

# Exhibit 9



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United States District Court  
For the Northern District of California

<p>ADAPTIX, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CELLCO PARTNERSHIP <i>d/b/a</i> VERIZON WIRELESS, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 5:13-cv-01844-PSG</p> <p><b>ORDER DENYING PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT</b></p> <p><b>(Re: Docket No. 285)</b></p>
<p>ADAPTIX, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>APPLE, INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 5:13-cv-02023-PSG</p> <p><b>ORDER DENYING PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT</b></p> <p><b>(Re: Docket No. 309)</b></p>

In the months leading up to the filing of what became the patents-in-suit, multiple employees of Defendant AT&T Mobility LLC with technical information about a “Project Angel” jumped ship to work at a predecessor-in-interest of Plaintiff Adaptix, Inc. Curiously, a large number of AT&T confidential emails detailing Project Angel specifications also found their way into Adaptix’s files. Adaptix now brings a motion for partial summary judgment to head off an invalidity challenge based on derivation by AT&T as well as Defendants Apple, Inc., Verizon Wireless and HTC Corporation. Because there remains a genuine dispute whether Adaptix knew about the specifications of AT&T’s Project Angel before Adaptix filed its patent applications, the motion for partial summary judgment is DENIED.

**I.**

Pursuant to Fed. R. Civ. P. 56(a), the “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”<sup>1</sup> At the summary judgment stage, the court “does not assess

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<sup>1</sup> Fed. R. Civ. P. 56(a).

1 credibility or weigh the evidence, but simply determines whether there is a genuine factual issue  
2 for trial.”<sup>2</sup> Material facts are those that may affect the outcome of the case.<sup>3</sup> A dispute as to a  
3 material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for  
4 the nonmoving party.<sup>4</sup>

5 Patents are presumed valid, a presumption that can only be defeated by clear and  
6 convincing evidence.<sup>5</sup> A patent is invalid if the asserted inventors did not in fact invent the  
7 invention.<sup>6</sup> “To show derivation, the party asserting invalidity must prove both prior conception of  
8 the invention by someone other than the named inventors and communication of that conception to  
9 the patentee.”<sup>7</sup> “Communication” must include sufficient information to allow someone or  
10 ordinary skill in the art to construct and operate the invention.<sup>8</sup> If any element of the claimed  
11 invention is not communicated, there can be no derivation.<sup>9</sup>

12 In August 1999, after nearly four years of development, AT&T began selling services from  
13 its Project Angel system.<sup>10</sup> Little over a year later and only months after its own founding,  
14 Broadstorm Telecommunications Inc.—Adaptix’s predecessor<sup>11</sup>—filed an application for the first  
15 of the patents-in-suit.<sup>12</sup>

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17 <sup>2</sup> *House v. Bell*, 547 U.S. 518, 559-60 (2006).

18 <sup>3</sup> *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that  
19 might affect the outcome of the suit under the governing law will properly preclude the entry of  
20 summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).

21 <sup>4</sup> *See id.*

22 <sup>5</sup> *See Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1354 (Fed. Cir. 2010).

23 <sup>6</sup> *See Creative Compounds, LLC v. Starmark Labs.*, 651 F.3d 1303, 1313 (Fed. Cir. 2011).

24 <sup>7</sup> *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1576 (Fed. Cir. 1997).

25 <sup>8</sup> *See Price v. Symsek*, 988 F.2d 1187, 1197 (Fed. Cir. 1993).

26 <sup>9</sup> *See id.* at 1193.

27 <sup>10</sup> *See* Case No. 13-01776: Docket No. 332-3 at 10.

28 <sup>11</sup> For the purpose of this order, both Broadstorm and Adaptix will be referred to as Adaptix.

<sup>12</sup> *See* Case No. 13-01776: Docket No. 332-3 at 1, 12.

1 From the earliest stages, Adaptix’s goals were ambitious—it sought to prototype its  
2 technology just nine months after its founding. Though motivated, Hui Liu—one of the company’s  
3 co-founders—recognized that reaching this goal was futile without additional help.<sup>13</sup> Along with  
4 Xiandong Li, another one of Adaptix’s co-founders, Liu proposed to strategically hire key Project  
5 Angel engineers from AT&T.<sup>14</sup> Adaptix was able to recruit three engineers: Pal Meiyappan, Liang  
6 Hong and James Hite.<sup>15</sup> Adaptix began working with Meiyappan just over two months before the  
7 patents-in-suit were filed.<sup>16</sup> A few days later, Adaptix hired Hite and subsequently began  
8 consulting with Hong.<sup>17</sup> In fact, Hong’s consulting relationship with Adaptix began while he was  
9 still an employee of AT&T, and he continued in his dual role for months before leaving AT&T.<sup>18</sup>  
10 Among the three engineers, Adaptix had—as Liu put it—“pretty much...everything...on  
11 [AT&T’s] engineering side.”<sup>19</sup> It was only after Adaptix began working with these three engineers  
12 that it proceeded to file applications for the patents-in-suit.<sup>20</sup>

13 All three former AT&T employees contributed significant knowledge and expertise to  
14 Adaptix, but that was not all. Among these were many internal AT&T email communications  
15 authored by Hong as well as several AT&T technical documents related to Project Angel.<sup>21</sup>  
16 Adaptix has offered no explanation as to how it came into possession of these files.<sup>22</sup>

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19 <sup>13</sup> *See id.* at 6.

20 <sup>14</sup> *See id.*

21 <sup>15</sup> *See id.* at 7.

22 <sup>16</sup> *See id.*

23 <sup>17</sup> *See id.* at 11.

24 <sup>18</sup> *See id.* at 8.

25 <sup>19</sup> *Id.* at 9.

26 <sup>20</sup> *See id.* at 11, 12.

27 <sup>21</sup> *See id.* at 10.

28 <sup>22</sup> *See id.*

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