

1 COOLEY LLP
 2 JOHN S. KYLE (CA 199196)
 3 jkyle@cooley.com
 4 4401 Eastgate Mall
 5 San Diego, California 92121
 6 Telephone: (858) 550-6000
 7 Facsimile: (858) 550-6420

8 FRANK V. PIETRANTONIO (*pro hac vice pending*)
 9 fpietrantonio@cooley.com
 10 CHRISTOPHER C. CAMPBELL (*pro hac vice pending*)
 11 ccampbell@cooley.com
 12 One Freedom Square
 13 11951 Freedom Drive
 14 Reston, VA 20190-5656
 15 Telephone: (703) 456-8000
 16 Facsimile: (703) 456-8100

17 Attorneys for Defendant
 18 MILLENNIAL MEDIA, INC.

19 Additional parties and counsel listed in the signature block

20 UNITED STATES DISTRICT COURT
 21 SOUTHERN DISTRICT OF CALIFORNIA

22 STREETSPLACE, INC.,

23 Plaintiff,

24 v.

25 GOOGLE INC.; ADMOB, INC.; APPLE
 26 INC.; QUATTRO WIRELESS, INC.; NOKIA
 27 CORPORATION; NOKIA INC.; NAVTEQ
 28 CORPORATION; MILLENNIAL MEDIA,
 INC.; JUMPTAP, INC.; and DOES 1 through
 20,

Defendants.

Case No. 3:10-CV-01757-LAB-AJB

**MEMORANDUM IN SUPPORT OF
 DEFENDANTS' RULE 12(B)(6) MOTION TO
 DISMISS OR, IN THE ALTERNATIVE, FOR A
 MORE DEFINITE STATEMENT**

Date: March 14, 2011
 Time: 11:15 a.m.
 Judge: Hon. Larry Alan Burns

1 On August 23, 2010, Plaintiff Streetspace, Inc. (“Streetspace”) filed a complaint
2 (“Complaint”) against Defendants Google Inc. (“Google”); Admob, Inc. (“Admob”); Apple Inc.
3 (“Apple”) and Quattro Wireless, Inc. (“collectively Apple”)¹; Nokia Corporation; Nokia Inc.;
4 Navteq Corporation (collectively the “Nokia Defendants”); Millennial Media, Inc. (“Millennial
5 Media”); Jumptap, Inc. (“Jumptap”); and DOES 1 through 20 (collectively “Defendants”) for
6 alleged infringement of U.S. Patent 6,847,969 (“the ’969 patent”).
7

8 Defendants collectively hereby move pursuant to Federal Rule of Civil Procedure
9 12(b)(6) to dismiss Streetspace’s Complaint for failure to state a claim upon which relief can be
10 granted, or in the alternative, for a more definite statement pursuant to Rule 12(e).
11

12 In addition, the Defendants will move the Court by January 20, 2011, to transfer the case
13 from the Southern District of California to the Northern District of California.

14 **I. SUMMARY OF ARGUMENT**

15 Streetspace’s Complaint fails entirely to satisfy the pleading standards under Federal Rule
16 of Civil Procedure 8(a), as articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007),
17 and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). Under Rule 8(a), a complaint must make “a
18 ‘showing,’ rather than a blanket assertion, of entitlement to relief.” *Twombly*, 550 U.S. at 555
19 n.3. Such a showing “demands more than an unadorned, the-defendant-unlawfully-harmed-me
20 accusation.” *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555). This standard applies
21 equally to complaints alleging patent infringement. *See, e.g., Bender v. LG Elecs. U.S.A., Inc.*,
22 No. C-09-02114-JF, 2010 WL 889541, at *5 (N.D. Cal. Mar. 11, 2010); *Ricoh Co., Ltd. v.*
23 *ASUSTeK Computer, Inc.*, 481 F. Supp. 2d 954, 959 (W.D. Wis. 2007).
24
25

26 Streetspace’s direct infringement claims against Millennial Media and Jumptap fail to
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28 ¹ Apple acquired Quattro Wireless in January 2010 and shut down all Quattro Wireless operations in September 2010.

1 state a claim for patent infringement. No products are accused. No services are accused. Instead,
2 parroting the claims, Streetspace makes a vague assertion of direct infringement against “a
3 method and/or system for providing personalized and/or targeted online advertising services
4 based on location, users’ profiles and/or usage history.” This hardly puts Millennial Media and
5 Jumtap on notice of the infringement charges against them. These direct infringement claims
6 fail to raise a plausible claim that Millennial Media and Jumtap infringe any claims of the ‘969
7 patent and thus should be dismissed.
8

9 In addition, Streetspace alleges indirect infringement against all of the Defendants based
10 only on a formulaic recitation of the statutory elements of the cause of action without facts
11 sufficient to allow the Court to infer that any of the Defendants actually knew of the ‘969 patent
12 prior to the filing of the suit. The ambiguous, conclusory and bare-bones allegations of the
13 Complaint give no clue as to what may be at issue in this case and unfairly prejudice Defendants’
14 ability to investigate the claims and answer the Complaint.
15

16 Accordingly, pursuant to Rule 12(b)(6), this Court should dismiss (i) Streetspace’s direct
17 infringement claims against Millennial Media and Jumtap, and (ii) Streetspace’s indirect
18 infringement claims as to all of the Defendants. Alternatively, should the Court deny Defendants’
19 motion to dismiss, it should at the very least require Streetspace to provide a more definite
20 statement of its claims pursuant to Rule 12(e).
21

22 **II. BACKGROUND**

23 Streetspace alleges that it owns and has standing to sue for infringement of the ‘969
24 patent. Compl. ¶ 41. The Complaint provides no description of the ‘969 patent or the scope and
25 nature of the claims that Streetspace intends to assert. A review of the ‘969 patent shows that on
26 the face of the patent, among other limitations, each independent claim recites a “*terminal . . .*
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1 [having] an identification code,” a “*database*,” and “a *program* for displaying personalized
2 information” or otherwise “providing selected advertisement and online services to said
3 consumer.” ’969 patent claims 1, 12, and 19 (emphasis added). Yet Streetspace fails to allege
4 how or where any of these features are contained in Defendants’ products , instead relying solely
5 on conclusory allegations. What little detail the complaint provides is nothing more than a
6 blanket assertion that Streetspace is entitled to relief.
7

8 As to Millennial Media and Jumtap, Streetspace does not identify a single product or
9 service that purportedly infringes the patent. The entirety of the assertion against Millennial
10 Media, for example, reads,

11 Streetspace is informed and believes and based thereon alleges that defendant Millennial
12 Media has been and is infringing, contributing to infringement and/or inducing others to
13 infringe one or more claims of the ’969 patent literally and/or under the doctrine of
14 equivalents by making, using, selling, importing and/or offering for sale (among other
15 things) a method and/or system for providing personalized and/or targeted online
advertising services based on location, users’ profiles and/or usage history (collectively,
“Millennial Media’s Accused Products and Services”).

16 *Id.* ¶ 93. A similar allegation is made against Jumtap. *Id.* ¶ 100. Streetspace’s boilerplate
17 recitation of the patent statute, followed by a boilerplate recitation of certain limited aspects of the
18 ’969 patent, leaves these Defendants to speculate as to what “products and services” are actually
19 at issue in the suit.

20 As for its deficient indirect infringement allegations, Streetspace alleges with respect to
21 Google, for example, that Google is “knowingly inducing direct infringement and has the specific
22 intent to encourage another’s direct infringement by (among other things) designing, developing
23 and selling advertising services to third party advertisers, vendors and retailers for the purpose of
24 delivering personalized and/or targeted advertisements based on location, users’ profiles and/or
25 usage history.” *Id.* ¶ 45. Similar allegations of indirect infringement are made against the other
26 Defendants. *Id.* ¶¶ 52, 59, 66, 73, 80, 87, 94, and 101. Streetspace also alleges that each
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1 Defendant’s “Accused Products and Services are material components of [Streetspace’s] patented
2 method and/or system and . . . are not capable of substantial non-infringing use.” *Id.* These
3 blanket assertions are nothing more than statutory recitals and naked conclusions — they too do
4 not stand muster under the requisite standards for pleading under *Iqbal* and *Twombly* — and
5 must be dismissed.
6

7 **III. THIS ACTION SHOULD BE DISMISSED UNDER FEDERAL RULE OF CIVIL PROCEDURE**
8 **12(b)(6)**

9 **A. Legal Principles**

10 A complaint must contain “a short and plain statement of the claim showing that the
11 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). However, Rule 8 “does not unlock the doors
12 of discovery for a plaintiff armed with nothing more than conclusions.” *Iqbal* 129 S. Ct. at 1950.
13 “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a
14 cause of action will not do.’” *Id.* at 1949 (citing *Twombly*, 550 U.S. at 555). If a plaintiff has not
15 pleaded “enough facts to state a claim to relief that is plausible on its face,” and thereby “nudged
16 [his] claims . . . across the line from conceivable to plausible,” the complaint “must be
17 dismissed.” *Twombly*, 550 U.S. at 570 (dismissing a complaint pursuant to Fed. R. Civ. P.
18 12(b)(6)).
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21 When reviewing a motion to dismiss under Rule 12(b)(6), a court must assume all factual
22 allegations in a complaint as true and view them in the light most favorable to the plaintiff.
23 *Christopher v. Harbury*, 536 U.S. 403, 406 (2002). However, pleadings containing “no more
24 than conclusions[] are not entitled to the assumption of truth.” *Iqbal*, 129 S. Ct. at 1950. Only
25 when there are “well-pleaded factual allegations” should a court “assume their veracity and then
26 determine whether they plausibly give rise to an entitlement to relief.” *Id.* A claim has facial
27 plausibility “when the plaintiff pleads factual content that allows the court to draw the reasonable
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1 inference that the defendant is liable for the misconduct alleged.” *Id.* at 1949 (citing *Twombly*,
2 550 U.S. at 556). The “sheer possibility that a defendant has acted unlawfully” is not enough. *Id.*
3 Such a complaint “has alleged—but has not ‘show[n]’—‘that the pleader is entitled to relief.’”
4 *Id.* at 1950 (quoting Fed. R. Civ. P. 8(a)(2)).

5
6 **B. Streetspace’s Allegations of Direct Infringement Against Millennial Media and**
7 **Jumtap Should Be Dismissed Because They Do Not Identify Any Allegedly**
8 **Infringing Products or Services**

9 Following *Iqbal*, a complaint must “at a minimum, [include] a brief description of what
10 the patent at issue does, and an allegation that certain named and specifically identified products
11 or product components also do what the patent does, thereby raising a plausible claim that the
12 named products are infringing.” *LG Elecs.*, 2010 WL 889541 at *6. Applying *Twombly* and
13 *Iqbal*, the court in *LG Electronics* reasoned that a brief description of the patent and specific
14 allegation of the allegedly-infringing products are necessary to “provide enough specificity for
15 the defendant to formulate a response,” and “permit the Court to ‘draw the reasonable inference
16 that the defendant is liable for the misconduct alleged.’” *Id.* (citing *Iqbal*, 129 S. Ct. at 1949).

17 With respect to the patent infringement allegations against Millennial Media and Jumtap,
18 *Streetspace has failed to identify a single infringing product or service.* The allegation against
19 Millennial Media and Jumtap are nearly identical:

20
21 Streetspace is informed and believes and based thereon alleges that defendant Millennial
22 Media has been and is infringing, contributing to infringement and/or inducing others to
23 infringe one or more claims of the ‘969 patent literally and/or under the doctrine of
24 equivalents by making, using, selling, importing and/or offering for sale (among other
things) a method and/or system for providing personalized and/or targeted online
advertising services based on location, users’ profiles and/or usage history (collectively,
“Millennial Media’s Accused Products and Services”).

25 Compl. ¶ 93; *see also* ¶ 100. Without more, Streetspace’s bare-bones assertion of infringement
26 pertaining to Millennial Media’s and Jumtap’s alleged “method and/or system for providing
27 personalized and/or targeted online advertising services based on location, users' profiles and/or
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1 usage history,” is far too vague to state a claim of patent infringement that is “plausible on its
2 face.” *Iqbal*, 129 S. Ct. at 1949.

3 This court and others have properly dismissed patent infringement claims where plaintiffs
4 have not identified specific products or services. *See, e.g., Gen-Probe, Inc. v. Amoco Corp.*, 926
5 F. Supp. 948, 962 (S.D. Cal. 1996) (granting Rule 12(b)(6) dismissal because “pointing vaguely
6 to ‘products and/or kits’ . . . does not provide adequate notice as required by the Rules, and does
7 not reflect the reasonable inquiry required by the Rules”); *LG Elecs.*, 2010 WL 889541 at *4
8 (requiring plaintiff to specifically identify allegedly infringing products and finding list of
9 allegedly infringing product types to be insufficient); *Hewlett-Packard Co. v. Intergraph Corp.*,
10 No. C 03-2517 MJJ, 2003 U.S. Dist. LEXIS 26092, at *6 (N.D. Cal. Sept. 6, 2003) (dismissing
11 plaintiff’s complaint that defendant’s “software and hardware products” infringed the patent
12 because the allegations did not provide defendant with “fair notice” as to what claims to defend);
13 *Realtime Data, LLC v. Morgan Stanley*, No. 6:09CV326, 2010 WL 2403779, at *5 (E.D. Tex.
14 June 10, 2010) (granting Rule 12(b)(6) dismissal because plaintiff’s allegations did not
15 “specifically identify any accused products or services” and finding the identification of “data
16 compression products and/or services” too vague).

17
18
19 By failing to identify any specific product or service, Streetspace has not put Millennial
20 Media and Jumtapp on fair notice as to what products are subject to the infringement claim.
21 Streetspace’s allegations against Millennial Media and Jumtapp are even more vague than the
22 allegations at issue in *Gen-Probe*, *LG Electronics*, *Hewlett-Packard* and *Realtime Data*. As the
23 Supreme Court has cautioned, “a district court must retain the power to insist upon some
24 specificity in pleading before allowing a potentially massive factual controversy to proceed.”
25 *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 528 n.17 (1983).
26 Millennial Media and Jumtapp should not be required to engage in a time consuming
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1 investigation without knowing the specific products or services that Streetspace believes infringe
2 the '969 patent. As such, the court should at a minimum dismiss the Complaint against
3 Millennial Media and Jumtap.

4 **C. Streetspace's Allegations of Indirect Infringement Against All Defendants**
5 **Should be Dismissed Because They Do Not Plead Any Facts Sufficient To**
6 **State a Claim**

7 There are two types of indirect infringement: active inducement under 35 U.S.C. § 271(b)
8 and contributory infringement under 35 U.S.C. § 271(c). Streetspace accuses all Defendants of
9 both types of indirect infringement but includes only threadbare recitals of the elements of both
10 in its Complaint. Streetspace pleads no factual content that would allow a court to draw a
11 reasonable inference that any of the defendants are liable for either indirect or direct infringement.
12 Accordingly, Streetspace's allegations "do not suffice," and its Complaint should be dismissed
13 under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

14 **1. Streetspace Has Failed To State A Claim For Active Inducement**

15 The elements of active inducement of infringement include:

- 16 (1) a third party directly infringed the patent;
17 (2) Defendant undertook an affirmative act during the enforceable term of the patent, and
18 not merely a failure to act, that induced the third party's act that directly infringed the
19 patent (the "inducing act");
20 (3) Defendant had actual or constructive knowledge of the asserted patent at the time it
21 committed the inducing act;
22 (4) Defendant knew or should have known that the acts of the third party it induced would
23 result in direct infringement; and
24 (5) Defendant had a specific and actual intent to cause direct infringement.

25 *See, e.g.,* 35 U.S.C. § 271(b); *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed.
26 Cir. 2009); *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304–06 (Fed. Cir. 2006) (en banc);
27 *Acco Brands, Inc. v. ABA Locks Mfr. Co.*, 501 F.3d 1307, 1312 (Fed. Cir. 2007); *Dynacore*
28 *Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1277–78 (Fed. Cir. 2004).

To state a claim for active inducement against each defendant, Streetspace was required to

1 allege facts sufficient to show that it can establish each of these elements. *Iqbal*, 129 S. Ct. at
2 1950; *Twombly*, 550 U.S. at 555. Merely reciting each element of the cause of action without
3 also alleging facts that could establish those elements is insufficient because, in the words of the
4 Supreme Court, “a formulaic recitation of [the] cause of action will not do.” *Twombly*, 550 U.S.
5 at 555.

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7 But Streetspace’s allegations of active inducement comprise nothing more than a bare
8 formulaic recitation that “Streetspace is informed and believes” that each of the Defendants
9 satisfies some—but not even all—of the legal elements for inducement. Streetspace’s allegations
10 of inducement against defendant Jumtapp are illustrative:

11
12 Streetspace is further informed and believes and based thereon
13 alleges that if and to the extent Jumtapp is not infringing directly,
14 Jumtapp is infringing indirectly by . . . inducing a direct infringer
15 (including without limitation the creator, user and/or recipient of
16 targeted and/or personalized advertisements created, managed or
17 maintained by Jumtapp) to infringe the ‘969 patent. Streetspace is
18 further informed and believes and based thereon alleges that
19 Jumtapp is knowingly inducing direct infringement and has the
specific intent to encourage another’s direct infringement by
(among other things) designing, developing and selling advertising
services to third party advertisers, vendors and retailers for the
purpose of delivering personalized and/or targeted advertisements
based on location, users’ profiles and/or usage history. . . .

20 Compl. ¶ 101. Streetspace’s inducement allegations against Millennial Media are substantially
21 identical, i.e., they fail to specify any infringing product or service, a prerequisite for adequately
22 stating a cause of action for infringement. *See, e.g., AntiCancer Inc. v. Xenogen Corp.*, 248
23 F.R.D. 278 (S.D. Cal. 2007). While Streetspace identifies accused products for Google, Apple
24 and the Nokia Defendants, the inducement allegations are still far short in other respects. *See*
25 Compl. ¶¶ 45, 52, 59, 66, 93, 101.

26
27 For all of the defendants, Streetspace’s allegations fail to name any third party who has
28 allegedly directly infringed the ‘969 Patent as a result of the Defendants’ actions, as required for

1 an inducement claim. An allegation that a defendant has induced some unnamed others to
2 infringe is insufficient to state a claim for inducement. *Anticancer*, 248 F.R.D. at 282 (dismissing
3 complaint that alleged defendants had “indirectly infringed the [asserted] Patent by contributing
4 to or inducing directed infringements of the [asserted] Patent by others”); *Bender v. Motorola,*
5 *Inc.*, No. C 09-1245, 2010 WL 726739, at *4 (N.D. Cal. Feb. 26, 2010) (dismissing complaint
6 that defendant had “performed acts . . . that infringe and induce others to infringe”). Streetspace
7 also has not alleged how any third parties directly infringe the ’969 Patent, let alone identified any
8 facts to support such an allegation.
9

10 In addition, Streetspace fails to allege facts sufficient to allow the Court to infer that any
11 of the Defendants knew of the asserted patent at the time of the alleged inducement, or to allege
12 any facts that would support such an allegation. The failure to allege facts sufficient to allow the
13 Court to infer Defendants’ knowledge of the asserted patent means that Streetspace has failed to
14 state a cause of action for inducement. *Vita-Mix*, 581 F.3d at 1328; *Xpoint Techs. Inc. v.*
15 *Microsoft Corp.*, No. 09-628, 2010 WL 3187025, at *5 (D. Del. Aug. 12, 2010) (“[A] complaint
16 stating a claim for inducement must allege the requisite knowledge and intent . . .”).
17
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19 Finally, Streetspace’s Complaint merely recites other elements of inducement without
20 alleging any facts sufficient to support an inference of those necessary elements. For example,
21 Streetspace recites that each defendant is knowingly inducing infringement, but alleges no facts
22 supporting such a conclusion. Streetspace likewise recites that each defendant had a specific
23 intent to induce another’s direct infringement, but fails to allege any fact that would support such
24 an inference. Again, each of these failures requires dismissal for failure to state a claim of
25 inducement. *See, e.g., Koninklijke Philips Elecs. N.V. v. ADS Group*, 694 F. Supp. 2d 246, 253
26 (S.D.N.Y. 2010) (“[T]he Amended Complaints do not allege facts permitting the conclusion that
27 the . . . defendants acted culpably, with the *specific intent* of inducing infringement, a necessary
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1 element of an inducement claim.” (emphasis in original)).

2 Thus, for any one of the foregoing reasons, Streetspace has failed to state a claim for
3 inducement against each of the Defendants.
4

5 **2. Streetspace Has Failed To State A Claim For Contributory** 6 **Infringement**

7 The elements of contributory infringement include:

- 8 (1) Defendant sold or supplied in the United States a component of a system or service
9 during the time the patent was in force;
- 10 (2) a third party used that component to directly infringe the patent;
- 11 (3) the only substantial use for the component is in a service or system that is directly
12 covered by the claim; that is, the service or system has no substantial, non-infringing
13 use other than the alleged infringing use;
- 14 (4) Defendant knew of the patent; and
- 15 (5) Defendant knew that the systems or services for which the component has no other
16 substantial use other than one covered by a claim of the patent.

17 *See, e.g.*, 35 U.S.C. § 271(c); *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek*, 424 F.3d
18 1293, 1312 (Fed. Cir. 2005); *DSU Med.*, 471 F.3d at 1303; *Hodosh v. Block Drug Co.*, 833 F.2d
19 1575, 1578 (Fed. Cir. 1987); *Acco Brands*, 501 F.3d at 1314; *Dynacore*, 363 F.3d at 1277–78;
20 *Hoffman-La Roche, Inc. v. Promega Corp.*, 33 U.S.P.Q.2d 1641, 1648–49 (N.D. Cal. 1994).

21 Like Streetspace’s allegations of active inducement, its allegations of contributory
22 infringement likewise fails to state a claim because they are nothing more than a bare formulaic
23 recitation that “Streetspace is informed and believes” that each of the Defendants satisfies some—
24 but not even all—of the legal elements for contributory infringement. Streetspace’s allegations of
25 contributory infringement against defendant Millennial Media are illustrative:

26 Streetspace is further informed and believes and based thereon
27 alleges that if and to the extent Millennial Media is not infringing
28 directly, Millennial Media is infringing indirectly by contributing
to . . . a direct infringer (including without limitation the creator,
user and/or recipient of targeted and/or personalized advertisements
created, managed or maintained by Millennial Media) to infringe
the ‘969 patent. . . . Streetspace is further informed and believes
and based thereon alleges that Millennial Media’s Accused

1 Products and Services are material components of Streetspace’s
2 patented method and/or system and that Millennial Media’s
3 Accused Products and Services are not capable of substantial non-
infringing use.

4 Compl. ¶ 94. As before, Streetspace’s contributory infringement allegations against each of the
5 other Defendants are substantively identical except for the names of the Defendants, and, with
6 respect to the allegations against Google, Apple and the Nokia Defendants the identification of
7 accused products and services. *See Id.* ¶¶ 45, 52, 59, 66, 93, 101.

8 Like pleading inducement, successfully pleading contributory infringement requires
9 Streetspace to have named the allegedly infringing products and services, named the alleged third
10 party direct infringers, and properly alleged facts sufficient to allow the Court to infer that the
11 defendant knew of the asserted patent at the time of the alleged contributory infringement. Thus,
12 for the same reasons that Streetspace failed to properly allege these elements in connection with
13 inducement, it also failed to properly allege them in connection with contributory infringement.
14

15 Streetspace likewise failed to properly allege the other elements of contributory
16 infringement, including that the Defendants’ accused services were material components of the
17 patented invention and that they have no substantial non-infringing uses. *Cross Med. Prods.*, 424
18 F.3d at 1312. Once again, Streetspace has not alleged any specific facts showing the Defendants’
19 accused services were material components of the patented invention or lacked substantial non-
20 infringing use. Instead, Streetspace simply recites that the Defendants satisfy the required
21 statutory elements in a naked, conclusory fashion: “[Defendants’] Accused Products and Services
22 are material components of Streetspace’s patented method and/or system and [Defendants’]
23 Accused Products and Services are not capable of non-infringing use. (*E.g.*, Compl. ¶ 101). “[A]
24 formulaic recitation of [the] cause of action will not do.” *Twombly*, 550 U.S. at 555. Streetspace
25 has thus failed to state an actionable claim for contributory infringement against any of the
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1 Defendants.

2
3 **IV. AT A MINIMUM, THE COURT SHOULD REQUIRE A MORE DEFINITE STATEMENT UNDER**
4 **RULE 12(E)**

5 Because the Complaint has many naked assertions, at a minimum, Streetspace should be
6 required to provide a more definite statement. Federal Rule of Civil Procedure 12(e) provides
7 that “[a] party may move for a more definite statement of a pleading” where the pleading “is so
8 vague or ambiguous that the party cannot reasonably prepare a response.” Here, Streetspace
9 failed to allege some of the most basic facts underlying its Complaint—in the case of Millennial
10 Media and Jumptap, the product or method alleged to infringe the ’969 patent and, in the case of
11 all of the Defendants, the facts necessary to allow the Court to draw an inference that the
12 Defendants are liable for indirect infringement.

13
14 Courts have granted motions under Rule 12(e) in patent cases for these very reasons. *See,*
15 *e.g., Bay Indus., Inc. v. Tru-Arx Mfg., LLC*, No. 06-C-1010, 2006 U.S. Dist. LEXIS 86757, at *5
16 (E.D. Wis. Nov. 29, 2006) (“Defendant should not have to guess which of its products infringe
17 nor guess how its products might fall within plaintiff’s interpretation of the claims of the patent.”);
18 *eSoft, Inc. v. Astaro Corp.*, No. 06-cv-00441-REB-MEH, 2006 U.S. Dist. LEXIS 52336, at *4 (D.
19 Colo. July 31, 2006) (granting a motion for a more definite statement where the complaint failed
20 to identify any particular product that infringed the plaintiff’s patent); *Agilent Techs., Inc. v.*
21 *Micromuse, Inc.*, No. 04 Civ 3090 (RWS), 2004 U.S. Dist. LEXIS 20723, at *15-16 (S.D.N.Y.
22 Oct. 19, 2004) (granting a motion for a more definite statement where the complaint did not
23 specify which products infringed the plaintiff’s patents); *Duhn Oil Tool, Inc. v. Cooper Cameron*
24 *Corp.*, No. CV-F-05-1411 OWW/GSA, 2010 WL 2354411, at *5 (E.D.Cal. 2010) (granting
25 motion for a more definite statement where the complaint failed to adequately plead indirect
26 infringement). By failing to identify any allegedly infringing Millennial Media and Jumptap
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1 products or methods in its Complaint, and by failing to plead the facts necessary to allow the
2 Court to draw an inference that the Defendants are liable for indirect infringement, Streetspace
3 has impermissibly attempted to “foist the burden of discerning what products it believes infringes
4 the patent onto defense counsel.” *eSoft*, 2006 U.S. Dist. LEXIS 52336 at *4. Indeed,
5 Streetspace’s Complaint leaves Defendants to guess what products or services allegedly infringe
6 the ’969 patent. As a result, Defendants cannot realistically frame a responsive pleading, let
7 alone begin defending themselves in this action. At a minimum, a more definite statement is
8 warranted.
9

10
11 **V. CONCLUSION**

12 Streetspace’s Complaint is so vague and devoid of facts that it fails to state a claim upon
13 which relief can be granted. Therefore, Defendants respectfully request that Streetspace’s
14 Complaint be dismissed. In the alternative, Defendants request that the Court require Streetspace
15 to provide a more definite statement pursuant to Rule 12(e).
16

17
18 Respectfully submitted,

Cooley LLP

19 Dated: January 18, 2011

/s/John S. Kyle

JOHN S. KYLE (jkyle@cooley.com)

21 Attorneys for Defendants
22 MILLENNIAL MEDIA, INC.
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/s/Luann L. Simmons

George A. Riley (SB# 118304)
griley@omm.com
Luann L. Simmons (SB# 203526)
lsimmons@omm.com
Anne E. Huffsmith (SB# 236438)
ahuffsmith@omm.com
O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

Attorneys for Defendants APPLE INC. and
QUATTRO WIRELESS, INC.

/s/ Shawn E. McDonald

Foley & Lardner LLP
MATTHEW B. LOWRIE (*Pro Hac Vice*)
mlowrie@foley.com
111 Huntington Avenue, Suite 2600
Boston, MA 02119-7610
Telephone: 617.342.4000
Facsimile: 617.342.4001

Foley & Lardner LLP
SHAWN E. MCDONALD (CSB NO. 237580)
semcdonald@foley.com
JUSTIN E. GRAY (*Pro Hac Vice*)
jegrays@foley.com
3579 Valley Centre Drive, Suite 300
San Diego, CA 92130
Telephone: 858.847.6700
Facsimile: 858.792.6773

Attorneys for Defendants Google Inc. and AdMob,
Inc.

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/s/ David Heskell Ben-Meir

David Heskell Ben-Meir
david.ben-meir@alston.com
ALSTON & BIRD LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071
(213) 576-1133
Fax: (213) 576-1100

Attorney for Defendants NOKIA, INC., NOKIA CORPORATION, and NAVTEQ, INC.

/s/ Kurt M. Kjelland

Kurt M. Kjelland
KKjelland@goodwinprocter.com
GOODWIN PROCTER LLP
4365 Executive Drive
Third Floor
San Diego, CA 92121
(858) 202-2728
Fax: (858) 457-1255

Attorney for Defendant JUMPTAP, INC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on January 18, 2011, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any counsel of record who have not consented to electronic service through the Court’s CM/ECF system will be served by electronic mail, first class mail, facsimile and/or overnight delivery.

/s/ John Kyle
John Kyle, Esq.