

1 Jennifer Ishimoto (SBN 211845)
2 Banie & Ishimoto LLP
3 2100 Geng Road, Suite 210
4 Palo Alto, California 94303
5 Telephone: 408-981-9472
6 Email: ishimoto@banishlaw.com

7 *Attorneys for Plaintiff*
8 Mesa Digital, LLC

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 MESA DIGITAL, LLC,
13 Plaintiff,

14 v.

15 GEN MOBILE, INC.,
16 Defendant.

Case No.:

**PLAINTIFF’S ORIGINAL
COMPLAINT FOR PATENT
INFRINGEMENT**

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

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19 **PLAINTIFF’S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

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21 Plaintiff Mesa Digital, LLC files this First Amended Complaint and demand
22 for jury trial seeking relief from patent infringement of the claims of 9,031,537 (“the
23 ’537 patent”) (referred to as the “Patent-in-Suit”) by Gen Mobile, Inc. (“Defendant”).

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25 **I. THE PARTIES**

26 1. Mesa Digital, LLC is a New Mexico limited liability company with its
27 Principal place of business located in Albuquerque, New Mexico.
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1 2. On information and belief, Defendant is a corporation organized and existing
2 under the laws of Delaware with a regular and established places of business
3 throughout this District, including at least at P.O. Box 1187, Gardena, California
4 90249. Defendant can be served through its registered agent, Incorp Services, Inc.,
5 131 Continental Drive, Suite 301, Newark, Delaware 19713, at its place of business,
6
7 or anywhere else it may be found.
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9 3. On information and belief, Defendant sells and offers to sell products and
10 services throughout California, including in this judicial district, introduces products
11 and services that perform infringing methods or processes into the stream of
12 commerce knowing that they would be sold in California and this judicial district, and
13 otherwise directs infringing activities to this judicial district in connection with its
14 products and services.
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17 **II. JURISDICTION AND VENUE**

18 4. This Court has original subject-matter jurisdiction over the entire action
19 pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an
20 Act of Congress relating to patents, namely, 35 U.S.C. § 271.
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22 5. This Court has personal jurisdiction over Defendant because: (i) Defendant is
23 present within or has minimum contacts within the State of California and this judicial
24 district; (ii) Defendant has purposefully availed itself of the privileges of conducting
25 business in the State of California and in this judicial district; and (iii) Plaintiff's cause
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1 of action arises directly from Defendant’s business contacts and other activities in the
2 State of California and in this judicial district.

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4 6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).
5 Defendant has committed acts of infringement and has a regular and established place
6 of business in this District. Further, venue is proper because Defendant conducts
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8 substantial business in this forum, directly or through intermediaries, including: (i) at
9 least a portion of the infringements alleged herein; and (ii) regularly doing or
10 soliciting business, engaging in other persistent courses of conduct and/or deriving
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12 substantial revenue from goods and services provided to individuals in California and
13 this District.

14 **III. INFRINGEMENT**

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16 **A. Infringement of the ’537 Patent**

17 7. On May 12, 2015, U.S. Patent No. 9,031,537 (“the ’537 patent” (included as
18 an attachment, the contents of which are fully incorporated by reference)) entitled
19
20 “Electronic wireless hand held multimedia device” was duly and legally issued by the
21 U.S. Patent and Trademark Office. Plaintiff owns the ’537 patent by assignment.

22
23 8. The ’537 patent relates to novel and improved electronic wireless hand held
24 media devices including a microprocessor and more than one wireless transceiver
25 modules enabling wireless communication over a variety of standards, including
26 Cellular (e.g., GSM, CDMA, GPRS, 3G), 802.11 (i.e., WLAN), and short range (e.g.,
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1 Bluetooth, infrared, RFID), for the retrieval, processing and delivery of multimedia
2 data to/from remote data resources (i.e., Internet, servers).
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4 9. Defendant maintained, operated, manufactured, sold, offered for sale, and
5 imported electronic wireless hand held media devices including a microprocessor and
6 more than one wireless transceiver modules enabling wireless communications over
7 a variety of standards, including Cellular (e.g., GSM, CDMA, GPRS, 3G), 802.11
8 (e.g., WLAN), and short range (i.g. Bluetooth, infrared, RFID), for the retrieval,
9 processing and delivery of multimedia data to/from remote data resources (i.e.,
10 Internet, servers) that infringed one or more claims of the '537 Patent, including one
11 or more of claims 1-37, literally or under the doctrine of equivalents. Defendant put
12 the inventions claimed by the '537 Patent into service (i.e., used them); but for
13 Defendant's actions, the claimed-inventions embodiments involving Defendant's
14 products and services would never have been put into service. Defendant's acts
15 complained of herein caused those claimed-invention embodiments as a whole to
16 perform, and Defendant's procurement of monetary and commercial benefit from it.
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21 10. Support for the allegations of infringement may be found in the following
22 exemplary table included as Exhibit B, which depicts a Gen Mobile phone. These
23 allegations of infringement are preliminary and are therefore subject to change.
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1 11. Defendant has caused Plaintiff damage by direct infringement of the claims of
2 the '537 patent.¹

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4 **IV. CONDITIONS PRECEDENT**

5 12. Plaintiff has never sold a product. Upon information and belief, Plaintiff
6 predecessor-in-interest has never sold a product. Plaintiff is a non-practicing entity,
7 with no products to mark. Plaintiff has pled all statutory requirements to obtain pre-
8 suit damages. Further, all conditions precedent to recovery are met. Under the rule
9 of reason analysis, Plaintiff has taken reasonable steps to ensure marking by any
10 licensee producing a patented article.
11

12
13 13. Plaintiff and its predecessors-in-interest have entered into settlement licenses
14 with several defendant entities, but none of the settlement licenses were to produce a
15 patented article, for or under the Plaintiff's patents. Duties of confidentiality prevent
16 disclosure of settlement licenses and their terms in this pleading but discovery will
17 show that Plaintiff and its predecessors-in-interest have substantially complied with
18 Section 287(a). Furthermore, each of the defendant entities in the settlement licenses
19 did not agree that they were infringing any of Plaintiff's patents, including the Patents-
20 in-Suit, and thus were not entering into the settlement license to produce a patented
21 article for Plaintiff or under its patents. Further, to the extent necessary, Plaintiff will
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27 ¹ Plaintiff reserves the right to amend to add claims for indirect infringement, including
28 inducement and contributory, and/or willful infringement, to the extent fact discovery shows
Defendant's pre-expiration knowledge of the patent.

1 limit its claims of infringement to method claims and thereby remove any requirement
2 for marking.

3
4 14.To the extent Defendant identifies an alleged unmarked product produced for
5 Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in discovery to
6 either show that the alleged unmarked product does not practice the Patents-in-suit
7 and that Plaintiff has substantially complied with the marking statute. Defendant has
8 failed to identify any alleged patented article for which Section 287(a) would apply.
9
10 Further, Defendant has failed to allege any defendant entity produce a patented article.

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12 15.The policy of § 287 serves three related purposes: (1) helping to avoid innocent
13 infringement; (2) encouraging patentees to give public notice that the article is
14 patented; and (3) aiding the public to identify whether an article is patented.

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16 16.These policy considerations are advanced when parties are allowed to freely
17 settle cases without admitting infringement and thus not require marking. All
18 settlement licenses were to end litigation and thus the policies of §287 are not violated.
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20 Such a result is further warranted by 35 U.S.C. §286 which allows for the recovery of
21 damages for six years prior to the filing of the complaint.

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23 17.For each previous settlement license, Plaintiff understood that (1) the
24 settlement license was the end of litigation between the defendant entity and Plaintiff
25 and was not a license where the defendant entity was looking to sell a product under
26 any of Plaintiff's patents; (2) the settlement license was entered into to terminate
27 litigation and prevent future litigation between Plaintiff and defendant entity for
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1 patent infringement; (3) defendant entity did not believe it produced any product that
2 could be considered a patentable article under 35 U.S.C. §287; and, (4) Plaintiff
3 believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for
4 each prior settlement license.
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6 18. Each settlement license that was entered into between the defendant entity and
7 Plaintiff was negotiated in the face of continued litigation and while Plaintiff believes
8 there was infringement, no defendant entity agreed that it was infringing. Thus, each
9 prior settlement license reflected a desire to end litigation and as such the policies of
10 §287 are not violated.
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13 **V. JURY DEMAND**

14 Plaintiff hereby requests a trial by jury on issues so triable by right.
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16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief as follows:

- 18 a. enter judgment that Defendant has infringed the claims of the '537 patent;
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20 b. award Plaintiff damages in an amount sufficient to compensate it for
21 Defendant's infringement, in an amount no less than a reasonable royalty or
22 lost profits, together with pre-judgment and post-judgment interest and costs
23 under 35 U.S.C. § 284;
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25 c. award Plaintiff an accounting for acts of infringement not presented at trial and
26 an award by the Court of additional damage for any such acts of infringement;
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28 and,

1 d. award Plaintiff such other and further relief as this Court deems just and proper.

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Dated: February 13, 2025

Respectfully submitted,

BANIE & ISHIMOTO LLP

By: /s/Jennifer Ishimoto

Jennifer Ishimoto

*Attorneys for Plaintiff
Mesa Digital, LLC*