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12 Attorneys for Plaintiff
 13 STREETSPLACE, INC.

14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 STREETSPLACE, INC., a Delaware
 17 corporation,

18 Plaintiff,

19 vs.

20 GOOGLE INC., a Delaware corporation;
 21 ADMOB, INC., a Delaware corporation;
 22 APPLE INC., a California corporation;
 23 QUATTRO WIRELESS, INC., a Delaware
 24 corporation; NOKIA CORPORATION, a
 25 foreign corporation; NOKIA INC., a
 26 Delaware corporation; NAVTEQ
 27 CORPORATION, a Delaware corporation;
 28 MILLENNIAL MEDIA, INC., a Delaware
 corporation; JUMPTAP, INC., a Delaware
 corporation; and DOES 1 through 20,
 inclusive,

Defendants.

CASE NO. 10-CV-1747-LAB-AJB

**MEMORANDUM IN OPPOSITION TO
 DEFENDANTS' MOTION TO
 DISMISS OR, IN THE
 ALTERNATIVE, FOR A MORE
 DEFINITE STATEMENT**

Date: March 14, 2011
 Time: 11:15 a.m.
 Judge: Hon. Larry A. Burns
 Ctrm: 9

1 Plaintiff Streetspace, Inc. (“Streetspace”) respectfully submits the following memorandum
2 of points and authorities in opposition to the motion by Defendants Google, Inc., Admob, Inc.,
3 Apple, Inc., Quattro Wireless, Inc., Nokia Corporation, Nokia, Inc., Navteq Corporation,
4 Millennial Media, Inc. and Jumtap, Inc. (collectively, “Defendants”) to dismiss this case under
5 Fed. R. Civ. P. 12(b)(6) or, in the alternative, for a more definite statement.

6 **I. ARGUMENT**

7 On February 25, 2011, Streetspace filed and served an amended complaint (the “First
8 Amended Complaint”) as a matter of right, so Defendants’ motion to dismiss the original
9 complaint should be denied as moot. Pursuant to Fed. R. Civ. P. 15(a)(1), each party has the right
10 to amend its pleadings “as a matter of course” without leave of court at any time before a
11 responsive pleading is served. Fed. R. Civ. P. 15(a)(1). *See also Allwaste, Inc. v. Hecht*, 65 F.3d
12 1523, 1530 (9th Cir. 1995). Motions under Fed. R. Civ. P. 12 are not “responsive pleadings” for
13 purposes of Rule 15. Accordingly, the filing of Defendants’ motion to dismiss under Fed. R. Civ.
14 P. 12(b)(6) or, in the alternative, for a more definite statement under Fed. R. Civ. P. 12(e), does
15 not bar Streetspace from amending its complaint as a matter of right. *Crum v. Circus Circus*
16 *Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000); *McDonald v. Hall*, 579 F.2d 120, 121 (1st
17 Cir. 1978).

18 Streetspace’s amended complaint supersedes its original complaint filed August 23, 2010
19 and renders it of no legal effect (aside from the commencement date of this action, notice of the
20 asserted patent, and any other timing issues). *Santana v. State of Calif. Dept. of Corrections and*
21 *Rehabilitation*, 2010 WL 4176364, at *7 (N.D. Cal. Oct. 19, 2010) (*citing Loux v. Thay*, 375 F.2d
22 55, 57 (9th Cir. 1967)). *See also Migliaccio v. Midland Nat. Life Ins. Co.*, 2007 WL 316873, at *3
23 (C.D. Cal. Jan. 30, 2007). Defendants’ motion to dismiss the original complaint or, in the
24 alternative, for a more definite statement, should therefore be denied as moot. *Harvey v. City of*
25 *South Lake Tahoe*, 2010 WL 3749061, at *2 (E.D. Cal. Sep. 23, 2010) (*citing Ramirez s. Silgan*
26 *Containers*, 2007 WL 1241829, at *6 (E.D. Cal. Apr. 26, 2007)).

27 Nonetheless, Defendants incorrectly conclude that *Twombly* and *Iqbal* apply to the
28 pleading requirements for direct patent infringement – they do not. The Federal Circuit has

1 addressed the adequacy of a complaint for direct, but not indirect, patent infringement, holding
2 that even conclusory allegations of direct patent infringement were sufficient to survive a motion
3 to dismiss. *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed. Cir. 2007). The *McZeal*
4 court was guided by then Form 16 of the Federal Rules of Civil Procedure (now Form 18), which
5 “requires essentially nothing more than conclusory statements” to allege direct patent
6 infringement. *Technology Licensing Corporation v. Technicolor USA, Inc.*, 2010 WL 4070208 at
7 *2 (E.D. Cal. Oct. 18, 2010) (quoting *Elan Microelecs. Corp. v. Apple, Inc.*, 2009 WL 2972374 at
8 *2 (N.D. Cal. Sept. 14, 2009). Although Streetspace’s First Amended Complaint goes way
9 beyond conclusory allegations, any renewed motion to dismiss as it relates to the sufficiency of
10 direct patent infringement pleadings would be unfounded.

11 The *Elan* case is informative as the court there addressed the pleading requirements for
12 indirect patent infringement claims, which were raised by counter-claimant *Apple, Inc.* (the very
13 same Apple named as a defendant in this action). There, the court found that Apple’s bare
14 assertion, made “on information and belief that Elan ‘has been and is currently directly and/or
15 indirectly infringing, in violation of 35 U.S.C. § 271’ the specified patents ‘through its design,
16 marketing, manufacture and/or sale of touch sensitive input devices or touchpads, including but
17 not limited to the Smart-Pad’” failed to allege sufficient facts to “comply with Rule 8, under the
18 standards enunciated in *Twombly* and *Iqbal*.” *Elan*, 2009 WL 2972374 at *2, *et seq.* Accordingly,
19 the *Elan* court granted Elan’s motion to dismiss, with leave to amend. *See id.* Apple submitted
20 (roughly three weeks later) a Second Amended Answer setting forth additional indirect
21 infringement allegations, which the *Elan* court found sufficient to entitle Apple to relief for
22 indirect patent infringement. *See Elan Microelecs. Corp. v. Apple, Inc.*, 2009 WL 3253901 (N.D.
23 Cal. Oct. 5, 2009). In its First Amended Complaint, Streetspace has further specified its indirect
24 infringement allegations against each of the nine defendants named in this case based on the
25 template provided by defendant Apple in its Second Amended Answer submitted in *Elan* – albeit
26 completely different sets of underlying facts and even more detail. *See id.* Thus, any renewed
27 motion to dismiss Streetspace’s claims of indirect patent infringement as provided in its First
28 Amended Complaint would be unfounded.

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, certify and declare that I am over the age of 18 years old, employed in
3 the County of San Diego, State of California, and am not a party to the above-entitled action.

4 On February 28, 2011, I filed a copy of the following document:

5 **MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN**
6 **THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**

7 by electronically filing with the Clerk of the Court using the CM/ECF system, which will send
8 notification of such filing to the following email addresses:

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I hereby certify and declare, under the penalty of perjury, under the laws of the United States and of the State of California, that the foregoing is true and correct.

Executed on this 28th day of February 2011, at San Diego, California.

By: /s/ James V. Fazio, III
James V. Fazio, III