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1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

3 NOVA INTELLECTUAL
4 SOLUTIONS, LLC, a Texas limited
5 liability company,

6 Plaintiff,

7 v.

8 FRANKLIN WIRELESS CORP., a
9 Nevada corporation, and
FRANKLIN TECHNOLOGY INC.,
a South Korean corporation,

10 Defendant.

Case No.3:15-cv-00912 LAB JMA

**AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

Jury Trial Demanded

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12 Plaintiff Nova Intellectual Solutions, LLC files this complaint against Franklin
13 Wireless Corp. and Franklin Technology Inc. (collectively “Franklin” or
14 “Defendants”) for infringement of U.S. Patent No. 7,944,901 (“the ’901 patent”).

15 **THE PARTIES**

16 1. Nova Intellectual Solutions, LLC (“NIS” or “Plaintiff”) is a Texas limited
17 liability company with its principal place of business at 8616 Turtle Creek Boulevard,
18 Suite 521, Dallas, Texas 75225. NIS is the owner by assignment of U.S. Patent No.
19 7,944,901 (“the ’901 patent”).

20 2. Franklin Wireless Corp. (“Franklin Wireless”) is a Nevada corporation with
21 its headquarters and principal place of business at 5440 Morehouse Drive, Suite 1000,
22 San Diego, California 92121. Franklin Wireless is engaged in the design,
23 manufacture, and sale of wireless data products.

24 3. Franklin Technology Inc. (“FTI”) is a South Korean corporation with its
25 headquarters and principal place of business at 906 JEI Platz, 459-11, Gasan-Dong,
26 Gumcheon-Gu Seoul, Korea. FTI is a subsidiary of Franklin Wireless. Franklin
27 Wireless has majority ownership in FTI. Franklin Wireless has full control over
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1 FTI. FTI provides design, development and manufacturing services to Franklin
2 Wireless for Franklin Wireless's wireless data products.

3 **JURISDICTION AND VENUE**

4 4. NIS brings this action for patent infringement under the patent laws of the
5 United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This
6 Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

7 5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(d) and
8 1400(b). Franklin Wireless resides in this District. FTI is an alien that conducts
9 business in this District through the related entity Franklin Wireless. A substantial
10 part of the infringing conduct giving rise to this Complaint has occurred in this
11 District. The patents at issue in this Complaint were formerly owned by, and
12 formerly assigned to, Novatel Wireless, which is headquartered in this District.

13 6. Each Defendant is subject to this Court's specific and general personal
14 jurisdiction pursuant to due process and/or the California Long Arm Statute, due at
15 least to its substantial business in this State and judicial district, including: (A) at
16 least part of its infringing activities alleged herein; and (B) regularly doing or
17 soliciting business, engaging in other persistent conduct, and/or deriving
18 substantial revenue from goods sold and services provided to California residents.

19 **COUNT I**

20 **(Patent Infringement - U.S. Patent No. 7,944,901)**

21 7. NIS incorporates paragraphs 1 through 6 herein by reference.

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

24 9. NIS is the owner of the '901 patent, entitled "Systems and Methods for
25 Automatic Connection with a Wireless Network," with ownership of all substantial
26 rights in the '901 patent, including the right to exclude others and to enforce, sue, and
27 recover damages for past and future infringement. A true and correct copy of the '901
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1 patent is attached as Exhibit A.

2 10. The '901 patent is valid, enforceable and was duly issued in full compliance
3 with Title 35 of the United States Code.

4 **DIRECT INFRINGEMENT (35 U.S.C. § 271(a))**

5 11. Defendants have directly infringed, and continue to directly infringe, one or
6 more claims of the '901 patent in this judicial district and elsewhere in California and
7 the United States.

8 12. Defendants have infringed the '901 patent, by using, selling, and/or offering
9 to sell, within the United States, and/or by importing into the United States, products,
10 including, but not limited to, mobile data hot spots and data modems, which embody
11 and/or practice at least claim 15 of the '901 patent by using a wide area network
12 configured to provide wireless communication between a wireless device and a
13 wireless network hub in violation of 35 U.S.C. § 271 (the "Accused Products"). The
14 Accused Products include, but are not limited to, the Ellipsis Jetpack MHS800L.

15 13. Defendants are liable for these direct infringements pursuant to 35 U.S.C. §
16 271.

17 **INDIRECT INFRINGEMENT (35 U.S.C. § 271(b))**

18 14. Defendants have indirectly infringed, and continue to indirectly infringe,
19 one or more claims of the '901 patent by inducing direct infringement by distributors
20 and the end users of the Accused Products.

21 15. Defendants have had knowledge of the '901 patent and the infringing nature
22 of their activities since at least April 2012, when Franklin Wireless was served with
23 the Second Amended Complaint in *Novatel Wireless, Inc., et al. v. Franklin Wireless*
24 *Corp., et al.*, Case No. 3:10-cv-02530, in the United States District Court for the
25 Southern District of California. Despite this knowledge, Defendants have specifically
26 intended for their distributors and/or end users to acquire and use the Accused
27 Products in a way that infringes the claims of the '901 patent. Defendants knew or
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1 should have known that their actions were inducing infringement.

2 16. For example, on information and belief, Defendant Franklin Wireless
3 provides product user manuals to its distributors, such as Verizon, that Verizon then
4 makes available to end users from its website. These manuals induce direct
5 infringement.

6 17. Furthermore, Defendants have not implemented a design around or
7 otherwise taken any remedial action with respect to the '901 patent. In accordance
8 with FED. R. CIV. P. 11(b)(3), NIS will likely have additional evidentiary support after
9 a reasonable opportunity for discovery on this issue.

10 **INDIRECT INFRINGEMENT (35 U.S.C. § 271(c))**

11 18. Defendants have indirectly infringed, and continue to indirectly infringe,
12 one or more claims of the '901 patent by contributing to the direct infringement by
13 users who use the Accused Products.

14 19. Defendants have had knowledge of the '901 patent and the infringing nature
15 of their activities since at least April 2012, when Franklin Wireless was served with
16 the Second Amended Complaint in *Novatel Wireless, Inc., et al. v. Franklin Wireless*
17 *Corp., et al.*, Case No. 3:10-cv-02530, in the United States District Court for the
18 Southern District of California. Despite this knowledge, Defendants have knowingly
19 sold and continue to offer for sale the Accused Products even though such devices
20 have no substantial noninfringing use. Such devices infringe the '901 patent,
21 including at least claim 15.

22 20. NIS has been damaged as a result of Defendants' infringing conduct
23 described in this Count. Defendants are, thus, liable to NIS in an amount that
24 adequately compensates NIS for their infringements, which, by law, cannot be less
25 than a reasonable royalty, together with interest and costs as fixed by this Court under
26 35 U.S.C. § 284.

COUNT II

(Willful Infringement)

21. NIS incorporates paragraphs 1 through 20 herein by reference.

22. Upon information and belief, Defendants first offered the Ellipsis Jetpack MHS800L for sale sometime after April 2012. Prior to this date, Defendants had knowledge of the '901 patent and the infringing nature of their activities. Thus, since the release of the Ellipsis Jetpack MHS800L, Defendants' infringement has been willful.

WHEREFORE, Plaintiffs request that the Court:

NIS asks that the Court find in its favor and against Defendants, and that the Court grant NIS the following relief:

- a. Judgment that one or more claims of the '901 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants;
- b. Judgment that one or more claims of the '901 patent have been willfully infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants;
- c. Judgment that Defendants account for and pay to NIS all damages and costs incurred by NIS because of Defendants' infringing activities and other conduct complained of herein;
- d. Judgment that Defendants account for and pay to NIS a reasonable, on-going, post judgment royalty because of Defendants' infringing activities and other conduct complained of herein;
- e. That NIS be granted pre judgment and post judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and
- f. That NIS be granted such other and further relief as the Court may deem

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just and proper under the circumstances

Dated: April 28, 2015

GARTMAN LAW GROUP, P.C.

By: /s/ John E. Gartman

John E. Gartman

Attorney for Plaintiff Nova Intellectual Solutions, LLC

REQUEST FOR TRIAL BY JURY

Plaintiffs claim trial by jury on all issues so triable.

Dated: April 28, 2015

GARTMAN LAW GROUP, P.C.

By: /s/ John E. Gartman

John E. Gartman

Attorney for Plaintiff Nova Intellectual Solutions, LLC