IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EVOLUTIONARY INTELLIGENCE, LLC, Plaintiff, v. APPLE INC.; JUMPTAP, INC.; KRONOS INCORPORATED; and RETAILMENOT, INC., Defendants.	Case No. 6:12-cv-00783-MHS-CMC JURY TRIAL DEMANDED
EVOLUTIONARY INTELLIGENCE, LLC, Plaintiff, v. SPRINT NEXTEL CORPORATION; SPRINT COMMUNICATIONS COMPANY L.P.; SPRINT SPECTRUM, L.P.; and SPRINT SOLUTIONS, INC., Defendants.	Case No. 6:12-cv-00791-MHS-CMC JURY TRIAL DEMANDED

CONSOLIDATED SECOND AMENDED COMPLAINT

FOR PATENT INFRINGEMENT

Plaintiff Evolutionary Intelligence, LLC states its Consolidated Second Amended Complaint against Defendants Apple Inc., Jumptap, Inc., Kronos Incorporated, RetailMeNot, Inc., Sprint Nextel Corporation, Sprint Communications Company L.P., Sprint Spectrum, L.P., and Sprint Solutions, Inc., and alleges as follows:

THE PARTIES

1. Plaintiff Evolutionary Intelligence, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Newton, Massachusetts.

2. Upon information and belief, Defendant Apple Inc. is a corporation organized and existing under the laws of California, with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.

3. Upon information and belief, Defendant Jumptap, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 155 Seaport Boulevard, 8th Floor, Boston, Massachusetts 02210.

4. Upon information and belief, Defendant Kronos Incorporated is a corporation organized and existing under the laws of Massachusetts, with its principal place of business at 297 Billerica Road, Chelmsford, Massachusetts 01824.

5. Upon information and belief, Defendant RetailMeNot, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 301 Congress Avenue, Austin, Texas 78701.

6. Upon information and belief, Defendant Sprint Nextel Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6200 Sprint Pkwy, Overland Park, KS 66251.

7. Upon information and belief, Defendant Sprint Communications L.P. is a limited partnership organized and existing under the laws of the State of Delaware, with its principal place of business at 6200 Sprint Pkwy, Overland Park, KS 66251.

8. Upon information and belief, Defendant Sprint Spectrum, L.P. is a limited partnership organized and existing under the laws of the State of Delaware, with its principal place of business at 6500 Sprint Pkwy, Overland Park, KS 66251.

9. Upon information and belief, Defendant Sprint Solutions Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6500 Sprint Pkwy, Overland Park, KS 66251.

10. For purposes of this complaint, Sprint Nextel Corporation, Sprint Communications Company L.P., Sprint Spectrum L.P., and Sprint Solutions Inc. are collectively referred to as "Sprint" or "Defendants."

JURISDICTION AND VENUE

11. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

12. This action is for patent infringement pursuant to the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. Personal jurisdiction exists generally over each Defendant because each Defendant has sufficient minimum contacts with the forum as a result of business conducted within Texas and within the Eastern District of Texas. Personal jurisdiction also exists specifically over each Defendant because it, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets one or more products and/or services within Texas, and more particularly, within the Eastern District of Texas, that infringe the patent-in-suit, as described more particularly below. In addition, RetailMeNot maintains its offices and facilities in Austin, Texas.

14. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), because each Defendant has committed acts of infringement in the Eastern District of Texas and has transacted business in the Eastern District of Texas.

COUNT ONE
INFRINGEMENT OF U.S. PATENT NO. 7,010,536

15. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

16. Plaintiff is the owner of all right, title, and interest in United States Patent No. 7,010,536, entitled "System and Method for Creating and Manipulating Information Containers with Dynamic Registers," duly and legally issued by the United States Patent and Trademark Office on March 7, 2006 (the " '536 patent"). A true and correct copy of the '536 patent is attached hereto as Exhibit A.

17. The '536 patent generally describes and claims an apparatus that efficiently processes data using containers, registers, information elements, and gateways.

18. Apple has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '536 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Apple has infringed and continues to infringe the '536 patent by making, using, offering to sell, selling, and/or importing into the United States its iOS mobile operating system and compatible devices (i.e., the iPhone, iPod Touch, and iPad devices).

19. The infringing Apple iOS mobile operating system, upon which all iOS-compatible devices operate, includes the CoreLocation framework, which is provided with various classes, including the CLPlacemark class, CLRegion class, CLHeading class, and CLLocation class. The CoreLocation framework is configured in a manner that, when used in conjunction with other frameworks, classes, and/or other software constructs, infringes the '536 patent.

20. Apple provides resources to enable other parties—including Jumptap, Kronos, RetailMeNot, and Sprint—to include various Apple iOS frameworks and classes within mobile software applications developed by those parties for execution on iOS-compatible devices. Among other things, Apple provides its iOS Developer Library documentation, which describes the structure and operation of the iOS frameworks and classes, and provides instructions for including those frameworks and classes in third party software applications. These Apple iOS frameworks and classes include the CoreLocation framework and its corresponding CLPlacemark, CLRegion, CLHeading, and CLLocation classes.

21. Jumptap has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '536 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Jumptap has infringed and continues to infringe the '536 patent by making, using, offering to sell, selling, and/or importing into the United States its iOS-compatible Jumptap advertising platform, which is configured to operate on Apple's iOS-compatible devices. On information and belief, the iOS-compatible Jumptap advertising platform incorporates Apple's CoreLocation framework, including one or more of the CLPlacemark, CLRegion, CLHeading, and/or CLLocation classes. On information and belief, Jumptap's use of Apple's CoreLocation framework and its classes is essential to the operation of the iOS-compatible Jumptap advertising platform; without using the CoreLocation framework and its classes, the infringing location-based features of the iOS-compatible Jumptap advertising platform would be inoperable. In addition, on information and belief, Jumptap has infringed and continues to infringe the '536 patent by using the infringing iOS mobile operating system and compatible devices.

22. Kronos has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '536 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Kronos has infringed and continues to infringe the '536 patent by making, using, offering to sell, selling, and/or importing into the United States its iOS-compatible Workforce Mobile, Workforce Tablet, and Workforce Ready Mobile software applications (the "Kronos iOS Software Applications"), which are configured to operate on Apple's iOS-compatible devices. On information and belief, each of the Kronos iOS Software Applications incorporates Apple's CoreLocation framework, including one or more of the CLPlacemark, CLRegion, CLHeading, and/or CLLocation classes. On information and belief, Kronos's use of Apple's CoreLocation framework and its classes is essential to the operation of the Kronos iOS Software Applications; without using the CoreLocation framework and its

classes, the infringing location-based features of the Kronos iOS Software Applications would be inoperable. In addition, on information and belief, Kronos has infringed and continues to infringe the '536 patent by using the infringing iOS mobile operating system and compatible devices.

23. RetailMeNot has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '536 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, RetailMeNot has infringed and continues to infringe the '536 patent by making, using, offering to sell, selling, and/or importing into the United States its iOS-compatible RetailMeNot mobile software application, which is configured to operate on Apple's iOS-compatible devices. On information and belief, the iOS-compatible RetailMeNot mobile software application incorporates Apple's CoreLocation framework, including one or more of the CLPlacemark, CLRegion, CLHeading, and/or CLLocation classes. On information and belief, RetailMeNot's use of Apple's CoreLocation framework and its classes is essential to the operation of the RetailMeNot mobile software application; without using the CoreLocation framework and its classes, the infringing location-based features of the iOS-compatible RetailMeNot mobile software application would be inoperable. In addition, on information and belief, RetailMeNot has infringed and continues to infringe the '536 patent by using the infringing iOS mobile operating system and compatible devices.

24. Sprint has infringed and continue to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '536 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States iOS-compatible devices and the iOS-compatible Pinsight Media+ mobile software application. On information and belief, these products and/or services incorporate Apple's CoreLocation framework, including one or more of the CLPlacemark, CLRegion, CLHeading, and/or CLLocation classes. On information and belief, Sprint's use of Apple's CoreLocation framework and its classes is essential to the operation of the iOS-compatible Pinsight Media+ mobile software application; without using the CoreLocation framework and its classes, the infringing location-based features of the iOS-

compatible Pinsight Media+ mobile software application would be inoperable. In addition, on information and belief, Sprint has infringed and continues to infringe the '536 patent by using the iOS mobile operating system. Further, Sprint has infringed and continues to infringe the '536 patent by making, using, offering to sell, selling, and/or importing into the United States the Sprint CDMA and 4G networks, as well as the Sprint Services Framework—a common development framework that Sprint utilizes to enable developers to access core services of the Sprint networks and mobile devices, including location-based services ("LBS") and/or GeoFencing services. By way of example, and without limitation, these services are generally described at http://developer.sprint.com/dynamicContent /sprintservices/overview/2.

25. Apple has had knowledge and notice of the '536 patent since at least as early as October 17, 2012, when the complaint in this action was filed.

26. Apple actively, knowingly, and intentionally induces infringement of the '536 patent by Kronos, RetailMeNot, and Sprint, all with knowledge of the '536 patent and its claims; with knowledge that Kronos, RetailMeNot, and Sprint will use the Apple iOS mobile operating system and compatible devices in an infringing manner, and with the knowledge and the specific intent to encourage and facilitate Kronos's, RetailMeNot's, and Sprint's infringement. Apple provides to Kronos, RetailMeNot, and Sprint the iOS CoreLocation framework and corresponding classes, along with documentation and instructions—including the iOS Developer Library documentation—regarding how to incorporate the iOS CoreLocation framework and corresponding classes into iOS-compatible software applications, including the infringing Kronos iOS Software Applications, the iOS-compatible RetailMeNot mobile software application, and the iOS-compatible Sprint Pinsight Media+ mobile software application. In addition, on information and belief, Apple provides software tools that enable Kronos, RetailMeNot, and Sprint to incorporate the iOS CoreLocation framework and corresponding classes into iOS-compatible software applications, including the infringing Kronos iOS Software Applications, the iOS-compatible RetailMeNot mobile software application, and the iOS-

compatible Sprint Pinsight Media+ mobile software application. Further, on information and belief, Apple reviewed the iOS-Compatible RetailMeNot mobile software application and one or more of the Kronos iOS Software Applications to ensure that they conformed with such documentation and instructions. Moreover, on information and belief, Apple certified the iOS-Compatible RetailMeNot mobile software application and one or more of the Kronos iOS Software Applications to be sold in Apple's App Store—an online marketplace through which consumers can download Apple-certified iOS applications to their iOS-compatible devices. Apple has also contracted with Sprint to sell infringing iOS-compatible devices through at least Sprint retail outlets and the Sprint.com website.

27. As a result of each Defendant's infringing activities with respect to the '536 patent, Plaintiff has suffered damages in an amount not yet ascertained. Plaintiff is entitled to recover damages adequate to compensate it for each Defendant's infringing activities in an amount to be determined at trial, but in no event less than reasonable royalties, together with interest and costs. Each Defendant's infringement of Plaintiff's exclusive rights under the '536 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT TWO
INFRINGEMENT OF U.S. PATENT NO. 7,702,682

28. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

29. Plaintiff is the owner of all right, title, and interest in United States Patent No. 7,702,682, entitled "System and Method for Creating and Manipulating Information Containers with Dynamic Registers," duly and legally issued by the United States Patent and Trademark Office on April 20, 2010 (the "'682 patent"). A true and correct copy of the '682 patent is attached hereto as Exhibit B.

30. The '682 patent generally describes and claims an apparatus and method for efficiently searching and processing data using containers, registers, information elements, and gateways.

31. Apple has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '682 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Apple has infringed and continues to infringe the '682 patent by making, using, offering to sell, selling, and/or importing into the United States its iOS mobile operating system and compatible devices (i.e., the iPhone, iPod Touch, and iPad devices).

32. Sprint has infringed and continue to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '682 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Sprint has infringed and continue to infringe the '682 patent by making, using, offering to sell, selling, and/or importing into the United States iOS-compatible devices, the Sprint CDMA and 4G networks, the Pinsight Media+ mobile advertising platform, and the Sprint Services Framework—a common development framework that Sprint utilizes to enable developers to access core services of the Sprint networks and mobile devices, including location-based services ("LBS") and/or GeoFencing services. By way of example, and without limitation, these services are generally described at http://developer.sprint.com/dynamicContent/sprintservices/overview/2.

33. Apple has had knowledge and notice of the '682 patent since at least as early as October 17, 2012, when the complaint in this action was filed.

34. Apple actively, knowingly, and intentionally induces infringement of the '682 Patent by Sprint, all with knowledge of the '682 patent and its claims; with knowledge that Sprint will sell infringing iOS-compatible devices, and with the knowledge and the specific intent to encourage and facilitate Sprint's infringement. In particular, Apple has contracted with

Sprint to sell infringing iOS-compatible devices through at least Sprint retail outlets and the Sprint.com website.

35. As a result of Apple's and Sprint's infringing activities with respect to the '682 patent, Plaintiff has suffered damages in an amount not yet ascertained. Plaintiff is entitled to recover damages adequate to compensate it for Apple's and Sprint's infringing activities in an amount to be determined at trial, but in no event less than reasonable royalties, together with interest and costs. Apple's and Sprint's infringement of Plaintiff's exclusive rights under the '682 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

Plaintiff requests entry of judgment in its favor against each Defendant as follows:

a) For a declaration that each Defendant has infringed one or more claims of the '536 patent;

b) For a declaration that each Defendant has infringed one or more claims of the '682 patent;

c) For an award of damages adequate to compensate Plaintiff for each Defendant's infringement of the '536 patent and/or '682 patent, but in no event less than a reasonable royalty, together with prejudgment and post-judgment interest and costs, in an amount according to proof;

d) For an entry of a permanent injunction enjoining each Defendant, and its respective officers, agents, employees, and those acting in privity with it, from further infringement of the '536 patent and '682 patent, or in the alternative, awarding a royalty for post-judgment infringement; and

e) For an award to Plaintiff of such other costs and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury.

Dated: March 25, 2013

Respectfully submitted,

_/s/ Todd Kennedy_____
Adam J. Gutride, Esq.
Seth A. Safier, Esq.
Todd Kennedy, Esq.
Anthony J. Patek, Esq.
835 Douglass Street
San Francisco, California 94114
Telephone: (415) 789-6390
Facsimile: (415) 449-6469
adam@gutridesafier.com
seth@gutridesafier.com
todd@gutridesafier.com
anthony@gutridesafier.com

Charles Ainsworth
Parker Bunt & Ainsworth
100 E. Ferguson, Suite 1114
Tyler, Texas 75702
Telephone: (903) 531-3535
Facsimile: (903) 533-9687
charley@pbatyler.com

Attorneys for Plaintiff Evolutionary Intelligence, LLC