

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

NOBELBIZ, INC.

Plaintiff,

v.

T C N, INC.

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff, NobelBiz, Inc. (“NobelBiz”), by and through its counsel, Capshaw DeRieux, L.L.P. and Gibbons P.C., as for its Complaint against Defendant, T C N, Inc. (hereafter referred to as “Defendant”), states as follows:

THE PARTIES

1. Plaintiff NobelBiz is a privately held company incorporated under the laws of the State of Delaware, and having its principal place of business at 5973 Avenida Encinas, Suite 202, Carlsbad, California 92008. NobelBiz is a provider of telecommunications solutions to call centers worldwide.

2. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of Utah, and having its principal place of business at 560 South Valley View Drive, Suite 3, St. George, Utah 84770.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1, *et seq.*

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because of its continuous and systematic business contacts with the state of Texas, as well as its purposefully availing itself of this Court's jurisdiction.

6. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(b).

NOBELBIZ'S PATENT

7. On October 22, 2013, the United States Patent and Trademark Office issued United States Patent No. 8,565,399 ("the '399 patent"), entitled "SYSTEM AND METHOD FOR MODIFYING COMMUNICATION INFORMATION (MCI)."

8. NobelBiz is the assignee of the '399 patent.

9. By way of a general description, the '399 patent discloses a system for processing a telephone call from a call originator (calling party) to a call target (receiving party), comprising a database for storing telephone numbers, as well as a processor to select from the database a telephone number based on the call target's area code, to set caller identification (or caller ID) data to the selected number, and to transmit the caller ID data to the call target.

10. In practice, the invention of the '399 patent allows a calling party's number to appear local or from the same area code as the receiving party.

11. NobelBiz has embodied features of the '399 patent in its LocalTouch™ service.

12. LocalTouch™ is designed to enhance the effectiveness of, *e.g.*, outbound teleservice call centers, such as collection agencies and marketing firms, by increasing contact rates between calling parties and receiving parties.

13. For example, by implementing the novel process of the '399 patent, LocalTouch™ has been shown to increase contact rates between calling parties and receiving parties by over thirty percent (30%).

14. LocalTouch™ has also received professional approval in the form of the Technovation Award from the American Teleservices Association (“ATA”) in 2006, as well as the Fulcrum Award from the ATA in 2009.

DEFENDANT’S INFRINGING SYSTEMS

15. Defendant is a provider of virtual call center services, as well as outbound services (hereafter “Defendant’s Services”).

16. Upon information and belief, Defendant’s Services contain a database for storing outgoing telephone numbers.

17. Upon information and belief, Defendant’s Services contain a processor to select from the database a telephone number that has the same area code as the call target’s area code.

18. Upon information and belief, Defendant’s Services contain a processor to set caller ID data to the selected number.

19. Upon information and belief, Defendant’s Services contain a processor to transmit the caller ID data to the call target.

20. Upon information and belief, Paragraphs 16-19 can be accomplished in Defendant’s Services using the Local Caller ID feature (the “Local Caller ID Feature”). The “Local Caller ID service is utilized to match the debtors’ number with a local number in . . . [a] pool. The numbers can also be randomized, increasing right party connection.” Ex. A. In short, “[t]his feature allows clients to call their customers and display a caller ID number that is local to the customer’s calling area. For example: ABC Bank in New York City can call John Doe in Buffalo and display a caller ID with a 917 area code - rather than a 212 area code or a 1-800

number. This local number encourages the customer to pick up the phone.” Ex. B (“TCN’s Local Caller ID Feature Increases Customer Contact Rates by 50-100%”); Ex. C.

21. Upon information and belief, the Local Caller ID feature identified in Paragraph 20 allows a calling party’s number to appear local or from the same area code as the call target (receiving party).

22. Upon information and belief, Defendant’s Services practice each and every element of one or more claims in the ‘399 patent.

COUNT I – PATENT INFRINGEMENT OF THE ‘399 PATENT

23. NobelBiz restates and incorporates by reference Paragraphs 1 through 22 as if stated fully herein.

24. Defendant had knowledge of the ‘399 patent at least as of upon service of this Complaint.

25. In violation of 35 U.S.C. § 271(a), Defendant is, literally and under the doctrine of equivalents, infringing the ‘399 patent, by, among other things, making, using, offering for sale, and/or selling Defendant’s Services and will continue to do so unless such infringing activities are enjoined by this Court.

26. In violation of 35 U.S.C. § 271(b), Defendant is indirectly infringing the ‘399 patent since the filing of this Complaint by offering to sell and selling Defendant’s Services in the United States, including within this judicial district.

(a) Defendant had knowledge of the ‘399 patent at least as of upon service of this Complaint.

(b) Defendant also knowingly induced infringement and possessed specific intent to encourage another’s infringement which led to direct infringement by a third party of

one or more claims of the '399 patent, *e.g.*, call centers, by use of Defendant's Services, and by soliciting end users to purchase and use Defendant's Services, in this district and elsewhere in the United States.

(c) On information and belief, Defendant, for example, provides and advertises to its customers the benefits of the Local Caller ID Feature through user manuals and other marketing and instructional materials. Exs. A-D.

(d) On information and belief, as another example, Defendant further offers a website (<https://www.tcnp3.com/home/management-login-form/>), available in this jurisdiction, where customers can log onto the site and learn or be instructed on how the Local Caller ID Feature operates, including downloading user manuals. Ex. E.

(e) By following the materials (and the Local Caller ID feature disclosed), these customers can, are intended to, and do practice the '399 patent.

27. In violation of 35 U.S.C. § 271(c), Defendant has contributorily infringed and continues to contributorily infringe since the filing of this Complaint, by selling and/or offering to sell in the United States the Local Caller ID Feature, which:

(a) constitute a material part of the invention of the '399 patent;

(b) are known by Defendant since at least as of upon the service of this Complaint, , to be especially adapted for use in infringing the '399 patent; and

(c) are not suitable for substantial noninfringing use. The Local Caller ID Feature allows a calling party's number to appear local or from the same area code as the receiving party and thus, has no substantial use that does not infringe one or more claims of the '399 patent.

28. NobelBiz will be substantially and irreparably harmed if Defendant's infringement of the '399 patent is not enjoined. Plaintiff does not have an adequate remedy at law.

29. NobelBiz is entitled to recover from the Defendant the damages sustained as a result of Defendant's infringing acts.

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

PRAYER FOR RELIEF

Plaintiff requests that:

(a) Judgment be entered that Defendant has directly and indirectly infringed the '399 patent;

(b) An accounting be had for the damages resulting from Defendant's infringement of the '399 patent, including, without limitation, lost profits caused by the infringing activities of Defendant, and that the damages so ascertained be awarded together with interest and costs plus expenses, and pre- and post-judgment interest;

(c) Judgment be entered that this is an exceptional case, and that NobelBiz is entitled to its reasonable attorney fees pursuant to 35 U.S.C. § 285;

(d) A permanent injunction be issued, restraining and enjoining Defendant, its officers, agents, attorneys, and employees, and those acting in privity or concert with them, from engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or importation into the United States, of systems claimed in the '399 patent; and

(e) The Court award such other and further relief as the Court may deem just and proper under the circumstances.

DATED: October 21, 2013

NOBELBIZ, INC.

By: /s/ Elizabeth DeRieux

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