

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

CALLWAVE COMMUNICATIONS, LLC,)	
)	
)	CIVIL ACTION NO. 1:12-cv-01788-RGA
)	
Plaintiff,)	
)	SECOND AMENDED COMPLAINT FOR
)	PATENT INFRINGEMENT
)	
v.)	
)	
AT&T MOBILITY, LLC, RESEARCH IN MOTION LTD., AND RESEARCH IN MOTION CORP.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

STATEMENT OF JURISDICTION

1. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 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 and B, respectively).

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 Research In Motion's location applications and its direct carrier billing services on the AT&T mobile network (collectively, the "Accused Products").

THE PARTIES

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

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

6. Defendant AT&T Mobility, LLC ("AT&T") is a Georgia corporation headquartered at 1025 Lenox Park Boulevard, Atlanta, Georgia.

7. AT&T is in the business of providing communication functionalities including, but not limited to, mobile telephony services, location tracking, mapping and navigation services, mobile application and content distribution, and billing services.

8. Defendant Research In Motion Ltd. is a Canadian corporation headquartered at 295 Phillip Street, Waterloo Ontario, Canada.

9. Defendant Research In Motion Corp. is a Texas corporation headquartered at 122 W. John Carpenter Parkway, Suite 430, Irving, Texas. Collectively, Research In Motion Ltd. and Research In Motion Corp. will be referred to as "RIM."

10. RIM is in the business of providing communication functionalities including, but not limited to, mobile telephony services, location tracking, mapping and navigation services, and mobile application distribution.

11. 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 compromises Plaintiff's lawful patent rights to exclude others from making, using, selling, offering to sell, and/or importing the patented inventions.

12. 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 an unwarranted competitive advantage over any of Plaintiff's future licensees by infringing Plaintiff's patented technology.

JURISDICTION AND VENUE

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

14. Defendants are subject to personal jurisdiction in the State of Delaware because they are incorporated in and/or, on information and belief, they 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.

15. 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, on information and belief, committed acts of infringement in this district.

THE PATENTS-IN-SUIT

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

17. 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

18. RIM's applications, denominated "Maps" and "Protect," allow a user to locate one or more mobile devices. The Protect application locates the devices using GPS or other location services, and displays the location of the devices on a map. The Maps application allows users to determine the location of their mobile device, and displays the location on a map.

19. RIM's "App World" is an online mobile application marketplace. It allows purchasers to make online purchases through the App World marketplace over the AT&T mobile network. The purchase is then billed directly to the purchaser's AT&T phone bill.

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

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

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

22. RIM makes, uses, sells, offers to sell, practices and/or provides in the United States, RIM's Maps and Protect applications.

23. RIM's Maps and Protect applications each infringe one or more of the claims of the 6,771,970 Patent. RIM's use, practice and/or provision of the Maps and Protect applications infringes one or more claims of the 6,771,970 Patent.

24. RIM 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 December 29, 2012, CallWave sent, and, on information and belief, RIM received, a letter ("the RIM Letter") that attached a copy of the original complaint (D.I. 1), providing notice to RIM of its ongoing infringement of the 6,771,970 and 7,907,933 Patents.

26. On information and belief, RIM has been willfully infringing the 6,771,970 Patent since at least as early as December 29, 2012, and RIM continues to willfully infringe.

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

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

28. Paragraphs 1 through 27 are incorporated by reference as if fully restated herein.

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

30. Defendants use, practice, and/or provide in the United States, the direct carrier billing functionality for purchases made from RIM's App World marketplace on the AT&T network.

31. RIM's use, practice and/or provision of direct carrier billing functionality for purchases made from RIM's App World marketplace on the AT&T network infringes one or more claims of the 7,907,933 Patent.

32. AT&T's use, practice and/or provision of direct carrier billing functionality for purchases made from RIM's App World marketplace on the AT&T network infringes one or more claims of the 7,907,933 Patent.

33. On December 29, 2012, CallWave sent, and, on information and belief, AT&T received, a letter ("the AT&T Letter") that attached a copy of the original complaint (D.I. 1), providing notice to AT&T's of its ongoing infringement of the 7,907,933 Patent.

34. The Defendants have 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.

35. On information and belief, AT&T and RIM have been willfully infringing the 7,907,933 Patent since at least as early as December 29, 2012, and RIM and AT&T continue to willfully infringe.

36. The AT&T Letter informed AT&T that it may be inducing its vendors of direct carrier billing on RIM App World to infringe the 7,907,933 Patent. On information and belief, RIM is one of AT&T's vendors for direct carrier billing on the RIM App World, and AT&T has a commercial relationship with RIM to provide direct carrier billing for purchases on the RIM App World made on the AT&T network.

37. On information and belief, at least as early as December 29, 2012, AT&T knew that its vendors, including RIM, directly infringed the methods claimed in the 7,907,933 Patent and AT&T intended, and caused or encouraged its vendors, including at least RIM, to directly infringe the 7,907,933 Patent.

38. On information and belief, AT&T is inducing infringement of the 7,907,933 Patent.

39. 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:

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

41. 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;

42. 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;

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

44. 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;

45. That this Court grant to Plaintiff such other, further, and different relief as may be just and proper.

JURY DEMAND

46. 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/ James G. McMillan, III
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