

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

Civil Action No. 1:13-cv-00174-RBJ

CELLPORT SYSTEMS, INC.,

Plaintiff,

v.

KYOCERA CORPORATION,
KYOCERA COMMUNICATIONS, INC., and
KYOCERA WIRELESS CORP.,

Defendants.

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT AND JURY DEMAND**

Plaintiff Cellport Systems, Inc., by counsel Ridley, McGreevy & Winocur P.C. and Clearman | Prebeg LLP, for its Second Amended Complaint against Defendant Kyocera Communications, Inc. alleges as follows:

THE PARTIES

1. Plaintiff Cellport Systems, Inc. (hereinafter “Cellport”) is a Colorado Corporation with its corporate headquarters and principal place of business at 885 Arapahoe Avenue, Boulder, Colorado 80302.

2. Kyocera Communications, Inc. is a wholly-owned subsidiary of Kyocera International, Inc. and is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 9520 Towne Centre Drive, San Diego, California 92121. Kyocera Communications, Inc. has been served and has appeared and

answered. Kyocera Communications, Inc. will be served with this Second Amended Complaint by service on its counsel of record by ECF.

3. Throughout this pleading, and unless specifically noted otherwise, Defendant Kyocera Communications, Inc. will be referenced as the “Defendant.” The term “Defendant” also includes the Defendant’s employees, agents, and all other persons or entities that the Defendant directs and/or controls.

THE PATENT

U.S. Patent No. 6,122,514

4. On September 19, 2000, United States Patent No. 6,122,514, entitled “Communications Channel Selection” (the “‘514 patent”) was duly and legally issued by the United States Patent and Trademark Office (“PTO”). A true and correct copy of the ‘514 patent is attached as Exhibit A.

5. Pursuant to 35 U.S.C. § 282, the ‘514 patent is presumed valid.

6. Cellport has, at all times relevant to this litigation, marked Cellport’s own products, if any, in accordance with 35 U.S.C. § 287 and is thus entitled to past damages.

7. Cellport is sole holder of the entire right, title, and interest in the ‘514 patent, including the right to recover damages for past, present, and future infringement.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271 and 281. This Court has jurisdiction over the claim for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

9. Personal jurisdiction exists generally over each of the Defendant because the Defendant has sufficient minimum contacts with the forum as a result of business conducted

within the State of Colorado and within the District of Colorado. Personal jurisdiction also exists specifically over the Defendant because the Defendant, directly or through subsidiaries or intermediaries, imports, makes, uses, offers for sale, or sells products or services within the State of Colorado and within the District of Colorado, that infringe the patent-in-suit.

10. On information and belief, the Defendant derives substantial revenue from the sale of the Accused Products referred to in paragraph 16 of the Second Amended Complaint to companies organized and existing under the laws of the State of Colorado, and/or the Defendant derives substantial revenue from products sold or distributed within this District.

11. On information and belief, the Defendant derives substantial revenue from interstate and international commerce.

12. On information and belief, the Defendant expects or should reasonably expect its actions to have consequences within this District.

13. The above acts cause injury to Cellport within this District.

14. Venue is proper in this Court under Title 28 United States Code §§ 1391(b)–(c) and 1400(b).

COUNT I: FIRST CLAIM FOR RELIEF
(INFRINGEMENT OF U.S. PATENT NO. 6,122,514)

15. Plaintiff incorporates its previous allegations by the reference.

Accused Products

16. The Defendant has been and/or is now making, using, selling, offering for sale within the United States, or importing into the United States, at least the following cell phone products: Kyocera Rise (at least model no. C5155) and other cell phones that perform network channel selection for communicating information according to the claims of the '514 patent (e.g., phones that automatically switch between WiFi and cellular data network interfaces for

transmitting data) (hereinafter the “Accused Products”). An additional, non-exhaustive, non-exclusive, list of Accused Products is contained in Exhibit B.

Direct Infringement

17. By so making, using, selling, or offering to sell within the United States, or importing into the United States at least the aforementioned Accused Products, the Defendant has directly infringed and continue to infringe at least claims 17, 18, 19, 20, 24, 25, 27, and 29 of the ‘514 patent, either literally or by equivalents.

Inducement of Infringement

18. The ‘514 patent was cited during the prosecution of U.S. Patent No. 8,218,506 and appears on the face of U.S. Patent No. 8,218,506.

19. Kyocera Corporation was the original assignees of U.S. Patent No. 8,218,506.

20. U.S. Patent No. 8,218,506 issued on July 10, 2012.

21. Kyocera Corporation was aware of an Information Disclosure Statement filed with the PTO on November 1, 2007 in regards to what became U.S. Patent No. 8,218,506.

22. Said Information Disclosure Statement referenced the ‘514 patent.

23. Kyocera Corporation has had actual knowledge of the ‘514 patent since at least as early as November 1, 2007, and no later than July 10, 2012.

24. The Defendant has had actual knowledge of the ‘514 patent at least as early as February 20, 2013, the date the Defendant was served with the Original Complaint.

25. The Defendant knew of, should have known of, or was willfully blind towards the ‘514 patent by virtue of the ‘514 patent being well known in the industry, having been cited by at least 124 issued U.S. patents since 2000, including Defendant’s parent company.

26. The Defendant knew of, should have known of, or was willfully blind towards the '514 patent by virtue of the '514 patent being well known to the Defendant's competitors (and to major vendors of software and parts in the cell phone arena), including at least Motorola, Samsung, Nokia, Ericsson, Qualcomm, Research in Motion, Broadcom, Alcatel, Microsoft, and so forth.

27. Since becoming aware of the '514 patent, the Defendant has continued to intentionally, actively, and knowingly provide one or more user manuals for one or more of the Accused Products and/or advertise about one or more of the Accused Products through its websites, including but not limited to Kyocera-Wireless.com, as well as in other ways.

28. Since the Defendant became aware, was willfully blind, knew, or should have known of the '514 patent, the Defendant's said user manuals and/or advertising have intentionally, actively, and knowingly contained and continue to contain instructions, directions, suggestions, and/or invitations that intentionally, actively, and knowingly invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public and Kyocera-Wireless.com website users to, at least, transmit videos, pictures, emails, third party applications, and/or other information with the Accused Products.

29. Since the Defendant became aware, was willfully blind, knew, or should have known of the '514 patent, the Defendant was willfully blind, knew, or should have known that the users' and/or customers' acts relative to transmitting videos, pictures, emails, third party applications, and/or other information with the Accused Products would be performed with the data connection and/or file transmission management features related to network channel selection that are present in the Accused Products.

30. Said acts of transmitting videos, pictures, emails, third party applications, and/or other information with the Accused Products by using the data connection and/or file transmission management features related to network channel selection present in the Accused Products, directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the '514 patent.

31. Since the Defendant became aware, was willfully blind, knew, or should have known of the '514 patent, the Defendant was willfully blind, knew, or should have known that the users' and/or customers' acts relative to transmitting videos, pictures, emails, third party applications, and/or other information with the Accused Products by using the data connection and/or file transmission management features related to network channel selection present in the Accused Products, directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the '514 patent.

32. For these reasons, the Defendant is liable for inducing infringement of the '514 patent.

Contributory Infringement

33. At least for the reasons stated above, the Defendant has actual knowledge, was willfully blind, knew, or should have known of the '514 patent.

34. Since the Defendant became aware, was willfully blind, knew, or should have known of the '514 patent, the Defendant has intentionally, actively, and knowingly offered to sell or sold the Accused Products within the United States or imported the Accused Products into the United States.

35. One or more of said Accused Products contain a version of the Android Operating System approximately equal to or greater than version 4.0.1_r1 (Ice Cream Sandwich). Such

versions of the Android Operating System (and/or prior, subsequent, modified, or related Android versions) contain Data Connection and/or File Transmission Management (hereinafter “Android DC/FTM”) features related to network channel selection in a mobile unit such as a smart phone or tablet.

36. Android DC/FTM is a material or apparatus used in practicing a patented process, including at least claims 1, 2, 15, and 16 of the ‘514 patent, either literally or through the doctrine of equivalents because the Android DC/FTM’s users perform acts with the Android DC/FTM relative to transmitting videos, pictures, emails, third party applications, and/or other information; and said acts of transmitting videos, pictures, emails, third party applications, and/or other information with the Android DC/FTM in the Accused Products directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the ‘514 patent.

37. The Android DC/FTM is a material part of the claimed processes because the Android DC/FTM is the data connection and/or file transmission management features of a mobile device, such as the Accused Products, necessary to perform multiple steps of the claimed processes in a mobile unit and thus directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the ‘514 patent.

38. Since the Defendant became aware, was willfully blind, knew, or should have known of the ‘514 patent, the Defendant was willfully blind, knew, or should have known that the Android DC/FTM were especially made or especially adapted for use in an infringement of at least claims 1, 2, 15, and 16 of the ‘514 patent for at least the reasons stated *infra* and *supra*.

39. The Android DC/FTM is not a staple article or commodity of commerce suitable for substantial noninfringing use because Android DC/FTM is software created for the purpose of being installed in mobile units (such as smart phones and tablets) with multiple network

interfaces (e.g., Wifi and cellular network data interfaces) and has no substantial use when installed in such mobile units except to perform the claimed process related to network channel selection in a mobile unit, such as the Accused Products, which infringes at least claims 1, 2, 15, and 16 of the '514 patent, either literally or through the doctrine of equivalents.

40. Since the Defendant became aware, was willfully blind, knew, or should have known of the '514 patent, the Defendant was willfully blind, knew, or should have known that the Android DC/FTM's users' and/or customers' acts relative to transmitting videos, pictures, emails, third party applications, and/or other information with Android DC/FTM in the Accused Products directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the '514 patent.

41. For these reasons, the Defendant is a contributory infringer of at least claims 1, 2, 15, and 16 of the '514 patent, either literally or through the doctrine of equivalents.

Damages

42. The Defendant's acts of infringement of the '514 patent as alleged above have injured Cellport and thus Cellport is entitled to recover damages adequate to compensate it for that infringement, which in no event can be less than a reasonable royalty.

DEMAND FOR JURY TRIAL

Cellport hereby demands a jury trial on all claims and issues triable of right by a jury, including Defendant's affirmative defenses and counterclaims, if any.

PRAYER FOR RELIEF

WHEREFORE, Cellport prays for entry of judgment in its favor and against Defendant Kyocera Communications, Inc. declaring:

A. That the Defendant has infringed one or more claims of the '514 patent.

- B. That the Defendant account for and pay to Cellport all damages caused by the infringement of the '514 patent, which by statute can be no less than a reasonable royalty;
- C. That Cellport be granted pre-judgment and post-judgment interest on the damages caused to it by reason of the Defendant's infringement of the '514 patent;
- D. That the case be declared exceptional pursuant to 35 U.S.C. § 285, in favor of Cellport, and that Cellport be granted its attorneys' fees in this action;
- E. That costs be awarded to Cellport;
- F. That Cellport be granted such other and further relief that is just and proper under the circumstances.

Date: July 10, 2013

Respectfully submitted,

/s/ Matthew S. Compton, Jr.

Matthew J.M. Prebeg

Matthew S. Compton, Jr.

Clearman | Prebeg LLP

815 Walker, Suite 1040

Houston, TX 77002

Telephone: 713-223-7070

Facsimile: 713-223-7071

Email: mprebeg@clearmanprebeg.com

Email: mcompton@clearmanprebeg.com

David M. Tenner

Ridley, McGreevy & Winocur, P.C.

303 16th Street, Suite 200

Denver, Colorado 80202

Telephone: 303-629-9700

Facsimile: 303-629-9702

Email: tenner@ridleylaw.com

ATTORNEYS FOR CELLPORT SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically and was served on all counsel who are deemed to have consented to electronic service. Pursuant to Fed. R. Civ. P. 5(d), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by mail on this the 10th day of July, 2013.

/s/ Matthew S. Compton, Jr.
Matthew S. Compton, Jr.