

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

CALLWAVE COMMUNICATIONS, LLC,	)	
	)	
	)	CIVIL ACTION NO. 1:12-cv-01702-RGA
	)	
Plaintiff,	)	SECOND AMENDED COMPLAINT FOR
	)	PATENT INFRINGEMENT
	)	
v.	)	
	)	
SPRINT NEXTEL CORP. AND GOOGLE INC.,	)	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; 7,907,933; 8,325,901; 7,636,428; 7,822,188; and, 8,064,588 (collectively, the "Asserted Patents") (attached as Exhibits A-F, respectively), and on information and belief, Defendants' inducement of others to do the same.

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 Google's Voice services, Sprint's family location services, Sprint Complete Collaboration, and the Google Play Store with direct carrier billing services on the Sprint mobile network (collectively, the "Accused Products"). On information and belief, Sprint 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. 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, California.

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 application and content distribution.

8. Defendant Sprint Nextel Corp. ("Sprint") is a Kansas corporation headquartered at 6200 Sprint Parkway, Overland Park, Kansas.

9. Sprint is in the business of providing communication functionalities including, but not limited to, mobile telephony services, location tracking, mapping and navigation services, mobile app and content distribution, and Voice-Over-Internet Protocol ("VOIP") solutions.

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 compromises Plaintiff's 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 an unwarranted competitive advantage over any of Plaintiff's future licensees by 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/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.

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, on information and belief, 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.

17. United State Patent No. 8,325,901 is entitled “Methods and Apparatus for Providing Expanded Telecommunications Service” and relates to systems and methods of allowing a user to screen phone calls.

18. United States Patent No. 7,636,428 is entitled “Systems and Methods for Call Screening” and relates to, *inter alia*, systems and methods of allowing a user to screen a call.

19. United States Patent No. 7,822,188 is entitled “Methods and Apparatus for Providing Expanded Telecommunications Service” and relates to, *inter alia*, methods of placing calls from a call processing system in response to a request.

20. United States Patent No. 8,064,588 is entitled “Systems and Method for Call Screening” and relates to, *inter alia*, systems and methods for allowing a user to screen a call.

#### **EXEMPLARY ACCUSED PRODUCTS**

21. Sprint’s “Family Locator” service allows users to track the location of their family members who have mobile phones using the Sprint mobile network. The service allows a user to track the location of mobile phones, and displays the location of the phones on a map.

22. The “Google Play Store” is an online mobile application and content marketplace. It allows purchasers to make online purchases through the Google Play Store. The purchase is then billed directly to the purchaser’s Sprint phone bill on the Sprint mobile network.

23. Sprint offers direct carrier billing on its mobile network for purchases of applications and content made by its users on the Google Play Store.

24. “Google Voice” is a comprehensive telephony service provided by Google. Among the features offered by Google Voice is the ability to screen calls by listening to part of a message left by a caller, allowing the user to determine whether to answer the call.

25. Sprint’s “Complete Collaboration” service is a unified cloud-based VOIP communications product, including call screening and forwarding.

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

26. Paragraphs 1 through 25 are incorporated by reference as if fully restated herein.

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

28. Sprint makes, uses, sells, offers to sell, practices and/or provides in United States Sprint’s Family Locator service.

29. Sprint’s Family Locator service infringes one or more of the claims of the 6,771,970 Patent. Sprint’s use, practice, or provision of Family Locator infringes one or more claims of the 6,771,970 patent.

30. On January 4, 2013, CallWave sent, and, on information and belief, Sprint received, a letter (“the Sprint Letter”) that attached a copy of the original complaint (D.I. 1) providing notice to Sprint of its ongoing infringement of the 6,771,970 and 7,907,933 Patents.

31. Sprint 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.

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

33. The Sprint Letter also informed Sprint that it may be inducing its vendors and business partners to infringe the 6,771,970 Patent. On information and belief, Sprint contracts with at least one vendor to provide Family Locator.

34. On information and belief, at least one vendor to Sprint of Family Locator makes, sells, offers for sale products that directly infringe the 6,771,970 Patent. On information and belief, at least one vendor uses methods that directly infringe the 6,771,970 Patent.

35. On information and belief, at least as early as January 4, 2013, Sprint knew that its vendors for Family Locator infringed the 6,771,970 Patent, and made, sold, or offered for sale, products that infringed the 6,771,970 Patent, and, on information and belief, Sprint intends and causes or encourages its vendors of Family Locator to do the same.

36. On information and belief, Sprint is inducing infringement of the 6,771,970 Patent.

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

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

38. Paragraphs 1 through 37 are incorporated by reference as if fully restated herein.

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

40. Defendants make, use, sell, offer to sell, practice, and/or provision in the United States, services, methods, or processes that include the direct carrier billing functionality for purchases made from the Google Play Store over the Sprint mobile network.

41. Google's use, practice, and/or provision of the Google Play Store on the Sprint mobile network infringes one or more claims of the 7,907,933 Patent.

42. Sprint's use, practice, and/or provision of the Google Play Store on its mobile network infringes one or more claims of the 7,907,933 Patent.

43. The Defendants have each 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.

44. The Sprint Letter informed Sprint that it may be inducing its vendors to infringe the 7,907,933 Patent. On information and belief, Google is one of Sprint's vendors for direct carrier billing on the Sprint mobile network.

45. On information and belief, at least as early as January 4, 2013, Sprint knew that its vendors, including at least Google, directly infringed the methods claimed in the 7,907,933 Patent, and, on information and belief, Sprint intended, and caused or encouraged its vendors to do the same.

46. On information and belief, Sprint is inducing infringement of the 7,907,933 Patent.

47. 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 to Google of its ongoing infringement of the 7,970,933 and 8,325,901 Patents.

48. On information and belief, Google and Sprint have each been independently willfully infringing the 7,907,933 Patent since at least as early as December 30, 2012, and January 4, 2013, respectively, and Google and Sprint each continue to willfully infringe.

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

**INFRINGEMENT OF UNITED STATES PATENT NO. 8,325,901**

50. Paragraphs 1 through 49 are incorporated by reference as if fully restated herein.

51. CallWave is the assignee and lawful owner of all right, title, and interest in and to the 8,325,901 Patent.

52. Google makes, uses, sells, offers to sell, practices and/or provides Google Voice in the United States.

53. Google's use, practice, and/or provision, of Google Voice infringes one or more claims of the 8,325,901 Patent.

54. Google has directly infringed the 8,325,901 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

55. On information and belief, Google has been willfully infringing the 8,325,901 Patent since at least as early as December 30, 2012, when, on information and belief, it received the Google Letter, and Google continues to willfully infringe.

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

**DIRECT INFRINGEMENT OF UNITED STATES PATENT NO. 7,822,188**

57. Paragraphs 1 through 56 are incorporated by reference as if fully restated herein.



58. Plaintiff CallWave is the assignee and lawful owner of all right, title and interest in and to the 7,822,188 Patent.

59. Sprint makes, uses, sells, offers to sell, practices, and/or provides in the United States, Sprint Complete Collaboration.

60. Sprint's use, practice and/or provision of Complete Collaboration infringes one or more of the claims of the 7,822,188 Patent.

61. Sprint has infringed one or more of the claims of the 7,822,188 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

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

**DIRECT INFRINGEMENT OF UNITED STATES PATENT NO. 7,636,428**

63. Paragraphs 1 through 62 are incorporated by reference as if fully restated herein.

64. Plaintiff CallWave is the assignee and lawful owner of all right, title and interest in and to the 7,636,428 Patent.

65. Sprint makes, uses, sells, offers to sell, practices and/or provides in the United States, Sprint Complete Collaboration.

66. Sprint's use, practice, and/or provision of Complete Collaboration infringes one or more of the claims of the 7,636,428 Patent.

67. Sprint has infringed one or more of the claims of the 7,636,428 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

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

**DIRECT INFRINGEMENT OF UNITED STATES PATENT NO. 8,064,588**

69. Paragraphs 1 through 68 are incorporated by reference as if fully restated herein.

70. Plaintiff CallWave is the assignee and lawful owner of all right, title, and interest in and to the 8,064,588 Patent.

71. Google makes, uses, sells, offers to sell, practices and/or provides Google Voice in the United States.

72. Google Voice infringes one or more of the claims of the 8,064,588 Patent. Google's use, practice, and/or provision, of Google Voice infringes one or more claims of the 8,064,588 Patent.

73. Google has directly infringed the 8,064,588 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

74. Sprint makes, uses, sells, offers to sell, practices and/or provides, Complete Collaboration in the United States.

75. Sprint Complete Collaboration infringes one or more of the claims of the 8,064,588 Patent. Sprint's use, practice, or provision, of Complete Collaboration infringes one or more claims of the 8,064,588 Patent.

76. Sprint has directly infringed the 8,064,588 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

77. 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:

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

79. 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;

80. 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;

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

82. 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;

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

#### **JURY DEMAND**

84. 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

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