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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 ADAPTIX, INC.,
 18 Plaintiff,
 19 v.
 20 HTC CORPORATION, HTC AMERICA,
 21 INC., CELLCO PARTNERSHIP d/b/a
 VERIZON WIRELESS, AND JOHN DOE
 NOS. 1-10,
 22 Defendants.

Case No. 5:15-cv-00367

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL REQUESTED

24 This is an action for patent infringement in which Plaintiff, ADAPTIX, Inc. (“ADAPTIX”),
 25 complains against Defendants HTC Corporation, HTC America, Inc. (together “HTC”), Cellco
 26 Partnership *d/b/a* Verizon Wireless (“Verizon”), and John Doe Nos. 1-10 (collectively “the
 27 Defendants”), as follows:
 28

THE PARTIES

1
2 1. ADAPTIX is a Delaware corporation with its principal place of business at 2400 Dallas
3 Parkway, Suite 200, Plano, Texas 75093.

4 2. HTC Corporation is a Taiwanese corporation with its principal place of business at 23
5 Xinghau Road, Taoyuan City, Taoyuan 330, Taiwan, R.O.C. and does business in this judicial district
6 by, among other things, committing the infringing acts giving rise to this Complaint.

7 3. HTC America, Inc. is a Washington corporation with its principal place of business at
8 13290 SE Eastgate Way, Suite 400, Bellevue, Washington 98005 and does business in this judicial
9 district by, among other things, committing the infringing acts giving rise to this Complaint.

10 4. Verizon is a Delaware corporation with its principal place of business at 1 Verizon
11 Way, Basking Ridge, New Jersey 07920, and regularly does business in this judicial district by,
12 among other things, committing the infringing acts giving rise to this Complaint.

13 5. Defendants John Doe Nos. 1-10 are customers of HTC and Verizon who have
14 purchased or have been provided and have used the HTC Desire 612, HTC Droid DNA, HTC One
15 (M7), HTC One (M8), HTC One Max, and HTC One Remix (mini 2), and whose identities are not
16 currently known to ADAPTIX.

17 **JURISDICTION AND VENUE**

18 6. This action arises under the patent laws of the United States, Title 35 of the United
19 States Code, 35 U.S.C. §§ 101, et seq. This Court has subject matter jurisdiction pursuant to 28
20 U.S.C. §§ 1331 and 1338(a).

21 7. Defendants are subject to this Court's specific and general personal jurisdiction,
22 pursuant to due process and/or the California Long Arm Statute.

23 8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b-c) and 1400(b)
24 because, among other things, Defendants have committed acts of patent infringement within this
25 judicial district, giving rise to this action, HTC and Verizon continue to conduct business in this
26 district, and John Doe Nos. 1-10 reside in this district.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,454,212)

9. ADAPTIX incorporates by reference paragraphs 1 through 8 herein.

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

11. ADAPTIX is the owner by assignment of United States patent number 7,454,212, entitled “OFDMA With Adaptive Subcarrier-Cluster Configuration And Selective Loading” (“the ’212 Patent”), with ownership of all substantial rights in the ’212 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 ’212 Patent is attached as Exhibit A.

Direct Infringement

12. Verizon has infringed, and continues to infringe, at least claim 18 of the ’212 patent in this judicial district and elsewhere in the United States by, among other things, making and using its 4G LTE Wireless Network (“Verizon’s LTE network”).

13. Verizon supplies cellular communication devices, including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8), HTC One Max, and HTC One Remix (mini 2), which together with the base stations that Verizon operates create Verizon’s LTE Network. Verizon’s LTE Network infringes at least claim 18 of the ’212 patent. Verizon is thereby liable for infringement of the ’212 Patent, pursuant to 35 U.S.C. § 271(a).

14. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 1 of the ’212 patent in this judicial district and elsewhere in the United States by, among other things, using cellular communication devices, including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8), HTC One Max, and HTC One Remix (mini 2), on Verizon’s 4G LTE Wireless Network.

15. Verizon’s and John Doe Nos. 1-10’s infringement has caused damage to ADAPTIX, which infringement by Verizon and John Doe Nos. 1-10 and damage to ADAPTIX will continue unless and until Verizon and John Doe Nos. 1-10 are enjoined.

Indirect Infringement

1
2 16. HTC has induced infringement of and continues to induce infringement of at least
3 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,
4 among other things, providing, offering for sale, selling, and/or importing cellular communication
5 devices, including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC
6 One (M8), HTC One Max, and HTC One Remix (mini 2), for use on Verizon's LTE network. HTC
7 knowingly encourages and intends for its customers to use those devices in a manner that infringes the
8 '212 patent. HTC's customers who operate such devices in accordance with HTC's instructions, as
9 well as Verizon, directly infringe one or more claims of the '212 Patent in violation of 35 U.S.C §
10 271. HTC's inducement of such infringement creates liability under 35 U.S.C. § 271(b).

11 17. Verizon has induced infringement of and continues to induce infringement of at least
12 Claims 1 and 18 of the '212 Patent in this judicial district and elsewhere in the United States by,
13 among other things, providing, offering for sale, selling, and/or importing cellular communication
14 devices, including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC
15 One (M8), HTC One Max, and HTC One Remix (mini 2), for use on Verizon's LTE network, and
16 using its LTE network to operate those devices. Verizon knowingly encourages and intends for its
17 customers to use those devices in a manner that infringes the '212 patent. Verizon's customers who
18 operate such devices in accordance with Verizon's instructions directly infringe one or more claims of
19 the '212 Patent in violation of 35 U.S.C § 271. Verizon's inducement of such infringement creates
20 liability under 35 U.S.C. § 271(b).

21 18. HTC has contributed, and continues to contribute, to the direct infringement of at least
22 claim 18 by others, such as Verizon and end users of its cellular communication devices, including
23 without the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8), HTC One Max, and
24 HTC One Remix (mini 2), to be used on Verizon's LTE network, by offering to sell, selling within,
25 and/or importing into the United States a component of a patented system or an apparatus for use in
26 practicing a patented process, that constitutes a material part of the invention, knowing the same to be
27 especially made or especially adapted for use in infringement of the '212 Patent and not a staple
28 article or commodity of commerce suitable for substantial non-infringing use. HTC's conduct creates

1 liability under 35 U.S.C. § 271(c).

2 19. Verizon has contributed, and continues to contribute, to the direct infringement of at
3 least claims 1 and 18 by others, such as end users of its LTE network and of cellular communication
4 devices, including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC
5 One (M8), HTC One Max, and HTC One Remix (mini 2), to be used on its LTE network, by making,
6 offering to sell, selling within, and/or importing into the United States a component of a patented
7 system or an apparatus for use in practicing a patented process, that constitutes a material part of the
8 invention, knowing the same to be especially made or especially adapted for use in infringement of the
9 '212 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing
10 use. Verizon's conduct creates liability under 35 U.S.C. § 271(c).

11 20. HTC and Verizon have been on notice of the '212 Patent since March 16, 2012, at the
12 latest, when they were served with the Complaint in the 13-cv-1844 litigation. HTC and Verizon will
13 thus have known and intended (since receiving such notice) that their continued actions would induce
14 or contribute to direct infringement of at least Claims 1 and 18 of the '212 Patent.

15 21. ADAPTIX has been reparably and irreparably damaged as a result of Defendants'
16 infringing conduct described in this Count. Defendants are thus liable to ADAPTIX for an amount
17 that adequately compensates ADAPTIX for Defendants' infringement, which, by law, cannot be less
18 than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §
19 284. Additionally, such irreparable damage will continue until Defendants are enjoined pursuant to 35
20 U.S.C. § 283.

21 **COUNT II**

22 **(INFRINGEMENT OF U.S. PATENT NO. 6,947,748)**

23 22. ADAPTIX incorporates by reference paragraphs 1 through 8 herein.

24 23. This cause of action arises under the patent laws of United States of America and, in
25 particular, 35 U.S.C. §§ 271, *et seq.*

26 24. ADAPTIX is the owner by assignment of United States patent number 6,947,748,
27 entitled "OFDMA With Adaptive Subcarrier-Cluster Configuration And Selective Loading" ("the
28 '748 Patent") with ownership of all substantial rights in the '748 Patent, including the right to exclude

1 others and to sue and recover damages for the past and future infringement thereof. A true and correct
2 copy of the '748 Patent is attached as Exhibit A.

3 **Direct Infringement**

4 25. Verizon has infringed, and continues to infringe, at least claim 21 of the '748 patent in
5 this judicial district and elsewhere in the United States by, among other things, making and using its
6 4G LTE Wireless Network.

7 26. Verizon supplies cellular communication devices, including without limitation the
8 HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8), HTC One Max, and HTC One
9 Remix (mini 2), which together with the base stations that Verizon operate create Verizon's LTE
10 Network. Verizon's LTE Network infringes at least claim 21 of the '748 patent. Verizon is thereby
11 liable for infringement of the '748 Patent, pursuant to 35 U.S.C. § 271(a).

12 27. John Doe Nos. 1-10 have infringed, and continue to infringe, at least claim 21 of the
13 '748 patent in this judicial district and elsewhere in the United States by, among other things, using
14 cellular communication devices, including without limitation the HTC Desire 612, HTC Droid DNA,
15 HTC One (M7), HTC One (M8), HTC One Max, and HTC One Remix (mini 2), on Verizon's 4G
16 LTE Wireless Network.

17 28. Verizon's and John Doe Nos. 1-10's infringement has caused damage to ADAPTIX,
18 which infringement by Verizon and John Doe Nos. 1-10's and damage to ADAPTIX will continue
19 unless and until Verizon and John Doe Nos. 1-10 are enjoined.

20 **Indirect Infringement**

21 29. HTC has induced infringement of and continues to induce infringement of at least
22 Claim 21 of the '748 Patent in this judicial district and elsewhere in the United States by, among other
23 things, providing, offering for sale, selling, and/or importing cellular communication devices,
24 including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8),
25 HTC One Max, and HTC One Remix (mini 2), for use on Verizon's LTE network. HTC knowingly
26 encourages and intends for its customers to use those devices in a manner that infringes the '748
27 patent. HTC's customers who operate such devices in accordance with HTC's instructions, as well as
28

1 Verizon, directly infringe one or more claims of the '748 Patent in violation of 35 U.S.C § 271.

2 HTC's inducement of such infringement creates liability under 35 U.S.C. § 271(b).

3 30. Verizon has induced infringement of and continues to induce infringement of at least
4 Claim 21 of the '748 Patent in this judicial district and elsewhere in the United States by, among other
5 things providing, offering for sale, selling, and/or importing cellular communication devices,
6 including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8),
7 HTC One Max, and HTC One Remix (mini 2), for use on Verizon's LTE network, and using its LTE
8 network to operate those devices. Verizon knowingly encourages and intends for its customers to use
9 those devices in a manner that infringes the '748 patent. Verizon's customers who operate such
10 devices in accordance with Verizon's instructions directly infringe one or more claims of the '748
11 Patent in violation of 35 U.S.C § 271. Verizon's inducement of such infringement creates liability
12 under 35 U.S.C. § 271(b).

13 31. HTC has contributed, and continues to contribute, to the direct infringement of at least
14 claim 21 by others, such as Verizon and end users of its cellular communication devices, including
15 without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8), HTC One
16 Max, and HTC One Remix (mini 2), to be used on Verizon's LTE network, by offering to sell, selling
17 within, and/or importing into the United States a component of a patented system or an apparatus for
18 use in practicing a patented process, that constitutes a material part of the invention, knowing the same
19 to be especially made or especially adapted for use in infringement of the '748 Patent and not a staple
20 article or commodity of commerce suitable for substantial non-infringing use. HTC's conduct creates
21 liability under 35 U.S.C. § 271(c).

22 32. Verizon has contributed, and continues to contribute, to the direct infringement of at
23 least claim 21 by others, such as end users of its LTE network and of cellular communication devices,
24 including without limitation the HTC Desire 612, HTC Droid DNA, HTC One (M7), HTC One (M8),
25 HTC One Max, and HTC One Remix (mini 2), to be used on its LTE network, by making, offering to
26 sell, selling within, and/or importing into the United States a component of a patented system or an
27 apparatus for use in practicing a patented process, that constitutes a material part of the invention,
28 knowing the same to be especially made or especially adapted for use in infringement of the '748

1 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.
2 Verizon's conduct creates liability under 35 U.S.C. § 271(c).

3 33. HTC and Verizon have been on notice of the '748 Patent since March 16, 2012, at the
4 latest, when they were served with the Complaint in the 13-cv-1844 litigation. HTC and Verizon will
5 thus have known and intended (since receiving such notice) that their continued actions would induce
6 or contribute to direct infringement of at least Claim 21 of the '748 Patent.

7 34. ADAPTIX has been reparably and irreparably damaged as a result of Defendants'
8 infringing conduct described in this Court. Defendants are thus liable to ADAPTIX for an amount
9 that adequately compensates ADAPTIX for Defendants' infringement, which, by law, cannot be less
10 than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §
11 284. Additionally, such irreparable damage will continue until Defendants are enjoined pursuant to 35
12 U.S.C. § 283.

13 **PRAYER FOR RELIEF**

14 For the above reasons, ADAPTIX respectfully requests that this Court enter judgment:

15 A. That each Defendant has infringed the '212 and '748 patents;

16 B. Enjoining each Defendant, its officers, directors, agents, servants, affiliates,
17 employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or
18 privity with it from infringement of the '212 and '748 patents, under 35 U.S.C. § 283;

19 C. That each Defendant pay ADAPTIX damages with interest and costs, under 35
20 U.S.C. § 284;

21 D. Declaring this case exceptional under 35 U.S.C. § 285 and awarding attorneys' fees;
22 and

23 E. Granting any further relief that the Court may deem appropriate.

24 **DEMAND FOR JURY TRIAL**

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

1 Dated: January 26, 2015

Respectfully submitted,

2 By: /s/ James J. Foster

3 Paul J. Hayes

4 James J. Foster

5 Kevin Gannon

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**ATTORNEYS FOR PLAINTIFF
ADAPTIX, INC.**

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