

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SMARTPHONE TECHNOLOGIES LLC,

Plaintiff,

v.

HUAWEI DEVICES USA INC.
and FUTUREWEI TECHNOLOGIES, INC.,

Defendants.

Case No. 6:12-cv-245-LED

**PLAINTIFF'S THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiff SmartPhone Technologies LLC ("SmartPhone") files this Third Amended Complaint against Huawei Devices USA Inc. and Futurewei Technologies, Inc. for infringement of U.S. Patent No. 7,664,485 ("the '485 patent"), U.S. Patent No. 6,173,316 ("the '316 patent"), U.S. Patent No. 7,076,275 ("the '275 patent"), and/or U.S. Reissue Patent No. 40,459 ("the '459 patent").

THE PARTIES

1. SmartPhone is a Texas limited liability company with its principal place of business in Frisco, Texas.

2. Huawei Devices USA Inc. is a Texas corporation with its principal place of business in Plano, Texas. This Defendant has been served with process and has appeared.

3. Futurewei Technologies, Inc. (collectively with Huawei Devices USA Inc., "Huawei") is a Texas corporation with its principal place of business in Plano, Texas. This Defendant has been served with process and has appeared.

4. Huawei does business in the State of Texas and in the Eastern District of Texas.

JURISDICTION AND VENUE

5. SmartPhone brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Each Defendant is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, has purposely transacted business involving their accused products in this judicial district, and/or has regular and established places of business in this judicial district.

7. Each Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this State and judicial district, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 7,664,485)

8. SmartPhone incorporates paragraphs 1 through 7 herein by reference.

9. SmartPhone is the exclusive licensee of the '485 patent, entitled "MAKING A PHONE CALL FROM AN ELECTRONIC DEVICE HAVING AN ADDRESS LIST OR A CALL HISTORY LIST," with ownership of all substantial rights in the '485 patent. SmartPhone has the exclusive right to exclude others and the exclusive right to enforce, sue and recover damages for the past and future infringement, including the exclusive right to exclude Huawei

and exclusive right to sue Huawei. A true and correct copy of the '485 patent is attached as Exhibit A.

10. The '485 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

11. Huawei is directly and/or indirectly infringing (by inducing infringement and/or contributing to infringement) one or more claims of the '485 patent in this judicial district and elsewhere in Texas, including at least claims 20, 26, and 28, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Ascend II, Express, and Impulse (U8800). Huawei and persons who acquire and use such devices, including Huawei's customers, have, at a minimum, directly infringed the '485 patent including at least claims 20, 26, and 28, and Huawei is thereby liable for direct and/or indirect infringement of the '485 patent pursuant to 35 U.S.C. § 271.

12. In its Answer to SmartPhone's Second Amended Complaint, Huawei admitted that it is, and has been, aware of the '485 patent and had pre-suit knowledge of the '485 patent. (Dkt. 80 at 6, ¶ 43.)

13. Huawei has had knowledge of the infringing nature of its activities since before SmartPhone filed its Original Complaint in this matter.

14. On information and belief, despite having pre-suit knowledge of the '485 patent, Huawei has specifically intended for persons who acquire and use such devices, including Huawei's customers, to acquire and use such devices in such a way that infringes the '485 patent, including at least claims 20, 26, and 28, and Huawei knew or should have known that its actions were inducing infringement. In particular, despite having pre-suit knowledge of the '485 patent,

Huawei has and continues to provide instructional materials (e.g., user guides) that specifically instruct its customers to use Huawei's computerized communication devices in an infringing manner. For example, the Ascend II User Guide, available at www.huaweideviceusa.com, specifically instructs customers who use that device to retrieve and display a "call log" and initiate a call using the call log, in a manner that performs each and every step of at least claims 20, 26, and 28. In providing such instructional materials, Huawei intentionally encourages and specifically intends that its customers use Huawei devices to directly infringe the '485 patent, with knowledge that such induced acts constitute patent infringement.

15. On information and belief, Huawei has known since before the filing of the Original Complaint in this matter that its products (and/or components thereof) accused of infringing are a material part of the inventions in the '485 patent, are especially made and/or adapted for use in infringing the '485 patent, and are not staple articles or commodities of commerce suitable for substantial non-infringing use. In particular, despite having pre-suit knowledge of the '485 patent, Huawei's computerized communication devices include software instructions specifically designed to retrieve and display a call log, and initiate a call using the call log, in a manner that performs each and every step of at least claims 20, 26, and 28. The software instructions for providing these features are specifically written for such purposes, and thus are not staple articles or commodities of commerce suitable for substantial non-infringing use.

16. SmartPhone has been damaged as a result of Huawei's infringing conduct described in this Count. Huawei is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for Huawei's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,173,316)

17. SmartPhone incorporates paragraphs 1 through 7 herein by reference.

18. SmartPhone is the exclusive licensee of the '316 patent, entitled "WIRELESS COMMUNICATION DEVICE WITH MARKUP LANGUAGE BASED MAN-MACHINE INTERFACE," with ownership of all substantial rights in the '316 patent. SmartPhone has the exclusive right to exclude others and the exclusive right to enforce, sue and recover damages for the past and future infringement, including the exclusive right to exclude Huawei and exclusive right to sue Huawei. A true and correct copy of the '316 patent is attached as Exhibit B.

19. The '316 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

20. Huawei has and continues to directly infringe one or more claims of the '316 patent in this judicial district and elsewhere in Texas, including at least claims 1-4, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Ascend, Ascend II, Ascend X, Comet, Express, Impulse (U8800), and M835. Huawei is thereby liable for direct indirect infringement of the '316 patent pursuant to 35 U.S.C. § 271.

21. SmartPhone has been damaged as a result of Huawei's infringing conduct described in this Count. Huawei is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for Huawei's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. 7,076,275)

22. SmartPhone incorporates paragraphs 1 through 7 herein by reference.

23. SmartPhone is the exclusive licensee of the '275 patent, entitled "METHOD AND SYSTEM FOR SINGLE-STEP ENABLEMENT OF TELEPHONY FUNCTIONALITY FOR A PORTABLE COMPUTER SYSTEM," with ownership of all substantial rights in the '275 patent. SmartPhone has the exclusive right to exclude others and the exclusive right to enforce, sue and recover damages for the past and future infringement, including the exclusive right to exclude Huawei and exclusive right to sue Huawei. A true and correct copy of the '275 patent is attached as Exhibit C.

24. The '275 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

25. Huawei has and continues to directly infringe one or more claims of the '275 patent in this judicial district and elsewhere in Texas, including at least claim 1, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Ascend II, Express, and Impulse (U8800). Huawei is thereby liable for direct infringement of the '275 patent pursuant to 35 U.S.C. § 271.

26. In its Answer to SmartPhone's Second Amended Complaint, Huawei admitted that it is, and has been, aware of the '275 patent and had pre-suit knowledge of the '275 patent. (Dkt. 80 at 8, ¶ 63.)

27. Moreover, on information and belief, in 2011 Huawei received notice from T-Mobile (a Huawei customer/partner) of its infringement of the '275 patent, when T-Mobile

sought indemnity from Huawei in connection with SmartPhone's February 2, 2011 First Amended Complaint in Civil Action No. 6:10-cv-580, filed in the Eastern District of Texas. That Complaint identified and accused the Huawei Comet of infringing the '275 patent. On information and belief, in 2011 Huawei also received a copy of SmartPhone's infringement contentions mapping the '275 patent to the Huawei Comet, which SmartPhone provided to T-Mobile on June 13, 2011. Accordingly, Huawei has had knowledge of the infringing nature of its activities since before SmartPhone filed its Original Complaint in this matter.

28. Despite having pre-suit knowledge of the '275 patent and knowledge that it is infringing one or more claims of the '275 patent, Huawei has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement; thus, Huawei's infringing activities relative to the '275 patent have been, and continue to be, willful, wanton and deliberate in disregard of SmartPhone's rights.

29. SmartPhone has been damaged as a result of Huawei's infringing conduct described in this Count. Huawei is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for Huawei's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT IV

(INFRINGEMENT OF U.S. PATENT NO. RE 40,459)

30. SmartPhone incorporates paragraphs 1 through 7 herein by reference.

31. SmartPhone is the exclusive licensee of the '459 patent, entitled "METHOD AND APPARATUS FOR COMMUNICATING INFORMATION OVER LOW BANDWIDTH COMMUNICATION NETWORKS," with ownership of all substantial rights in the '459 patent. SmartPhone has the exclusive right to exclude others and the exclusive right to enforce, sue and

recover damages for the past and future infringement, including the exclusive right to exclude Huawei and exclusive right to sue Huawei. A true and correct copy of the '459 patent is attached as Exhibit D.

32. The '459 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

33. Huawei is directly and/or indirectly infringing (by inducing infringement and/or contributing to infringement) one or more claims of the '459 patent in this judicial district and elsewhere in Texas, including at least claims 1 and 17, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Impulse (U8800). Huawei and persons who acquire and use such devices, including Huawei's customers, have, at a minimum, directly infringed the '459 patent including at least claims 1 and 17, and Huawei is thereby liable for direct and/or indirect infringement of the '459 patent pursuant to 35 U.S.C. § 271.

34. In its Answer to SmartPhone's Second Amended Complaint, Huawei admitted that it is, and has been, aware of the '459 patent and had pre-suit knowledge of the '459 patent. (Dkt. 80 at 10, ¶ 63.)

35. Moreover, on information and belief, in 2011 Huawei received notice from T-Mobile (a Huawei customer/partner) of its infringement of the '459 patent, when T-Mobile sought indemnity from Huawei in connection with SmartPhone's February 2, 2011 First Amended Complaint in Civil Action No. 6:10-cv-580, filed in the Eastern District of Texas. That Complaint identified and accused the Huawei Comet of infringing the '459 patent. On information and belief, in 2011 Huawei also received a copy of SmartPhone's infringement

contentions mapping the '459 patent to the Huawei Comet, which SmartPhone provided to T-Mobile on June 13, 2011. Accordingly, Huawei has had knowledge of the infringing nature of its activities since before SmartPhone filed its Original Complaint in this matter.

36. On information and belief, despite having pre-suit knowledge of the '459 patent, Huawei has specifically intended for persons who acquire and use such devices, including Huawei's customers, to acquire and use such devices in such a way that infringes the '459 patent, including at least claims 1 and 17, and Huawei knew or should have known that its actions were inducing infringement. In particular, despite having pre-suit knowledge of the '459 patent, Huawei has and continues to provide instructional materials (e.g., user guides) that specifically instruct its customers to use Huawei's computerized communication devices in an infringing manner. For example, the Impulse User Guide, available at www.huaweideviceusa.com, specifically instructs customers who use that device to open a search form in an application (e.g., YouTube, Android Market, Google Maps), enter a search keyword, and view content, in a manner that performs each and every step of at least claims 1 and 17. In providing such instructional materials, Huawei intentionally encourages and specifically intends that its customers use Huawei devices to directly infringe the '459 patent, with knowledge that such induced acts constitute patent infringement.

37. Despite having pre-suit knowledge of the '459 patent and knowledge that it is infringing one or more claims of the '459 patent, Huawei has nevertheless continued its infringing conduct and disregarded an objectively high likelihood of infringement; thus, Huawei's infringing activities relative to the '459 patent have been, and continue to be, willful, wanton and deliberate in disregard of SmartPhone's rights.

38. SmartPhone has been damaged as a result of Huawei's infringing conduct described in this Count. Huawei is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for Huawei's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

SmartPhone hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

SmartPhone requests that the Court find in its favor and against Huawei, and that the Court grant SmartPhone the following relief:

a. Judgment that one or more claims of the '485, '316, '275, and/or '459 patents have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to whose infringements Defendants has contributed and/or by others whose infringements have been induced by Defendants;

b. Judgment that Defendants account for and pay to SmartPhone all damages to and costs incurred by SmartPhone because of Defendants' infringing activities and other conduct complained of herein;

c. Judgment that Defendants account for and pay to SmartPhone a reasonable, ongoing, post judgment royalty because of Defendants' infringing activities and other conduct complained of herein;

d. That Defendants' infringements relative to the '275 and/or '459 patents be found willful from the time that Defendants became aware of the infringing nature of their products,

and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

e. That SmartPhone be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and

f. That SmartPhone be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: September 30, 2013

Respectfully submitted,

/s/ Edward R. Nelson, III

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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 via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 30th day of September 2013.

/s/ Edward R. Nelson, III