE networks.				
6	39. Apple's iPad WiFi + 4G (4 <sup>th</sup> Generation) (announced on October 23, 2012) can				
7	transmit and receive data over LTE networks, such as those operated by AT&T or Verizon in the				
8	United States.				
9	40. Apple's iPad Mini Wi-Fi + Cellular (announced October 23, 2012) is advertised as				
10	having the ability to operate with GPRS networks.				
11	41. Apple's iPad Mini Wi-Fi + Cellular (announced October 23, 2012) can transmit				
12	and receive data over GPRS networks, such as those operated by AT&T or T-Mobile in the				
13	United States.				
14	42. Apple's iPad Mini Wi-Fi + Cellular (announced October 23, 2012) is advertised as				
15	having the ability to operate with LTE networks.				
16	43. Apple's iPad Mini Wi-Fi + Cellular (announced October 23, 2012) can transmit				
17	and receive data over LTE networks, such as those operated by AT&T or Verizon in the United				
18	States.				
19	<u>COUNT ONE</u>				
20	(INFRINGEMENT OF THE '267 PATENT)				
21	44. GPNE incorporates paragraphs 1 through 43 herein by reference.				
22	45. This cause of action arises under the patent laws of the United States, and in				
23	particular, 35 U.S.C. §§ 271, et seq.				
24	46. On information and belief, Defendant is directly infringing one or more claims of				
25	the '267 patent in this judicial district and elsewhere in the United States, including at least				
26	claims 1, 4, 8-9, 11-14, 18-23, 30-32, 39-42, and 45, by, among other things, making, using,				
27	offering for sale, selling and/or importing cellular phones and tablet products with the ability to				
28	send and receive data via the GPRS including, without limitation, the (1) iPhone, (2) iPhone 3G,				

## Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page7 of 11

1	(3) iPhone 3GS, (4) iPhone 4, (5) iPhone 4S, (6) iPhone 5, (7) iPad WiFi + 3G, (8) iPad2 Wifi +
2	3G, (9) iPad Wifi + 4G (3 <sup>rd</sup> Generation) (announced March 7, 2012), (10) iPad WiFi + Cellular
3	(4 <sup>th</sup> Generation) (announced October 23, 2012), and (11) iPad Mini WiFi + Cellular (announced
4	October 23, 2012) to customers.
5	47. On information and belief, Defendant is directly infringing one or more claims of

6 the '267 patent in this judicial district and elsewhere in the United States, including at least 7 claims 1, 2, 4, 7-8, 10, 19-21, 39-43, and 45, by, among other things, making, using, offering for 8 sale, selling and/or importing cellular phones and tablet products with the ability to send and receive data via LTE including, without limitation, the (1) iPhone 5, (2) iPad Wifi + 4G (3<sup>rd</sup> 9 10 Generation) (announced March 7, 2012), (3) iPad WiFi + Cellular (4<sup>th</sup> Generation) (announced 11 October 23, 2012), and (4) iPad Mini WiFi + Cellular (announced October 23, 2012), to 12 customers. 13 48. GPNE has been damaged as a result of Defendant's infringing conduct described 14 in this Count. Defendant is, thus, liable to GPNE in an amount that adequately compensates it for 15 Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with

16 interest and costs as fixed by this Court under 35 U.S.C. § 284.

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## COUNT TWO

## (INFRINGEMENT OF THE '954 PATENT)

49. GPNE incorporates paragraphs 1 through 48 herein by reference.

20 50. This cause of action arises under the patent laws of the United States, and in
21 particular, 35 U.S.C. §§ 271, *et seq*.

51. On information and belief, Defendant is directly infringing one or more claims of
the '954 patent in this judicial district and elsewhere in the United States, including at least
claims 13, 15-20, and 22-26, by, among other things, making, using, offering for sale, selling
and/or importing cellular phones and tablet products with the ability to send and receive data via
GPRS including, without limitation, the (1) iPhone, (2) iPhone 3G, (3) iPhone 3GS, (4) iPhone 4,
(5) iPhone 4S, (6) iPhone 5, (7) iPad WiFi + 3G, (8) iPad2 WiFi + 3G, (9) iPad WiFi + 4G (3<sup>rd</sup>
Generation) (announced March 7, 2012), (10) iPad WiFi + Cellular (4<sup>th</sup> Generation) (announced

	Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page8 of 11		
1	October 23, 2012), and (11) iPad Mini WiFi + Cellular (announced October 23, 2012) to		
2	customers.		
3	52. On information and belief, Defendant is directly infringing one or more claims of		
4	the '954 patent in this judicial district and elsewhere in the United States, including at least		
5	claims 13, 16-17, and 22, by, among other things, making, using, offering for sale, selling and/or		
6	importing cellular phones and tablet products with the ability to send and receive data via LTE		
7	including, without limitation, the (1) iPhone 5, (2) iPad Wifi + 4G (3 <sup>rd</sup> Generation) (announced		
8	March 7, 2012), (3) iPad WiFi + Cellular (4 <sup>th</sup> Generation) (announced October 23, 2012), and (4)		
9	iPad Mini WiFi + Cellular (announced October 23, 2012), to customers.		
10	53. GPNE has been damaged as a result of Defendant's infringing conduct described		
11	in this Count. Defendant is, thus, liable to GPNE in an amount that adequately compensates it for		
12	Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with		
13	interest and costs as fixed by this Court under 35 U.S.C. § 284.		
14	COUNT THREE		
15	(INFRINGEMENT OF THE '492 PATENT)		
16	54. GPNE incorporates paragraphs 1 through 53 herein by reference.		
17	55. This cause of action arises under the patent laws of the United States, and in		
18	particular, 35 U.S.C. §§ 271, et seq.		
19	56. On information and belief, Defendant is directly infringing one or more claims of		
20	the '492 patent in this judicial district and elsewhere in the United States, including at least		
21	claims 2, 16-17, 28, 37-41, 44, 55-59, 62-63, 66-68, and 71-72, by, among other things, making,		
22	using, offering for sale, selling and/or importing cellular phones and tablet products with the		
23	ability send and receive data via GPRS including, without limitation, the (1) iPhone, (2) iPhone		
24	3G, (3) iPhone 3GS, (4) iPhone 4, (5) iPhone 4S, (6) iPhone 5, (7) iPad WiFi + 3G, (8) iPad2		
25	Wifi + 3G, (9) iPad Wifi + 4G (3 <sup>rd</sup> Generation) (announced March 7, 2012), (10) iPad WiFi +		
26	Cellular (4 <sup>th</sup> Generation) (announced October 23, 2012), and (11) iPad Mini WiFi + Cellular		
27	(announced October 23, 2012) to customers.		
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Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page9 of 11

1	57. On information and belief, Defendant is directly infringing one or more claims of		
2	the '492 patent in this judicial district and elsewhere in the United States, including at least		
3	claims 2, 16-17, 28, and 37-41, by, among other things, making, using, offering for sale, selling		
4	and/or importing cellular phones and tablet products with the ability to send and receive data via		
5	LTE including, without limitation, the (1) iPhone 5, (2) iPad Wifi + 4G (3 <sup>rd</sup> Generation)		
6	(announced March 7, 2012), (3) iPad WiFi + Cellular (4 <sup>th</sup> Generation) (announced October 23,		
7	2012), and (4) iPad Mini WiFi + Cellular (announced October 23, 2012), to customers.		
8	58. GPNE has been damaged as a result of Defendant's infringing conduct described		
9	in this Count. Defendant is, thus, liable to GPNE in an amount that adequately compensates it for		
10	Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with		
11	interest and costs as fixed by this Court under 35 U.S.C. § 284.		
12	PRAYER FOR RELIEF		
13	GPNE requests that the Court find in its favor and against Defendant, and that the Court		
14	grant GPNE the following relief:		
15	A. Judgment that one or more claims of the '267, '954, and/or '492 patents have been		
16	infringed, either literally and/or under the doctrine of equivalents, by Defendant;		
17	B. Judgment that Defendant account for and pay to GPNE all damages to and costs		
18	incurred by GPNE, including attorneys' fees, because of Defendant's infringing activities and		
19	other conduct complained of herein;		
20	C. Judgment that Defendant account for and pay to GPNE a reasonable, on-going,		
21	post judgment royalty because of Defendant's infringing activities and other conduct complained		
22	of herein;		
23	D. That GPNE be granted pre-judgment and post-judgment interest on the damages		
24	caused by Defendant's infringing activities and other conduct complained of herein; and		
25	E. That GPNE be granted such other and further relief as the Court may deem just		
26	and proper under the circumstances.		
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ĺ	Case5:12-cv-02885-LHK	Document45	Filed10/24/12	Page10 of 11
1 2	Dated: October 24, 2012	R	espectfully Subm	itted,
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	Case5:12-cv-02885-LHK Document45 Filed10/24/12 Page11 of 11
1	CERTIFICATE OF SERVICE
2	I hereby certify that on October 24, 2012, I electronically submitted the foregoing FIRST
3	AMENDED COMPLAINT FOR PATENT INFRINGEMENT using the electronic case files
4	system of the court. The electronic case files system sent a "Notice of Electronic Filing" to
5	individuals who have consented in writing to accept this Notice as service of this document by
6	electronic means.
7	<u>/s/ Randall Garteiser</u> Randall T. Garteiser
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