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21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 APPLE INC.,

24 Plaintiff,

25 v.

26 ZIPIT WIRELESS, INC.,

27 Defendant.

Civil Action No. 3:20-cv-4448

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF U.S.
PATENT NOS. 7,292,870 AND
7,894,837**

DEMAND FOR JURY TRIAL

1 **JURISDICTION AND VENUE**

2 11. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§
3 2201-2202, and under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

4 12. This Court has subject matter jurisdiction over the claims alleged in this
5 action at least under 28 U.S.C. §§ 1331, 1332, 1338, 2201, and 2202, because this
6 Court has exclusive jurisdiction over declaratory judgment claims arising under the
7 Patent Laws pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

8 13. This Court can provide the relief sought in this Declaratory Judgment
9 Complaint because an actual case and controversy exists between the parties within
10 the scope of this Court’s jurisdiction pursuant to 28 U.S.C. § 2201, at least because
11 Zipit sued Apple for patent infringement, despite the fact that Apple does not
12 infringe, and has not infringed, any claims of the Zipit Patents. While Zipit
13 dismissed the Former Zipit Litigation, it did so without prejudice, leaving open the
14 possibility of Zipit suing Apple again on these same patents. Zipit’s actions have
15 created a real, live, immediate, and justiciable case or controversy between Zipit and
16 Apple.

17 14. Zipit has consciously and purposefully directed activities at Apple, a
18 company that resides and operates in this District. As previously described, Apple
19 and Zipit had extensive pre-suit communications regarding the Zipit Patents over the
20 course of several years. Zipit also came to the District for an in-person meeting at
21 Apple’s facilities in Cupertino to discuss the Zipit Patents. Throughout, Zipit
22 maintained that Apple required a license to the Zipit Patents. Zipit purposefully
23 directed these activities relating to the Zipit Patents at Apple in this District, and this
24 action arises out of and directly relates to Zipit’s contacts with Apple in this District.

25 15. In doing so, Zipit has established sufficient minimum contacts with the
26 Northern District of California such that Zipit is subject to specific personal
27 jurisdiction in this action. The exercise of personal jurisdiction based on these
28

1 repeated and pertinent contacts does not offend traditional notions of fairness and
2 substantial justice.

3 16. Venue in this District is proper under 28 U.S.C. §§ 1391(b), (c), and (d)
4 with respect to Apple’s declaratory judgment claims. As discussed above, this Court
5 has personal jurisdiction over Zipit because Zipit has engaged in actions in this
6 District that form the basis of Apple’s claims against Zipit—namely, the pre-suit
7 communications and interactions with Apple representatives in Cupertino, and the
8 meeting at Apple’s Cupertino headquarters.

9 17. An actual and justiciable controversy exists under 28 U.S.C. §§ 2201-
10 2202 between Apple and Zipit as to whether the Zipit’s Patents are infringed by the
11 Apple products and/or services that Zipit alleged to infringe the Zipit Patents in the
12 Former Zipit Litigation.

13 **PATENTS-IN-SUIT**

14 18. The ’870 patent, entitled “Instant Messaging Terminal Adapted For Wi-
15 Fi Access Points,” states on its face that it issued on November 6, 2007. A true and
16 correct copy of the ’870 patent is attached as Exhibit A.

17 19. The ’837 patent, entitled “Instant Messaging Terminal Adapted For Wi-
18 Fi Access Points,” states on its face that it issued on February 22, 2011. A true and
19 correct copy of the ’837 patent is attached as Exhibit B.

20 **FIRST CLAIM FOR RELIEF**

21 **(Declaratory Judgment That Apple Does Not Infringe The ’870 Patent)**

22 20. Apple repeats and realleges each and every allegation contained in
23 paragraphs 1 through 19 of this Complaint as if fully set forth herein.

24 21. In view of the facts and allegations set forth above, there is an actual,
25 justiciable, substantial, and immediate controversy between Apple, on the one hand,
26 and Zipit, on the other, regarding whether Apple infringes any claim of the ’870
27 patent.

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