

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CALLWAVE COMMUNICATIONS, LLC,)))	CIVIL ACTION NO.
)	1:12-cv-01703-RGA
Plaintiff,)	FIRST AMENDED COMPLAINT
)	FOR PATENT INFRINGEMENT
v.))	
T-MOBILE USA INC. AND GOOGLE INC.,)	JURY TRIAL DEMANDED
Defendants.))	

STATEMENT OF JURISDICTION

1. This Court has subject matter jurisdiction over this case under 28 USC §§ 1331 and 1338(a).

NATURE OF THE ACTION

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to obtain damages resulting from Defendants' unauthorized manufacture, use, sale, and/or offer to sell in the United States of products, methods, processes, services and/or systems that infringe one or more claims of United States Patent Nos. 6,771,970 and 7,907,933 (collectively the "Asserted Patents") (attached as Exhibits A-B).

3. This action for patent infringement involves Defendants' manufacture, use, sale, and/or offer for sale, in the United States of infringing products, methods, processes, services and systems that are primarily used or primarily adapted for use in consumer telephony

services, including but not limited to the Google Play Store with direct carrier billing on the T-Mobile network, and T-Mobile's family location services (collectively, "Accused Products"). On information and belief, T-Mobile induces its vendors, including Google, to infringe the asserted patents.

THE PARTIES

4. Plaintiff CallWave Communications LLC ("CallWave") is a Delaware limited liability corporation with its principal place of business in Newton, Massachusetts.

5. Plaintiff CallWave is the assignee or exclusive licensee of all substantial rights, title and interest in and to the Asserted Patents.

6. Defendant Google Inc. ("Google") is a Delaware corporation headquartered at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

7. Google is in the business of providing Internet search and communication functionalities including, but not limited to, email services, location-based advertising, telephony services, mapping and navigation services, and mobile app and content distribution.

8. Defendant T-Mobile USA Inc. ("T-Mobile") is a Delaware corporation headquartered at 12920 South East 38th Street, Bellevue, Washington.

9. T-Mobile is in the business of providing communication functionalities including, but not limited to, mobile telephony services, location tracking, mapping and navigation services, and mobile app and content distribution and billing services.

10. Plaintiff has been and will continue to be harmed by Defendants' infringement of the Asserted Patents. Moreover, Defendants' unauthorized and infringing uses of Plaintiff's patented systems and methods have threatened the value of this intellectual property because Defendants' conduct results in Plaintiff's loss of its lawful patent rights to

exclude others from making, using, selling, offering to sell and/or importing the patented inventions.

11. Defendants' disregard for Plaintiff's property rights threatens Plaintiff's relationships with potential licensees of Plaintiff's patents, including the Asserted Patents. The Defendants will derive a competitive advantage over any of Plaintiff's future licensees from infringing Plaintiff's patented technology.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this patent infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. Defendants are subject to personal jurisdiction in the State of Delaware because they are incorporated in Delaware and, on information and belief, regularly transact business in this judicial district by, among other things, offering and providing their products and services to customers, business affiliates and partners located in this judicial district. In addition, on information and belief, the Defendants have committed acts of direct infringement of one or more of the claims of the Asserted Patents in this judicial district.

14. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because the Defendants are subject to personal jurisdiction in this district, and have committed acts of infringement in this district.

THE PATENTS-IN-SUIT

15. United States Patent No. 6,771,970 is entitled "Location Determination System" and relates to, *inter alia*, systems and methods for locating mobile devices.

16. United States Patent No. 7,907,933 is entitled "Call Routing Apparatus" and relates to, *inter alia*, systems and methods of processing a payment over a network.

EXEMPLARY ACCUSED PRODUCTS

17. T-Mobile's Family Where service allows users to track the location of their family members. The service allows a user to track the location of mobile phones and displays the location of the phones on a map.

18. The Google Play Store is a mobile application and content marketplace. It allows for purchases made on the store to be billed directly to the purchaser's phone bill on the T-Mobile network.

19. T-Mobile offers direct carrier billing on its mobile network for purchases of applications and content made by its users on the Google Play Store.

INFRINGEMENT OF UNITED STATES PATENT NO. 6,771,970

20. Paragraphs 1 through 19 are incorporated by reference as if fully restated herein.

21. Plaintiff CallWave is the exclusive licensee of all substantial rights and interest in and to the 6,771,970 Patent.

22. T-Mobile makes, uses, sells, offers to sell, practices, and/or provides in the United States, T-Mobile's Family Where.

23. T-Mobile's Family Where infringes one or more of the claims of the 6,771,970 Patent. T-Mobile's use, practice, and/or provision of Family Where infringes one or more claims of the 6,771,970 Patent.

24. T-Mobile has directly infringed one or more of the claims of the 6,771,970 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

25. On January 4, 2013, CallWave sent and, on information and belief, T-Mobile received a letter (“the T-Mobile Letter”) that attached a copy of the original complaint (D.I. 1), providing notice of T-Mobile’s infringement of the 6,771,970 and 7,907,933 Patents.

26. On information and belief, T-Mobile has been willfully infringing the 6,771,970 Patent since at least as early as January 4, 2013, and T-Mobile continues to willfully infringe.

27. The T-Mobile Letter also informed T-Mobile that it may be inducing its vendors and business partners to infringe the 6,771,970 Patent. On information and belief, T-Mobile’s has a contractual relationship with at least one vendor to provide Family Where.

28. On information and belief, at least one vendor to T-Mobile of Family Where makes, sells, offers for sale products that directly infringe the claims of the 6,771,970 Patent. On information and belief, at least one vendor to T-Mobile of Family Where uses methods that directly infringe the claims of the 6,771,970 Patent.

29. On information and belief, at least as early as December 29, 2012, T-Mobile knew that its vendors of Family Where infringed the methods claimed in the 6,771,970 Patent, and made, sold, and/or offered for sale, products that infringed the 6,771,970 Patent, and, on information and belief, T-Mobile intended, and caused or encouraged its vendors of Family Where to make, use, or sell products or methods that infringe the 6,771,970 Patent.

30. On information and belief, T-Mobile is inducing infringement of the 6,771,970 Patent.

31. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

INFRINGEMENT OF UNITED STATES PATENT NO. 7,907,933

32. Paragraphs 1 through 31 are incorporated by reference as if fully restated herein.

33. Plaintiff CallWave is the assignee and lawful owner of all right, title and interest in and to the 7,907,933 Patent.

34. Defendants make, use, sell, offer to sell and/or import into the United States for subsequent sale or use products, services, methods or processes that include the direct carrier billing functionality of the Google Play Store on the T-Mobile network.

35. T-Mobile uses, practices, and/or provides direct carrier billing for the Google Play Store on its mobile network, and thereby infringes one or more of the claims of the 7,907,933 Patent.

36. Google uses, practices, and/or provides the Google Play Store with direct carrier billing over the T-Mobile mobile network, and thereby infringes one or more of the claims of the 7,907,933 Patent.

37. The Defendants have directly infringed one or more of the claims of the 7,907,933 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

38. On December 30, 2012, CallWave sent and, on information and belief, Google received a letter (“the Google Letter”) that attached a copy of the original complaint (D.I. 1) providing notice of Google’s infringement of the 7,907,933 Patent.

39. On information and belief, Google and T-Mobile have been willfully infringing the 7,907,933 Patent since at least as early as December 30, 2012 and January 4, 2013, respectively, and Google and T-Mobile continue to willfully infringe.

40. The T-Mobile Letter informed T-Mobile that it may be inducing T-Mobile's vendors to infringe the 7,907,933 Patent. On information and belief, Google is one of T-Mobile's vendors for direct carrier billing. On information and belief, T-Mobile has a commercial relationship with Google to provide direct carrier billing on the T-Mobile network.

41. On information and belief, at least as early as December 29, 2012, T-Mobile knew that its vendors, including at least Google, infringed the methods claimed in the 7,907,933 Patent, and, on information and belief, T-Mobile intended, and caused or encouraged its vendors, including at least Google, to directly infringe the 7,907,933 Patent.

42. On information and belief, T-Mobile is inducing infringement of the 7,907,933 Patent.

43. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

WHEREFORE, Plaintiff prays for judgment against the Defendants, granting Plaintiff the following relief:

44. That this Court adjudge and decree that Defendants have infringed the Asserted Patents;

45. That this Court order an accounting, including a post-verdict accounting, to determine the damages to be awarded to Plaintiff as a result of the Defendants' infringement;

46. That this Court, pursuant to 35 U.S.C. § 284, enter an award to Plaintiff of such damages as it shall prove at trial against the Defendants that is adequate to compensate Plaintiff for said infringement, said damages to be no less than a reasonable royalty together with interest and costs;

47. That this Court assess pre-judgment and post-judgment interest and costs against the Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

48. That this court, pursuant to 35 U.S.C. § 284, treble the damage award on account of Defendants' willful infringement of CallWave's patents;

49. Grant to Plaintiff such other, further, and different relief as may be just and proper.

JURY DEMAND

50. Plaintiff demands a trial by jury of all matters to which it is entitled to trial by jury pursuant to FED. R. CIV. P. 38.

Dated: April 18, 2013

/s/ Edmond D. Johnson
Edmond D. Johnson (Del. Bar. No. 2257)
James G. McMillan, III (Del. Bar. No. 3979)
Pepper Hamilton LLP
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709
(302) 777-6539
johnsone@pepperlaw.com
mcmillaj@pepperlaw.com

*Attorneys for Plaintiff CallWave
Communications, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2013, a copy of Plaintiff CallWave Communications, Inc.'s First Amended Complaint, was served electronically with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to the following counsel of record:

Arthur G. Connolly, III, Esquire
Connolly Gallagher LLP
Brandywine Building
1000 North West Street, 14th Floor
Wilmington, DE 19801

Jack B. Blumenfeld, Esquire
Paul Saindon, Esquire
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899

/s/ James G. McMillan, III

James G. McMillan, III (#3979)