

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

Civil Action No. 1:13-cv-00173

CELLPORT SYSTEMS, INC.,

Plaintiff,

v.

HTC CORPORATION,
HTC AMERICA HOLDING INC., and
HTC AMERICA, INC.,

Defendants.

**FIRST 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 First Amended Complaint against Defendants HTC Corporation, HTC America Holding Inc., and HTC America, 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. Upon information and belief, HTC Corporation is a corporation organized and existing under the laws of the Republic of China, with its principal place of business at 23 Xinghua Road, Taoyuan 330, Taiwan, Republic of China.

3. Upon information and belief, HTC America Holding Inc. is a wholly-owned subsidiary of Defendant HTC Corporation, and is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at 13929 South East Eastgate Way, Suite 400, Bellevue, Washington 98005.

4. Upon information and belief, HTC America, Inc. is a wholly-owned subsidiary of Defendant HTC America Holding Inc., and is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at 13920 South East Eastgate Way, Suite 400, Bellevue, Washington 98005.

5. Throughout this pleading, and unless specifically noted otherwise, Defendants HTC Corporation, HTC America Holding Inc., and HTC America, Inc. will be referenced collectively as the “Defendants.” The term “Defendants” also includes the Defendants’ employees, agents, and all other persons or entities that the Defendants direct and/or control.

THE PATENT

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

6. 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. A true and correct copy of the ‘514 patent is attached as Exhibit A.

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

8. 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.

9. 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

10. 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).

11. Personal jurisdiction exists generally over each of the Defendants because each 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 each of the Defendants because each Defendant, directly or through subsidiaries or intermediaries, 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.

12. On information and belief, Defendants derive substantial revenue from the sale of the Accused Products referred to in paragraph 17 of the First Amended Complaint to companies organized and existing under the laws of the State of Colorado, and/or the Defendants derive substantial revenue from products sold or distributed within this District.

13. On information and belief, the Defendants derive substantial revenue from interstate and international commerce.

14. On information and belief, the Defendants expect or should reasonably expect their actions to have consequences within this District.

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

16. 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)

17. Plaintiff incorporates its previous allegations by the reference.

Accused Products

18. The Defendants have been and/or are now making, using, selling, offering for sale within the United States, or importing into the United States, at least the following cell phone products: HTC Evo Design 4G (at least model PH44100), HTC Titan, 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

19. 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 Defendants have 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

20. The Defendants have had knowledge of the ‘514 patent at least since the serving of the Original Complaint in this case on or around February 12 or February 20, 2013.

21. The Defendants knew of, should have known of, or were 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.

22. The Defendants knew of, should have known of, or were willfully blind towards the ‘514 patent by virtue of the ‘514 patent being well known to the Defendants 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, Kyocera, Alcatel, Microsoft, and so forth.

23. Since becoming aware of the '514 patent, the Defendants have 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 their websites, including but not limited to HTC.com, as well as in other ways.

24. Since the Defendants became aware, were willfully blind, knew, or should have known of the '514 patent, the Defendants' 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 HTC.com website users to, at least, transmit videos, pictures, emails, third party applications, and/or other information with the Accused Products.

25. Since the Defendants became aware, were willfully blind, knew, or should have known of the '514 patent, the Defendants were 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.

26. 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.

27. Since the Defendants became aware, were willfully blind, knew, or should have known of the '514 patent, the Defendants were 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.

28. For these reasons, Defendants are liable for inducing infringement of the '514 patent.

Contributory Infringement

29. At least for the reasons stated above, the Defendants have actual knowledge, were willfully blind, knew, or should have known of the '514 patent.

30. Since the Defendants became aware, were willfully blind, knew, or should have known of the '514 patent, the Defendants have 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.

31. One or more of said Accused Products contain either a version of the Android Operating System approximately equal to or greater than version 2.3_r1 (Gingerbread) or a version of the Windows Phone operating system equal to or greater than version 7.5 (Mango). Such versions of the Android Operating System and Windows Phone operating system (and/or prior, subsequent, modified, or related Android/Windows versions) contain Data Connection

and/or File Transmission Management (hereinafter “Android-Windows DC/FTM”) features related to network channel selection in a mobile unit such as a smart phone or tablet.

32. Android-Windows 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-Windows DC/FTM’s users perform acts with the Android-Windows 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-Windows 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.

33. The Android-Windows DC/FTM is a material part of the claimed processes because the Android-Windows 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.

34. Since the Defendants became aware, were willfully blind, knew, or should have known of the ‘514 patent, the Defendants were willfully blind, knew, or should have known that the Android-Windows 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*.

35. The Android-Windows DC/FTM is not a staple article or commodity of commerce suitable for substantial noninfringing use because Android-Windows 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.

36. Since the Defendants became aware, were willfully blind, knew, or should have known of the '514 patent, the Defendants were willfully blind, knew, or should have known that the Android-Windows DC/FTM's users' and/or customers' acts relative to transmitting videos, pictures, emails, third party applications, and/or other information with Android-Windows 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. For these reasons, the Defendants are contributory infringers of at least claims 1, 2, 15, and 16 of the '514 patent, either literally or through the doctrine of equivalents.

Damages

38. The Defendants' 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 Defendants' affirmative defenses and counterclaims, if any.

PRAYER FOR RELIEF

WHEREFORE, Cellport prays for entry of judgment in its favor and against Defendants HTC Corporation, HTC America Holding Inc., and HTC America, Inc. declaring:

- A. That the Defendants have infringed one or more claims of the '514 patent.
- B. That the Defendants 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 Defendants' 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.

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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.