

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

VISUAL INTERACTIVE PHONE CON-
CEPTS, INC., a Nevada Corporation

Plaintiff,

Case No. 2:11-cv-12945

vs.

Hon. Lawrence P. Zatkoff
Mag. Judge Laurie Michelson

SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC, a Delaware
limited liability company; SAMSUNG IN-
FORMATION SYSTEMS AMERICA, INC.,
a California corporation; SAMSUNG
ELECTRONICS AMERICA, INC., a New
York corporation; and, SAMSUNG SDS
AMERICA, INC., a California corporation,

Defendants.

**PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT;
AND JURY DEMAND**

Plaintiff VISUAL INTERACTIVE PHONE CONCEPTS, INC. ("VIPC"), for its First Amended Complaint against Defendants SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, SAMSUNG INFORMATION SYSTEMS AMERICA, INC., SAMSUNG ELECTRONICS AMERICA, INC., and SAMSUNG SDS AMERICA, INC. (collectively "Samsung"), hereby alleges as follows:

THE PARTIES

1. Plaintiff VIPC is a corporation organized and existing under the laws of the State of Nevada, with a principal place of business at 1 President Street, Staten Island, New York, 10314.

2. VIPC is informed and believes, and thereon alleges, that Defendant Samsung Telecommunications America, LLC (“STA”) is a Delaware limited liability company with a principal place of business at 1301 E. Lookout Drive, Richardson, Texas 75082.

3. VIPC is informed and believes, and thereon alleges, that Defendant Samsung Information Systems America, Inc. (“SISA”) is a California corporation with a principal place of business at 75 W. Plumeria Drive, San Jose, California 95134.

4. VIPC is informed and believes, and thereon alleges, that Defendant Samsung Electronics America, Inc. (“SEA”) is a New York corporation with a principal place of business at 85 Challenger Road, Ridgewood Park, New Jersey 07660.

5. VIPC is informed and believes, and thereon alleges, that Defendant Samsung SDS America, Inc. (“SDS”) is a California corporation with a principal place of business at 250 Moonachie Road 4th Floor, Moonachie, New Jersey 07074.

6. The Samsung Defendants, individually and collectively, provide products and services to customers including, *inter alia*, various mobile communication devices and/or smartphones; software applications intended for use on such mobile communication devices and/or smartphones; and consumer content, such as films and television episodes to be viewed on mobile communication devices and/or smartphones. For example:

A. Defendant STA “researches, develops and markets a variety of personal and business communications products throughout North America, including handheld wireless phones, wireless communications infrastructure systems, fiber optics and enterprise communication systems.” www.samsung.com/us/aboutsamsung/ourbusiness/businessarea/usdivisions.html. Upon information and belief, STA develops, markets and sells the hand held devices described below. STA is a wholly owned subsidiary of Defendant SEA.

B. Defendant SISA is charged with “researching ‘frontier’ technologies for creating new businesses, as well as developing core technologies to enhance the competitiveness of existing products of Samsung.” *Id.* On information and belief, SISA developed Samsung Media Hub and other Samsung services described below. SISA operations are overseen by Defendant SEA.

C. Defendant SEA is a wholly-owned subsidiary of Samsung Electronics Co. Ltd. (“SEC”). Non-Party SEC is a Korean corporation that is believed to be the largest company in South Korea and one of the world’s largest electronics companies. On information and belief, Defendant SEA is charged with expanding Samsung’s market in the United States and SEA manages multiple Samsung divisions in the United States, including Defendants STA and SISA.

D. Defendant SDS is an affiliate of the other Samsung Defendants. On information and belief, SDS provides IT services and, among other things, manages the New Jersey data center that includes the sales activity database for Samsung.

7. Samsung makes, uses, and sells or offers to sell, without license, certain technological products, processes and systems protected by patents owned by VIPC.

8. VIPC is informed and believes and thereon alleges that Samsung has committed acts alleged herein within this Judicial District.

JURISDICTION

9. This is an action seeking relief with respect to infringement of a United States Patent under 35 U.S.C. §§ 271 and 281.

10. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Laws of the United States, Title 35 of the United States Code.

11. This Court has personal jurisdiction over Samsung because it has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271, employs infringing methods and/or processes, and places infringing products, systems and/or services into the stream of commerce with the knowledge or understanding that such products, processes and/or services are sold and/or employed in the State of Michigan, including in this District. The infringing acts of Samsung cause injury to VIPC within this District. Upon information and belief, Samsung derives substantial revenue from the sale and/or employment of infringing products, processes and/or services within this District, expects its actions to have consequences within this District, and derives substantial revenue from e-commerce related to this District.

12. Venue is proper in the Judicial District under 28 U.S.C. §§ 1391 and 1400.

FACTUAL BACKGROUND

A. The Patents at Issue

13. On February 25, 1997, United States Patent No. 5,606,361 (“the ‘361 Patent”), titled “Videophone interactive mailbox facility system and method of processing information,” issued and was subsequently assigned to Plaintiff. At all relevant times, Plaintiff has been and remains the owner of all right, title, and interest in and to the ‘361 Patent. A copy of the ‘361 Patent is attached to the Complaint as Exhibit A.

14. On March 3, 1998, United States Patent No. 5,724,092 (“the ‘092 Patent”), titled “Videophone interactive mailbox facility system and method of processing information” issued and was subsequently assigned to Plaintiff. At all relevant times, Plaintiff has been and remains the owner of all right, title, and interest in and to the ‘092 Patent. A copy of the ‘092 Patent is attached to the Complaint as Exhibit B.

B. Development of the Patents

15. In 1995, the world of electronic commerce was very different than it is today. Interactive network systems existed wherein a subscriber could buy products and/or services with the aid of a telephone or cable television system, but such interactive network systems were mainly limited to the subscriber's one-way input of data. The existing systems did not provide for the immediate confirmation of an order, could not readily deliver video content to a non-television device, were not portable and lightweight, and did not provide proper security for the transactions. (Ex A, '361 Patent, p. 9 "Background of the Invention").

16. John Davidsohn ("Davidsohn"), a systems developer who has designed and implemented improved trading and other computerized systems for large brokerage and financial services firms, invented the system contained in the subject patents that allows the user to view products and services including video on a communications device or "videophone" intended to be less expensive than a personal computer and also more portable and user friendly than a personal computer.

17. A "videophone" as described in the Patents includes "any device having the capabilities to receive video/voice and/or video/text as its primary function and which, in the future, may have additional capabilities added to it that will enable it to perform functions that a PC computer system performs today. Further, a videophone is defined to include cellular videophones or wireless videophones or all videophones integrated with additional PC technologies and similar capabilities (disk storage, CDs, diskettes, and memory in the megabyte range and up and/or keyboards)." (Ex B, '092 Patent, pp 14-15).

18. "Videophone" encompasses basic mobile handsets that allow the user to purchase products such as basic videogames, as well as today's so-called smart phones.

19. Davidsohn's system and method (the "interactive mailbox facility system and method of processing information" or "invention") includes the use of a central data center for functions such as receiving transaction-related information from purchasers, processing and dispensing information to and from purchasers and sellers, and allowed for the use of improved security safeguards for network transactions.

20. Davidsohn and Anthony Cinotti ("Cinotti") filed a patent application on the invention on May 10, 1995, application number 438,892 ("the initial application"). On February 25, 1997, the United States Patent and Trademark Office duly and legally issued the '361 Patent, as described above, naming Davidsohn and Cinotti as co-inventors.

21. On September 12, 1996, Davidsohn and Cinotti filed a continuation of the initial application, application number 713,007 ("the second application"). On March 3, 1998, the United States Patent and Trademark Office duly and legally issued the '092 Patent, naming Davidsohn and Cinotti as co-inventors.

22. Davidsohn and Cinotti assigned both the '361 Patent and the '092 Patent to VIPC.

C. The 2008 Reexamination Requests

23. During June and July 2008, anonymous reexamination requests were filed on both of VIPC's patents ("the First Reexam").

24. Following the United States Patent and Trademark Office's reexamination, the patents were reaffirmed as valid, with only minor amendments to the claims.

25. On April 6, 2010, a reexamination certificate issued for the '361 Patent.

26. On May 11, 2010, a reexamination certificate issued for the '092 Patent.

27. VIPC is the sole owner of the patents and holds all rights, title and interest in the patents, including the right to bring legal action against patent infringers.

D. The 2011 Reexamination Requests

28. In December, 2011, Samsung caused Ex-Parte Reexamination Requests to be filed with the U.S. Patent and Trademark Office (“the Second Reexam”).

29. During the Second Reexam, VIPC proposed minor amendments to the claims.

30. During January and February, 2013, the USPTO issued notices of intent to issue reexamination certificates allowing the patents-in-suit to go forward with the minor amendments proposed by VIPC.

31. On March 12, 2013, a reexamination certificate issued for the ‘092 Patent. See exhibit

B.

32. On March 14, 2013, a reexamination certificate issued for the ‘361 Patent. See exhibit

A.

33. VIPC is the sole owner of the patents and holds all rights, title and interest in the patents, including the right to bring legal action against patent infringers.

CLAIMS FOR RELIEF

I. DIRECT INFRINGEMENT

34. Plaintiff realleges all preceding paragraphs herein.

35. VIPC is informed and believes, and thereon alleges, that several of Samsung’s products, including its Galaxy lines of videophones, including but not limited to Galaxy S, Galaxy Note, and Galaxy Nexus lines of videophones and including but not limited to phones such as the Epic 4G and the Infuse 4G; combined with Samsung services and services made available for use on Samsung mobile devices such as the Media Hub film and television content mobile video delivery service, Samsung Hub services, Samsung Apps store, and the Google Play Store; are covered by, and therefore infringe, one or more of the claims of the patents-in-suit. By way of example and not limitation:

A. Samsung produces and sells mobile communications devices (including those described above), many of which feature, *inter alia*, a video screen, a touch screen or pad for inputting information, encryption and decryption hardware/software, a memory chip, a SIM card, other chips or integrated circuits that enable the devices to interface with other systems and/or devices through mobile networks, and the ability to receive video/voice or video/text for viewing by the device's operator.

B. Samsung provides a service called "Media Hub" in the United States that acts as a mailbox facility system for downloading movies, television shows, games and other entertainment on Samsung videophones. This system includes a central data center that facilitates the order and delivery of television episodes and movies, and is accessed through a mobile application that is pre-loaded on many of the videophone handsets that Samsung produces. In order to use the service, handset owners employ a password-protected personal identification login. Credit cards are the primary payment mechanism for purchases.

C. Samsung provides a service called "Samsung Hub" in the United States that combines several services such as Samsung Video Hub, Samsung Music Hub, Samsung Learning Hub, and Samsung Books Hub, and acts as a mailbox facility system for users to view and purchase content, including video content, on their videophones. The Samsung Hub transactions are facilitated through a central data center. All services require the videophone operator to register a Samsung account and password-protected personal identification login. Credit cards are the primary payment mechanism for purchases.

D. Samsung provides a Samsung Apps store in the United States that acts as a mailbox facility system for videophone operators to view and purchase video games and other content, including video applications such as MX Player, DM Videos, and Local TV. The Samsung Apps transactions are facilitated through a central data center.

E. Samsung phones are sold with a pre-installed Play Store where applications, digital books, digital music files and videos are available to be purchased and/or downloaded onto mobile communication devices and/or smartphones, including but not limited to Google Play Movies & TV. Play Store transactions are facilitated through a central data center.

36. VIPC is informed and believes, and thereon alleges, that Samsung, through its agents, employees and servants, has knowingly, intentionally and willfully infringed the patents-in-suit by making, using, offering for sale, selling and/or importing products and/or services, within this Judicial District and elsewhere, covered by one or more claims of the '361 Patent and the '092 Patent.

37. Samsung committed these acts of infringement without license or other authorization from VIPC.

38. Upon information and belief, Samsung's infringement of the '361 Patent and the '092 Patent will continue unless enjoined by this Court.

39. As a direct and proximate result of Samsung's infringement of the '361 Patent and the '092 Patent, Plaintiff has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Plaintiff VIPC is entitled to relief.

WHEREFORE, VIPC requests damages arising from Samsung's direct infringement of the '361 and '092 Patents, along with all the relief set forth below in its Request for Relief.

II. INDUCEMENT OF INFRINGEMENT

40. Plaintiff realleges all preceding paragraphs herein.

41. VIPC is informed and believes, and thereon alleges, that at all times during which Samsung developed, marketed, made, used, sold, offered for sale, and/or imported the products and services set forth in paragraphs 6 and 35 above, Samsung knew of, or was willfully blind to the existence of, the '361 and '092 Patents.

42. At the very least, Samsung knew of the '361 and '092 Patents since July, 2011.

43. VIPC is informed and believes, and thereon alleges, that at all times during which Samsung developed, marketed, made, used, sold, offered for sale, and/or imported the products and services set forth in paragraphs 6 and 35 above, Samsung knew its marketing, promotion, sale and offers to sell the products and services set forth herein would induce direct infringement of the '361 and '092 Patents by, among others, operators of Samsung mobile devices, Samsung vendors, and Samsung business partners in the development of Samsung devices and systems for Samsung devices, such as Google.

44. VIPC is informed and believes, and thereon alleges, that Samsung intended its marketing, promotion, sale and offers to sell the products and services set forth in paragraphs 6 and 35 above to induce infringement of the '361 and '092 Patents.

45. For example, Samsung's website includes videos and written descriptions relating to the products and services described in paragraph 35 above, so that Samsung's customers can use the services in a manner that infringes the '361 and '092 Patents. See, e.g., <http://www.samsung.com/us/mediahub/>.

46. VIPC is informed and believes, and thereon alleges, that due to Samsung's inducement, Samsung's vendors, customers, business partners and others have directly infringed the '361 and '092 Patents by making, using, offering for sale, selling and/or importing products and/or services covered by one or more claims of the '361 Patent and the '092 Patent.

47. Samsung has obtained substantial revenue from its inducement of infringement of the '361 Patent and the '092 Patent.

48. Upon information and belief, Samsung will continue to induce infringement of the '361 and '092 Patent unless enjoined by this Court.

49. As a direct and proximate result of Samsung's inducement of infringement of the '361 Patent and the '092 Patent, Plaintiff has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Plaintiff VIPC is entitled to relief.

WHEREFORE, VIPC requests damages arising from Samsung's inducement of infringement of the '361 and '092 Patents, along with all the relief set forth below in its Request for Relief.

REQUEST FOR RELIEF

WHEREFORE, VIPC prays for relief as follows:

A. That Samsung be adjudged to have infringed United States Patent No. 5,724,092 and Patent No. 5,606,361;

B. That Samsung be adjudged to have induced infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361;

C. That Samsung, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be permanently enjoined and restrained from infringing the United States Patent No. 5,724,092 and Patent No. 5,606,361;

D. That Samsung account for damages caused by the infringement of the United States Patent No. 5,724,092 and Patent No. 5,606,361;

E. That a judgment be entered against Samsung awarding VIPC all damages necessary to compensate VIPC pursuant to 35 U.S.C. § 284, and in no event less than a reasonable royalty, for infringement of the United States Patent No. 5,724,092 and Patent No. 5,606,361.

F. That the damages in this judgment be trebled pursuant to 35 U.S.C. § 284 for Samsung's knowing, intentional and willful infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361.

G. That VIPC be awarded all pre-judgment and post-judgment interest and costs in accordance with 35 U.S.C. § 284.

H. That this case be judged an "exceptional" case within the meaning of 35 U.S.C. § 285 and VIPC awarded its reasonable attorneys' fees.

I. That VIPC receives such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

DEMAND FOR JURY

Plaintiff respectfully demands a trial by jury on all claims and issues so triable.

Respectfully Submitted,

MANTESE HONIGMAN ROSSMAN
and WILLIAMSON, P.C.
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Dated: June 4, 2013

CERTIFICATE OF SERVICE

I, Sherri Sikorski, hereby certify that on June 4, 2013, I electronically filed Plaintiff's First Amended Complaint for Patent Infringement; and Jury Demand with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

s/Sherri Sikorski

Sherri Sikorski