

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

IPVX PATENT HOLDINGS, INC.,
a Delaware corporation,

Plaintiff,

vs.

IXC, INC., a Delaware corporation,

Defendant.

CASE NO. 6:11-cv-00594-LED

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

On November 1, 2011 then plaintiff Klausner Technologies, Inc. (“Klausner”) brought the initial Complaint for Patent Infringement in this action against Defendant IXC, Inc. (“Defendant”) alleging that Defendant had infringed United States Patent No. 5,572,576 entitled “Telephone Answering Device Linking Displayed Data with Recorded Audio Message” (the “’576 Patent”). On May 17, 2012, Klausner assigned to IPVX Patent Holdings, Inc. (“IPVX”) all right, title and interest in, inter alia, the patent-in-suit, i.e., the ’576 Patent, including the right to enforce the ’576 Patent and to recover for past infringement as to the Defendant in this lawsuit. On June 6, 2012, the Court ordered that Plaintiff IPVX be substituted for Klausner Technologies as plaintiff in this action.

By this Second Amended Complaint, Plaintiff IPVX sues Defendant and on information and belief, alleges as follows:

Introduction

1. Plaintiff IPVX owns the inventions described and claimed in the ’576 Patent and Defendant (a) has used Plaintiff’s patented technology in products that it made,

used, sold, and offered to sell, without Plaintiff's authorization, and (b) has contributed to or induced others to infringe the '576 Patent. Plaintiff IPVX seeks damages for patent infringement.

Jurisdiction and Venue

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, et seq. The Court has original jurisdiction over this patent infringement action under 28 U.S.C. §§ 1338(a).

3. Venue is proper in this Court because the Defendant is responsible for acts of infringement occurring in the Eastern District of Texas as alleged in this Complaint, and has delivered or caused to be delivered its infringing products in the Eastern District of Texas.

Plaintiff IPVX Technologies

4. Plaintiff IPVX is a corporation existing under and by virtue of the laws of the State of Delaware.

The '576 Patent

5. The United States Patent and Trademark Office issued the '576 Patent on November 5, 1996. A copy of the '576 Patent is attached as Exhibit A. Through assignment, Plaintiff is the owner of all right, title, and interest, including rights for damages for past infringement, in the '576 Patent.

Defendant IXC, Inc.

6. Upon information and belief, IXC, Inc. is a Delaware corporation having its principal place of business in San Francisco, California.

First Claim for Patent Infringement ('576 Patent)

7. On or about November 5, 1996, the '576 Patent, disclosing and claiming a "Telephone Answering Service Linking Displayed Data with Recorded Audio Message," was duly and legally issued by the United States Patent and Trademark Office.

8. Plaintiff IPVX is the owner of the '576 Patent with full rights to pursue recovery of royalties or damages for infringement of such patent, including full rights to recover past damages, including those damages accruing from the date of the filing of the initial Complaint.

9. The '576 Patent relates to what is known in the telecommunications and related industries as "visual voicemail", i.e., the "visual identification of callers' identities and selective access to their linked recorded voice messages." '576 Patent at Col. 2 (Summary of Invention).

10. The '576 Patent and its previous assignee Klausner Patent Technologies have been virtually synonymous with "visual voicemail" functionality since the time when this feature rapidly entered the marketplace. At least as early as 2007, visual voicemail became widely publicized as a feature of Apple's first iPhone. Coinciding with Apple's release of its first iPhone, Klausner's patent infringement suit against Apple and AT&T asserting the '576 Patent was heavily publicized, especially in publications directed toward telecommunications and related industries, including without limitation, VoIP Monitor, Reuters, PC World, and The Register. The identification of Klausner and its '576 Patent with visual voicemail capabilities is so widespread that it is included with the Wikipedia encyclopedia entry for the term "visual voicemail" available at http://en.wikipedia.org/wiki/Visual_voicemail. Since as early as September 18, 2009, Klausner and its '576 Patent were referenced in the Wikipedia encyclopedia entry for visual voicemail when the entry stated that "The patent for Visual Voicemail is owned

by Klausner Technologies, Inc.” *See* Wikipedia Archive available at

http://en.wikipedia.org/w/index.php?title=Visual_voicemail&oldid=314720314 .

11. The patent infringement suit against Apple and AT&T was preceded by several other articles that were widely distributed across the telecommunications industry which publicized infringement suits, licenses, and settlements relating to the ‘576 patent, involving visual voicemail offerings by Time Warner AOL and Vonage Holdings. Klausner has also filed highly publicized suits for infringement of the ‘576 Patent against others in the industry, including wireless services providers, mobile phone manufacturers, cable/VOIP providers, and other companies that offer visual voicemail services, such as Verizon, Cablevision, Google, Comcast, HTC Corporation, LG Electronics, Citrix, Panasonic, Avaya, Yahoo, Cisco, NEC, Siemens, Alcatel-Lucent, and Samsung.

12. Upon information and belief, those companies involved in offering voicemail products at the time of Apple’s release of its first iPhone and popularization of visual voicemail capability knew about Klausner and its ‘576 Patent.

13. Upon information and belief, Defendant has been active in the telecommunications and related industries since at least as early as 2007.

14. Upon information and belief, Defendant was aware of the release of Apple’s iPhone and its visual voicemail feature.

15. Upon information and belief, Defendant was aware of visual voicemail features offered by Defendant’s competitors.

16. Upon information and belief, Defendant was aware of the fact that others who offered products with visual voicemail capabilities were sued by Klausner for infringement of the ‘576 Patent.

17. Upon information and belief, Defendant was aware that others in the telecommunications and related industries offering products with visual voicemail capabilities entered into licensing agreements and settled infringement suits with Klausner.

18. Defendant has infringed, contributed to the infringement of, and induced others to infringe the '576 Patent through the expiration date of the '576 patent.

19. Defendant has infringed, contributed to the infringement of, and induced others to infringe the '576 Patent by manufacturing, using, selling, offering for sale or by using the method(s) claimed in the '576 Patent in conjunction with, or by contributing to or inducing others to manufacture, use, sell, offer for sale, or use the method(s) claimed in the '576 Patent in conjunction with voicemail products with visual voicemail capabilities, including IXC Telenex Command Center Visual Voicemail ("Command Center") and Telekenex Outlook IMAP Integration Client ("Outlook IMAP Integration Client"), and other systems with similar functionality (hereinafter "IXC Voicemail Products").

20. Defendant infringed the Patents by manufacturing, using, selling, offering for sale or by using the method(s) claimed in the '576 Patent in conjunction with the IXC Voicemail Products, by contributing to the manufacture, use, sale, offer for sale, or use of the method(s) claimed in the '576 Patent in conjunction with the IXC Voicemail Products by others, including Defendant's customers, and inducing others, including Defendant's customers to infringe by manufacturing, using, selling, offering to sell or by using the method(s) claimed in the '576 Patent in conjunction with the IXC Voicemail Products.

21. The manufacture, use, sale, or offer to sell the IXC Voicemail Products, or use of the method(s) claimed in the '576 Patent in conjunction with the IXC Voicemail Products by Defendant and others, including Defendant's customers, infringes

the '576 Patent because, upon information and belief, the IXC Voicemail Products contain visual voicemail capabilities or features that make voicemails accessible via e-mail boxes and/or through remote devices such as a computer, telephone, or Personal Digital Assistant (PDA).

22. Upon information and belief, users of Defendant's IXC Voicemail Products have used the method(s) claimed in the '576 Patent and infringed at least claim(s) 3, 4, 18 and/or 19 of the '576 Patent. Upon information and belief, Defendant has induced such users of Defendant's IXC Voicemail Products to use the method(s) claimed in the '576 Patent and infringed at least claim(s) 3, 4, 18 and/or 19 of the '576 Patent. More particularly, upon information and belief, the users of Defendant's IXC Voicemail Products who have used the method(s) claimed in the '576 Patent are employees of business entities that are customers of Defendant.

23. Defendant had actual knowledge of the '576 Patent at least as of the date that it was served with the initial Complaint in this action. Defendant had actual knowledge of the '576 Patent at least as of October 26, 2011 when it was served with a previous summons and complaint alleging infringement of the '576 Patent.

24. Upon information and belief, Defendant had actual knowledge of the '576 Patent before the filing of the Complaint in this action. Specifically, upon information and belief Defendant was aware of visual voicemail technology and, as a result of the association of Klausner and the '576 Patent with visual voicemail technology, was also aware of the '576 Patent when Defendant incorporated the visual voicemail features into the IXC Voicemail Products and induced its customers to use such features. Defendant therefore knew that use of the IXC Voicemail Products by Defendant's customers infringed the '576 Patent and by offering

and encouraging users to use the IXC Voicemail Products, Defendant intended that the users of the IXC Voicemail Products infringe the '576 Patent.

25. Upon information and belief, Defendant has also induced customers and users of the IXC Voicemail Products, particularly users of the visual voicemail features, to infringe the '576 Patent by promoting and instructing users to use the capability of retrieving voicemails using the visual voicemail feature of the IXC Voicemail Products. Defendant touted its Command Center including advanced phone features and functionalities that “provides business flexibility to users” and more particularly advertised “Visual Voicemail” as one of its phone features. Furthermore, Defendant includes On-Demand training videos on its website that instructs users on how to use the Visual Voicemail feature and further includes an “Accessing Your Voice Message” slide with associated audio that instructs users on how to listen to “specific” voice messages using the Command Center web based application, which, upon information and belief, can be accessed from a number of remote access devices, including computers, phones and PDAs, by, among other things, clicking on a voice messages tab and then clicking on the phone message associated with the number from which that phone message was received.

26. Upon information and belief, Defendant advertised at least its Command Center product in a manner that demonstrated that the Command Center product, or associated service(s), provides a telephone answering device with a memory that is coupled to a telephone for automatically answering telephone calls, as well as storing and retrieving information related to the telephone calls; receives first signals in the form of, for example, the caller's telephone number for each incoming call and then displays the telephone number for the voicemail in the Command Center web application visual interface; that the

Command Center product, or associated service(s), receives and stores voice messages in its memory; that the Command Center product links each of said received first signals with a corresponding voice message by displaying the telephone number for each voice message in at least the Command Center web application visual interface; that the Command Center product transmits received first signals to a user remote access device in the form of, for example, the caller's telephone number at least via the Command Center web application accessible from a variety of remote devices such as a computer, a phone, or a PDA and allowing the first signals to be used as assistance in selectively retrieving voice messages; and that the Command Center product transmits a specific voice message which is linked to the specific received first signal in the form of the caller's telephone number that is included in the Command Center web application visual interface, the specific voice message being transmitted to a user remote access device, such as a computer, phone or PDA in response to a selection of the stored voice message.

27. Upon information and belief, Defendant also contributed to the infringement of the '576 Patent by providing its customers with the infringing visual voicemail feature as part of its Command Center product when such visual voicemail feature had no substantial non-infringing use.

28. Specifically, Defendant's Command Center product includes a visual voicemail component and this visual voicemail component has no substantial non-infringing use. This component is advertised as a distinct feature of the Command Center product. This visual voicemail component allows for the selective retrieval of voicemail through the use of caller identification information displayed to the user in a manner that infringes

claims 3, 4, 18 and 19 of the '576 Patent. On information and belief, there are no other uses for the visual voicemail component of the Command Center product.

29. Additionally, Defendant's Outlook IMAP Integration Client product provides voicemail to email, wherein the voicemails are reflected in a user's email client so that they may be selectively retrieved through the use of caller identification information in a manner that infringes claims 3, 4, 18 and 19 of the '576 Patent. Additionally, on information and belief, the sole use of the Outlook IMAP Integration Client product is to provide the voicemail to email function. Accordingly, on information belief, there are no other substantial non-infringing uses for the Outlook IMAP Integration Client product.

30. Plaintiff has been damaged by Defendant's infringement of the '576 Patent and has suffer additional irreparable damage and impairment of the value of its patents rights due to Defendant's infringement of the Patent, including due to Defendant's continued infringement of the Patent after the filing of the initial Complaint in this action.

31. Plaintiff demands trial by jury of all issues so triable.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Compensatory damages awarding Plaintiff damages caused by Defendant's infringement of the '576 Patent;
- B. For costs of suit and attorneys fees;
- C. For pre-judgment interest; and
- D. For such other relief as justice requires.

Dated: August 8, 2013

Respectfully submitted,

By: /s/ Pierre R. Yanney

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ATTORNEYS FOR PLAINTIFF,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document this 8th day of August, 2013, via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Pierre R. Yanney