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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 PLANTRONICS, INC.

13 Plaintiff,

14 v.

15 CALLPOD, INC.,

16 Defendant.

CASE NO.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Plantronics, Inc., through its undersigned attorneys, alleges the following for its
2 Complaint against Defendant Callpod, Inc.:

3 **NATURE OF ACTION**

4 1. This is an action for declaratory judgment seeking relief of noninfringement and
5 invalidity under the patent laws of the United States, Title 35, United States Code, the Declaratory
6 Judgment Act, 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P. 57.

7 **THE PARTIES**

8 2. Plantronics, Inc., a publicly traded corporation listed on the New York Stock
9 Exchange as PLT, is a Delaware corporation with its principal place of business in Santa Cruz,
10 California.

11 3. Upon information and belief, Callpod, Inc. is an Illinois corporation with its principal
12 place of business at 850 W. Jackson Boulevard #400, Chicago, Illinois, 60607.

13 **JURISDICTION AND VENUE**

14 4. This declaratory judgment claim arises under the United States Patent Laws,
15 35 U.S.C. § 100 et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Subject
16 matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338(a). This matter presents an actual
17 case or controversy and serves the purpose of resolving the legal rights of the parties.

18 5. This Court has personal jurisdiction over Callpod because, on information and belief,
19 and for the reasons set forth below, Callpod has maintained continuous and systematic contacts with
20 the State of California; Callpod has purposefully availed itself of the benefits and protections of the
21 laws of the State of California; and Callpod has purposefully directed its activities at residents of this
22 forum.

23 6. On information and belief, Callpod owns U.S. Patent Nos. 6,801,611; 7,707,250;
24 7,742,758; 7,899,445; and 7,945,624 (collectively, “the patents-in-suit”), attached as Exhibits A-E,
25 respectively.

26 7. On information and belief, Callpod has been registered with the California Secretary
27 of State to enter into repeated and successive transactions of its business in California, other than
28 interstate or foreign commerce, since January 2011.

1 8. On information and belief, Callpod’s co-founder and Chief Technology Officer, Craig
2 Lurey, resides in El Dorado Hills, California, and has been designated by Callpod as its agent for
3 service of process in the State of California.

4 9. Callpod admits that it has contacts and transacts business in the State of California
5 and in this judicial district. *GN Resound A/S v. Callpod, Inc.*, No 4:11-cv-04673-SBA (N.D. Cal.
6 Jan. 2, 2012), ECF No. 25 at ¶ 8.

7 10. Callpod admits that this Court has personal jurisdiction over Callpod. *Id.* ¶¶ 8-9.

8 11. Callpod has called upon the jurisdiction of this Court in seeking relief related to
9 Callpod’s products. *See id.* at 6-7.

10 12. Callpod’s products are sold and marketed in California, through brick-and-mortar
11 suppliers in this state as indicated on its website. *See* <http://www.callpod.com/wheretobuy>.

12 13. Callpod operates an interactive website through which persons in California can order
13 products from Callpod, for shipment to California. *See* <http://callpod.com/products/chargepod>.

14 14. Callpod’s ties to California are further supported by its claims that Callpod, “for its
15 achievements in mobile conferencing, was inducted into The Tech Museum in San Jose, CA” and
16 that it has won an INNY award from the Tech Museum for its products. *See Callpod, Inc. v. T*
17 *Technology, Inc.*, No. 2:11-cv-326-JRG-RSP (E.D. Tex. July 20, 2011), ECF No. 1 at ¶ 18.

18 15. Callpod had retained RPX Corporation, headquartered in San Francisco, California,
19 to assist in the sale of Callpod’s patent assets, including the patents-in-suit.

20 16. On December 30, 2013, Callpod and Plantronics entered into a Nondisclosure
21 Agreement, with a term of six months, whereby the Agreement is governed by the laws of the State
22 of California and all actions “arising out of or relating to” the Agreement “shall be heard and
23 determined exclusively by the Superior Court of the State of California for the County of San
24 Francisco or the United States District Court for the Northern District of California located in the
25 County of San Francisco.”

26 17. On April 24, 2014, Callpod’s CEO and purported inventor of the patents-in-suit, Mr.
27 Darren S. Guccione, visited Plantronics in Santa Cruz, California to facilitate a business transaction
28 related to Callpod’s patent portfolio.

1 *Technology, Inc.*, No. 2:11-cv-326-JRG-RSP (E.D. Tex. July 20, 2011), ECF No. 1; *Callpod, Inc. v.*
2 *GN Netcom, Inc.*, No. 1:06-cv-4961 (N.D. Ill. Sept. 13, 2006), ECF No. 1.

3 26. Given Callpod's initiation of other litigation with respect to its patents, including the
4 '250 and '611 Patents, and in light of Mr. Guccione's threats of litigation, it is clear that Callpod or
5 its successor-in-interest (if any) intends to pursue patent litigation against Plantronics regarding the
6 patents-in-suit.

7 27. Based on Callpod's threats and Plantronics's reasonable apprehension of being sued
8 by Callpod, Plantronics filed petitions at the United States Patent & Trademark Office for *inter*
9 *partes* review of each claim in the '250, '758, '445, and '624 Patents on October 16, 2014. The case
10 numbers for these petitions are IPR2015-00075, IPR2015-00077, IPR2015-00078, IPR2015-0076,
11 respectively.

12 COUNT I

13 DECLARATORY JUDGMENT OF NON-INFRINGEMENT

14 28. Plantronics incorporates the preceding paragraphs as if fully set forth herein.

15 29. Plantronics has not directly infringed, and does not directly infringe, any claim of the
16 '611, '250, '758, '445, or '624 Patents.

17 30. Plantronics has not contributorily infringed, and does not currently contributorily
18 infringe, any claim of the '611, '250, '758, '445, or '624 Patents.

19 31. Plantronics has not induced, and does not currently induce, any infringement of any
20 claim of the '611, '250, '758, '445, or '624 Patents.

21 32. Plantronics is entitled to a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that
22 Plantronics does not infringe any claim of the '611, '250, '758, '445, or '624 Patents.

23 COUNT II

24 DECLARATORY JUDGMENT OF INVALIDITY

25 1. Plantronics incorporates the preceding paragraphs as if fully set forth herein.

26 2. The claims of each of the '611, '250, '758, '445, or '624 Patents are invalid under
27 Title 35 of the United States Code, including but not limited to §§ 101, 102, 103, and/or 112.

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