1	Christopher D. Banys (CA Sate Bar: 230038) Richard C. Lin (CA State Bar: 209233)		
2	Daniel M. Shafer (CA State Bar: 244839) cdb@banyspc.com		
3	rcl@banyspc.com		
4	dms@banyspc.com BANYS, P.C. 1032 Elwell Court, Suite 100 Palo Alto, CA 94303		
5			
6	Telephone: (650) 308-8505 Facsimile: (650) 353-2202		
7			
8	Attorneys for Plaintiff, ADAPTIX. INC.		
9	UNITED STATES DISTRICT COURT		
10	NORTHERN DISTRICT OF CALIFORNIA		
11			
12			
13	ADAPTIX, INC.	Case No.	
14	Plaintiff,	COMPLAINT FOR PATENT INFRINGEMENT	
15	V.		
16	APPLE, INC., and AT&T MOBILITY LLC	JURY TRIAL DEMANDED	
17	Defendants.		
18			
19	ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT		
20			
21	This is an action for patent infringement in which plaintiff, ADAPTIX, Inc. ("ADAPTIX"),		
22	complains against defendants, Apple, Inc. ("Apple") and AT&T Mobility LLC ("AT&T")		
23	(collectively "the Defendants"), as follows: THE PARTIES		
24			
25	1. ADAPTIX is a Delaware corporation with its principal place of business at 4100		
26	Midway Road, Suite 2010, Carrollton, Texas 75007.		
27	2. On information and belief, Apple is a California corporation with a principal place of		
28	business at 1 Infinite Loop, Cupertino, California 95014.		

3. On information and belief, AT&T Mobility LLC ("AT&T") is a Delaware corporation with its principal place of business at 675 W. Peachtree St. Suite 42-090, Atlanta, Georgia 30375.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because Defendants have committed acts within this judicial district giving rise to this action, and continue to conduct business in this District, and/or have committed acts of patent infringement within this District giving rise to this action.

6. On information and belief, each defendant is subject to this Court's specific and/or general personal jurisdiction pursuant to due process because they have committed acts giving rise to this action within this judicial district and/or have established minimum contacts within California and within this judicial district such that the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

BACKGROUND

7 7. On March 9, 2012 ADAPTIX filed a patent infringement suit against APPLE, AT&T,
8 and AT&T, Inc. in the United States District Court for the Eastern District of Texas, Tyler Division,
9 Case No. 6:12-cv-0125 ("the first-filed case").

8. The first-filed case alleged infringement by those defendants of U.S. Patent Nos.
7,454,212 and 6,947,748, the same two patents alleged against APPLE and AT&T in this Complaint,
as set forth in detail *infra*. (For convenience, these two patents may be referred to as "the Suit
Patents.")

9. On information and belief, APPLE and AT&T were aware of each of the Suit Patents at least as early as the March 9, 2012 filing date of the first-filed case.

26 10. On January 4, 2013, ADAPTIX filed a patent infringement suit against APPLE,
27 AT&T, and AT&T, Inc. in the United States District Court for the Eastern District of Texas, Tyler
28 Division, Case No. 6:13-cv-0028 ("the second-filed case").

COMPLAINT FOR PATENT INFRINGEMENT

1 11. The second-filed case alleged infringement by those defendants of the Suit Patents, the
 2 same two patents alleged against APPLE and AT&T in this Complaint, as set forth in detail *infra*.;

3 12. On information and belief, APPLE and AT&T were again made aware of each of the
4 Suit Patents at least as early as the January 4, 2013 filing date of the second-filed case.

5 13. On or about March 28, 2013, motions to transfer the first- and second-filed cases to this
6 District filed by APPLE and AT&T were granted. Eventually, the cases ended up in this Division and
7 were given Case Nos. 5:13-cv-1774 PSG and 5:13-cv-2023 PSG, respectfully, and assigned to the
8 Honorable Paul S. Grewal.

9 14. On or about September 20, 2013, an in-person and telephone hearing was held before
10 Judge Grewal in a case related to the first- and second-filed cases, i.e., Case No. 5:13-cv-1774,
11 concerning an ADAPTIX request for leave to supplement its Infringement Contentions in the
12 aforesaid -1774 Case (the "September 20th Hearing").

15. On information and belief, counsel-of-record for APPLE and AT&T, among others, were either present at the September 20th Hearing or on the telephone during the Hearing.

15 16. Towards the end of the September 20th Hearing, ADAPTIX's counsel stated to the
Court, in words or effect, that ADAPTIX is in the process of supplementing its Infringement
Contentions in at least both the first- and second-filed cases to add as accused products APPLE's justnewly-publicly-released-that-day products known as the Apple iPhone 5s and Apple iPhone 5c. At
the time of the filing of this Complaint, ADAPTIX had not yet received its September 25th electronic
Transcript Order request for the September 20th Hearing.

17. On September 26, 2013, ADAPTIX sent separate emails to APPLE and AT&T counsel
that stated the following: "As a follow-up to our concerns made apparent by our verbal comments
during last Friday's (September 20, 2013) hearing in front of Judge Grewal, Adaptix is in the process
of supplementing its Infringement Contentions to add the Apple iPhone 5s and Apple iPhone 5c. We
understand that these products were publicly released ... on or about September 20, 2013. Please
advise whether you will oppose Adaptix's supplementation, and if so, please provide a time you will
be available to meet and confer regarding the supplementation."

28

13

14

1 18. On information and belief, APPLE and AT&T were aware at least as early as 2 September 20, 2013 that ADAPTIX had formed a belief that the Apple iPhone 5s and Apple iPhone 5c 3 devices infringed one or more claims of the Suit Patents, and that ADAPTIX was seeking to 4 supplement its Infringement Contentions in at least both the first- and second-filed cases to add as 5 accused products APPLE's just-newly-publicly-released-that-day products known as the Apple iPhone 6 5s and Apple iPhone 5c.

<u>COUNT I</u> (INFRINGEMENT OF U.S. PATENT NO. 7,454,212)

9 19. ADAPTIX is the owner by assignment of United States patent number 7,454,212, 10 entitled "OFDMA WITH ADAPTIVE SUBCARRIER-CLUSTER CONFIGURATION AND SELECTIVE LOADING" ("the '212 Patent") with ownership of all substantial rights in the '212 12 Patent, including the right to exclude others and to sue and recover damages for the past and future 13 infringement thereof. A true and correct copy of the '212 Patent is attached as Exhibit A.

14 20. On information and belief, Apple is directly and/or indirectly infringing at least one or 15 more claims of the '212 Patent in this judicial district and elsewhere in California and the United 16 States by, among other things, making, using, offering for sale, selling and/or importing computerized 17 devices, including without limitation the iPhone 5s and iPhone 5c, which, at a minimum, directly 18 infringe the '212 Patent. Apple is thereby liable for infringement of the '212 Patent pursuant to 35 19 U.S.C. § 271. Apple's infringement has caused damage to ADAPTIX, which infringement by the 20 Defendants and damage to ADAPTIX will continue unless and until Apple is enjoined.

21 21. On information and belief, AT&T is directly and/or indirectly infringing at least one or 22 more claims of the '212 Patent in this judicial district and elsewhere in California and the United 23 States by, among other things, making, using, offering for sale, selling and/or importing computerized 24 devices, including without limitation the iPhone 5s and iPhone 5c which, at a minimum, directly 25 infringe the '212 Patent. AT&T is thereby liable for infringement of the '212 Patent pursuant to 35 26 U.S.C. § 271. AT&T's infringement has caused damage to ADAPTIX, which infringement and 27 damage will continue unless and until AT&T is enjoined.

28

7

8

11

1 22. Defendants directly contribute to and induce infringement through supplying infringing 2 systems and components to customers. Defendants' customers who purchase systems and components 3 thereof and operate such systems and components thereof in accordance with defendants' instructions 4 directly infringe one or more claims of the '212 Patent in violation of 35 U.S.C. § 271.

5 23. The infringement by each defendant identified in this Count has caused irreparable 6 injury to ADAPTIX for which remedies at law are inadequate. Considering the balance of the 7 hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and 8 such a remedy would be in the public interest.

9

10

11

12

13

15

COUNT II (INFRINGEMENT OF U.S. PATENT NO. 6,947,748)

24. ADAPTIX is the owner by assignment of United States patent number 6,947,748 entitled "OFDMA WITH ADAPTIVE SUBCARRIER-CLUSTER CONFIGURATION AND SELECTIVE LOADING" ("the '748 patent") with ownership of all substantial rights in the '748 14 patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the '748 patent is attached as Exhibit B.

16 25. On information and belief, Apple is directly and/or indirectly infringing at least one or 17 more claims of the '748 Patent in this judicial district and elsewhere in California and the United 18 States by, among other things, making, using, offering for sale, selling and/or importing computerized 19 communications devices, including without limitation the iPhone 5s and iPhone 5c, which, at a 20 minimum, directly infringe the '748 Patent. Apple is thereby liable for infringement of the '748 21 Patent pursuant to 35 U.S.C. § 271. Apple's infringement has caused damage to ADAPTIX, which 22 infringement by Defendants and damage to ADAPTIX will continue unless and until Apple is 23 enjoined.

24 26. On information and belief, AT&T is directly and/or indirectly infringing at least one or 25 more claims of the '748 patent in this judicial district and elsewhere in California and the United 26 States by, among other things, making, using, offering for sale, selling and/or importing computerized 27 devices, including without limitation the iPhone 5s and iPhone 5c which, at a minimum, directly 28 infringe the '748 patent. AT&T is thereby liable for infringement of the '748 patent pursuant to 35 COMPLAINT FOR PATENT INFRINGEMENT

U.S.C. § 271. AT&T's infringement has caused damage to ADAPTIX, which infringement and
 damage will continue unless and until AT&T is enjoined.

27. Defendants directly contribute to and induce infringement through supplying infringing
systems and components to customers. Defendants' customers who purchase systems and components
thereof and operate such systems and components thereof in accordance with Defendants' instructions
directly infringe one or more claims of the '748 patent in violation of 35 U.S.C. § 271.

7 28. The infringement by each defendant identified in this Count has caused irreparable
8 injury to ADAPTIX for which remedies at law are inadequate. Considering the balance of the
9 hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and
10 such a remedy would be in the public interest.

PRAYER FOR RELIEF

Wherefore, ADAPTIX respectfully requests that this Court enter:

A. Judgment in favor of ADAPTIX that each defendant has infringed the '212 and '748 patents as aforesaid;

B. A permanent injunction enjoining each defendant, its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active concert or privity therewith from direct, indirect and/or joint infringement of the '212 and '748 patents pursuant to 35 U.S.C. § 283;

C. Judgment and order requiring each defendant to pay ADAPTIX its damages with preand post-judgment interest thereon pursuant to 35 U.S.C. § 284; and

Any and all further relief to which the Court may deem ADAPTIX entitled.

DEMAND FOR JURY TRIAL

ADAPTIX requests a trial by jury on all issues so triable by right pursuant to Fed. R. Civ. P. 38.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

D.

1	Date: September 26, 2013	ADAPTIX, INC.
2	Dute: September 20, 2013	
3		By: <u>/s/ Daniel M. Shafer</u> Christopher D. Banys (CA State Bar: 230038)
4		Richard C. Lin(CA State Bar: 209233)Daniel M. Shafer(CA State Bar: 244839)
5		cdb@banyspc.com rcl@banyspc.com
6		dms@banyspc.com BANYS, P.C.
7		1032 Elwell Court, Suite 100
8		Palo Alto, CA 94303 Telephone: (650) 308-8505
9		Facsimile: (650) 353-2202
10		Paul J. Hayes Steven E. Lipman
11		HAYES MESSINA GILMAN & HAYES, LLC
12		300 Brickstone Square, 9 th Floor Andover, MA 01810
13		phayes@hayesmessina.com slipman@hayesmessina.com
14		Telephone: (978) 809-3850 Facsimile: (978) 809-3869
15		
16		ATTORNEYS FOR THE PLAINTIFF ADAPTIX, INC.
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		