

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

CALLWAVE COMMUNICATIONS, LLC,)	
)	
)	CIVIL ACTION NO. 1:12-cv-01701-RGA
)	
Plaintiff,)	SECOND AMENDED COMPLAINT FOR
)	PATENT INFRINGEMENT
)	
v.)	
)	
AT&T MOBILITY, LLC AND GOOGLE)	JURY TRIAL DEMANDED
INC.,)	
)	
)	
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, and Defendants’ unauthorized use of methods that infringe one or more claims of United States Patent Nos. 6,771,970; 7,907,933; 7,555,110; 7,822,188; and 7,397,910 (collectively the “Asserted Patents”) (attached as Exhibits A-E), 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, and Defendants’

infringing use of methods 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 AT&T mobile network, Google's Voice and Location Services including Maps and Latitude, Google mobile search, and AT&T's Family Map services (collectively, "Accused Products"). On information and belief, AT&T induces its vendors, including at least Google, to infringe one of 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, MA.

5. Plaintiff 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 Blvd., 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, and mobile app and content distribution and billing services.

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

9. 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.

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 Google is incorporated in Delaware and, on information and belief, Defendants 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.

17. United States Patent 7,397,910 is entitled “Method and Apparatus for Providing Expanded Telecommunications Service” and relates to, *inter alia*, systems and methods of allowing a user to screen phone calls.

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

19. United States Patent No. 7,555,110 is entitled “Methods and Apparatus for Providing Expanded Telecommunications Service” and relates to, *inter alia*, systems and methods for allowing a user to screen phone calls.

EXEMPLARY ACCUSED PRODUCTS

20. AT&T’s Family Map 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.

21. Google’s Location Services, including Maps and Latitude, allow users to find and track the location of themselves and others. The service uses GPS and other location data to determine the location of mobile phones, and displays those phones on a map.

22. AT&T offers direct carrier billing on its mobile network for purchases made by its users of applications and content on the Google Play Store.

23. 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 AT&T mobile network.

24. Google search product includes a mobile product that allows for users to conduct location-based searches. The location used is associated with the mobile device and can be generated from a plurality of location tracking systems.

25. 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 pick up the call.

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

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

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

28. Google had knowledge of the 6,771,970 Patent at least as early as July 14, 2008. Google cited the 6,771,970 Patent in its Information Disclosure Statements for the following patents: 8,171,424; 7,917,866; 7,831,917; and 7,797,642, relating generally to online personal location technology.

29. AT&T makes, uses, sells, offers to sell, practices and/or provides AT&T's Family Map in the United States.

30. Google makes, uses, sells, offers to sell, practices and/or provides Google's Location Services including Maps and Latitude, and the Google mobile search product, in the United States.

31. AT&T's Family Map, infringes one or more of the claims of the 6,771,970 Patent.

32. Google's Location Services including Maps and Latitude, and Google mobile search product each infringe one or more claims of the 6,771,970 Patent.

33. AT&T's use, practice, and/or provision, of Family Map infringes one or more claims of the 6,771,970 Patent.

34. Google's use, practice, or provision, of Maps, Latitude, and the Google mobile search product infringes one or more claims of the 6,771,970 Patent.

35. The Defendants have directly infringed the 6,771,970 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

36. On December 29, 2012, CallWave sent to AT&T, 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 of AT&T's infringement of the 6,771,970 and 7,907,933 Patents.

37. The AT&T Letter also informed AT&T that it may be inducing its vendors and business partners to infringe the 6,771,970 Patent. On information and belief, Family Map is provided to AT&T by at least one vendor under a commercial arrangement with AT&T to do so.

38. On information and belief, AT&T's vendor(s) makes, sells, offers for sale products that directly infringe the 6,771,970 Patent. On information and belief, AT&T's vendor(s) directly infringes methods claimed in the 6,771,970 Patent.

39. On information and belief, at least as early as December 29, 2012, AT&T knew that its vendor for Family Map infringed methods claimed in the 6,771,970 Patent, and/or made, sold, or offered for sale products that infringed the 6,771,970 Patent, and, on information and belief, AT&T intended, and caused or encouraged its vendor(s) to do the same.

40. On information and belief, AT&T is inducing infringement of the 6,771,970 Patent.

41. On December 30, 2012, CallWave sent to Google, 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 6,771,970; 7,397,910; 7555,110; and 7,907,933 Patents.

42. On information and belief, AT&T and Google have been willfully infringing the 6,771,970 Patent since at least as early as December 29 and 30, 2012 respectively, and AT&T and Google continue to willfully infringe.

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

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

44. Paragraphs 1 through 43 are incorporated by reference as if fully restated herein.

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

46. Defendants make, use, sell, offer to sell, practice, and/or provide, methods including the direct carrier billing functionality of the Google Play Store on the AT&T network, and similar products in the United States.

47. Google’s use, practice, and/or provision, of the Google Play Store on the AT&T mobile network infringes one or more of the claims of the 7,907,933 Patent.

48. AT&T’s use, practice, and/or provision of the Google Play Store on its mobile network infringes one or more of the claims of the 7,907,933 Patent.

49. The Defendants have directly infringed the 7,907,933 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

50. The AT&T Letter informed AT&T that it may be inducing AT&T's vendors to infringe the 7,907,933 Patent. On information and belief, Google is one of AT&T's vendors for direct carrier billing on the Google Play Store, and provides direct carrier billing to AT&T according to a commercial relationship with Google to do the same.

51. At least as early as December 29, 2012, AT&T knew that its vendors, including Google, infringed the methods claimed in the 7,907,933 Patent, and, on information and belief, AT&T intended, and caused or encouraged its vendors, including at least Google, to do the same.

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

53. On information and belief, AT&T and Google have been willfully infringing the 7,907,933 Patent since at least as early as December 29 and 30, 2012, respectively, and AT&T and Google continue to willfully infringe.

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

DIRECT INFRINGEMENT OF UNITED STATES PATENT NO. 7,397,910

55. Paragraphs 1 through 54 are incorporated by reference as if fully restated herein.

56. Plaintiff CallWave is the assignee and lawful owner of all right, title and interest in and to the 7,397,910 Patent.

57. Google makes, uses, sells, offers to sell, practices, and/or provides, Google Voice as a service for its customers.

58. Google's use, practice, and/or provision, of Google Voice infringes one or more of the claims of the 7,397,910 Patent.

59. Google has directly infringed one or more of the claims of the 7,397,910 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

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

61. On information and belief, Google has been willfully infringing since at least as early as December 30, 2012, and Google continues to willfully infringe.

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

62. Paragraphs 1 through 61 are incorporated by reference as if fully restated herein.

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

64. Google make, uses, sells, offers to sell, practices, and/or provides, Google Voice as a service for its customers in the United States.

65. Google's use, practice, or provision, of Google Voice infringes one or more of the claims of the 7,822,188 Patent.

66. Google has directly infringed the 7,822,188 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

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

DIRECT INFRINGEMENT OF UNITED STATES PATENT NO. 7,555,110

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

69. Plaintiff CallWave is the assignee and lawful owner of all right, title and interest in and to the 7,555,110 Patent.

70. Google makes, uses, sells, offers to sell, practices, and/or provides Google Voice.

71. Google's use, practice, and/or provision of methods in Google Voice infringes one or more of the claims of the 7,555,110 Patent.

72. Google has been aware of the 7,555,110 Patent since at least as early as March 29, 2012, when Google cited the 7,555,110 patent in an Information Disclosure Statement during prosecution of its patent application, the now-issued US Patent No. 8,250,632.

73. Google has directly infringed the 7,555,110 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

74. On information and belief, Google has been willfully infringing the 7,555,110 Patent since at least as early as March 29, 2012, and Google continues to willfully infringe.

75. 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:

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

77. 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;

78. 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;

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

80. 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;

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

JURY DEMAND

82. 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

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