

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

PATENTMARKS COMMUNICATIONS,)	
LLC)	
)	
Plaintiff,)	
)	C.A. No. 13-999-LPS
v.)	
)	JURY TRIAL DEMANDED
SAMSUNG TELECOMMUNICATIONS)	
AMERICA, LLC,)	
)	
Defendant.)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Plaintiff PatentMarks Communications, LLC (“PMC”) makes the following allegations against Samsung Telecommunications America, LLC (“Defendant”):

PARTIES

1. PMC is a Delaware limited liability company with a registered address of 2140 S. Dupont Highway, Camden, Delaware 19934.
2. On information and belief, Defendant is a Delaware limited liability company with its principal place of business at 1301 Lookout Drive, Richardson, Texas 75082. Defendant has appointed Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, as its agent for service of process.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, including § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because, among other reasons, Defendant has done business in this District, has committed and continues to commit acts of patent infringement in this District, and has harmed and continues to harm PMC in this District, by, among other things, using, selling, offering for sale, and importing infringing products and services in this District.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because, among other reasons, Defendant is subject to personal jurisdiction in this District, has committed and continues to commit acts of patent infringement in this District. On information and belief, for example, Defendant has used, sold, offered for sale, and imported infringing products in this District.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,400,926

6. PMC is the owner by assignment of United States Patent No. 8,400,926 (the "'926 Patent"), entitled "Multi-Protocol Telecommunications Routing Optimization," from inventors Allen D. Kaplan and William F. McCarthy, by way of a number of related applications and transfers of ownership. The application for the '926 Patent was filed on November 30, 2007, and is related to United States Patent 6,016,307 (Application No. 08/741,130), filed on October 31, 1996. The '926 Patent issued on March 19, 2013. A true and correct copy of the '926 Patent is attached as Exhibit A.

7. Defendant has infringed and is still infringing the '926 Patent, in this judicial District and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling products and services that embody the patented inventions, and will continue to do so unless enjoined by this Court. For instance, infringing smartphones made, used, imported, offered for sale, and/or sold by Defendant, include functionality that may

transfer files by means of a variety of telecommunication paths, such as WiFi 802.11 a/b/g/n, 4G, 3G, and/or 2G. The particular path used by the device may depend on factors such as availability, speed, stability, signal strength, and/or default or user preferences associated with the paths, some of which factors may be measured or calculated by a device processor. Such infringing devices include, for example, Defendant's Galaxy S4, Galaxy Nexus, Galaxy Nexus 4G (LTE), and Galaxy S III smartphones.

8. Defendant has also infringed indirectly and continues to infringe indirectly the '926 Patent by active inducement under 35 U.S.C. § 271(b).

9. At least after being served with the Complaint in this action, Defendant has had knowledge of the '926 Patent.

10. On information and belief, Defendant intended, and continues to intend, to induce patent infringement by end-users and has knowledge that the inducing acts would cause infringement or has been willfully blind to the possibility that its inducing acts would cause infringement. For instance, Defendant makes, sells, and/or imports smartphones that include functionality that may transfer files by means of a variety of telecommunication paths, such as WiFi 802.11 a/b/g/n, 4G, 3G, and/or 2G. The particular path used by the smartphones made, sold, and/or imported by Defendant may depend on factors such as availability, speed, stability, signal strength, and/or default or user preferences associated with the paths, some of which factors may be measured or calculated by a device processor. Defendant provides instructions to end-users on how to use the smartphones to transfer files by means of a variety of telecommunication paths in a manner that infringes the '926 patent. These instructions include, among other things, user manuals, downloadable guides, FAQs and How-Tos, support videos, and menus and options that are pre-installed on the smartphones. By using Defendant's

smartphones to transfer files based on various factors and by means of various telecommunication paths, end-users are directly infringing the '926 Patent. By continuing to provide instructions on the use of the smartphones in an infringing manner, Defendant has and continues to specifically intend to induce infringement of the '926 Patent.

11. By engaging in the conduct described herein, Defendant has injured PMC and is thus liable for infringement of the '926 Patent pursuant to 35 U.S.C. § 271.

12. Defendant has committed these acts of infringement without license or authorization.

13. As a result of Defendant's infringement of the '926 Patent, PMC has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

14. PMC has also suffered and will continue to suffer severe and irreparable harm unless this Court enjoins Defendant, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '926 Patent.

PRAYER FOR RELIEF

PMC respectfully requests that this Court enter:

- A. A judgment in favor of PMC that Defendant has infringed the '926 Patent;
- B. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '926 Patent, or such other equitable relief the Court determines is warranted;

- C. A judgment and order requiring Defendant to pay PMC its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '926 Patent as provided under 35 U.S.C. § 284;
- D. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to PMC its reasonable attorneys' fees against Defendant;
- E. A judgment and order requiring Defendant to provide an accounting and to pay supplemental damages to PMC, including without limitation, pre-judgment and post-judgment interest; and
- F. Any and all other relief to which PMC may be entitled.

DEMAND FOR JURY TRIAL

PMC, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: August 14, 2013

BAYARD, P.A.

OF COUNSEL:

Benjamin T. Wang
Marc A. Fenster
RUSS, AUGUST & KABAT
12424 Wilshire Boulevard 12th Floor
Los Angeles, California 90025
(310) 826-7474
bwang@raklaw.com
mfenster@raklaw.com

/s/ Stephen B. Brauerman
Richard D. Kirk (#0922)
Stephen B. Brauerman (#4952)
Vanessa R. Tiradentes (#5398)
222 Delaware Avenue, Suite 900
P.O. Box 25130
Wilmington, DE 19899
(302) 655-5000
rkirk@bayardlaw.com
sbrauerman@bayardlaw.com
vtiradentes@bayardlaw.com

*Attorneys for Plaintiff PatentMarks
Communications, LLC*