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11 + *Pro Hac Vice* to be filed

12 Attorneys for Plaintiff  
*NOBELBIZ, INC.*

13 Pursuant to Civ. L.R. 3-4, additional counsel are  
14 listed on the signature page.

15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **OAKLAND DIVISION**

19 NOBELBIZ, INC.,  
20 Plaintiff,  
21 v.  
22 FIVE9, INC.,  
23 Defendant.

Case No. 13-01846 YGR

**RELATED CASES:**  
CV 13-01773 YGR  
CV 13-02423 YGR

**CORRECTED AMENDED COMPLAINT**

First Action Filed: April 3, 2012  
Action Transferred: April 19, 2013  
Trial Date: None Set

26 Plaintiff, NobelBiz, Inc. (“NobelBiz”), by and through its counsel, Coblentz, Patch, Duffy  
27 & Bass LLP and Gibbons P.C., as for its Amended Complaint against Defendant, Five9, Inc.

28

1 (hereafter referred to as “Five9” or “Defendant”), pursuant to the Parties’ Joint Case Management  
2 Statement (Dkt. No. 75) states as follows:

3  
4 **THE PARTIES**

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

9 2. Upon information and belief, Defendant is a corporation organized and existing  
10 under the laws of the State of Delaware, and having its principal place of business at 4000  
11 Executive Parkway, Suite 400, San Ramon, CA 94583.

12  
13 **JURISDICTION AND VENUE**

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

16 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§  
17 1331 and 1338(a).

18 5. This Court has personal jurisdiction over Defendant because of its continuous and  
19 systematic business contacts with the state of California.

20 6. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391(b) and (c),  
21 and/or 28 U.S.C. § 1400(b). Five9’s headquarters is located in this District. Ex. A.

22  
23 **NOBELBIZ’S PATENTS**

24 **U.S. Patent No. 8,135,122 Patent**

25 7. On March 13, 2012, the USPTO issued United States Patent No. 8,135,122 (“the  
26 ‘122 patent”), entitled “SYSTEM AND METHOD FOR MODIFYING COMMUNICATION  
27 INFORMATION (MCI).” A copy of the ‘122 patent is attached hereto as Exhibit B.

28 8. NobelBiz is the assignee of the ‘122 patent.

1           9.       By way of a general description, the ‘122 patent discloses a system for processing a  
2 telephone call from a call originator (also referred to as a calling party) to a call target (also  
3 referred to as a receiving party), where the system accesses a database storing outgoing telephone  
4 numbers, selects a replacement telephone number from the outgoing telephone numbers based on  
5 the telephone number of the call target, and originates an outbound call to the call target with a  
6 modified outgoing caller identification (“caller ID”). *See, e.g.*, ‘122 patent, Abstract.

7           10.       In practice, the invention of the ‘122 patent allows a calling party in one  
8 geographical location to originate a call to a receiving party in another geographical location, and  
9 for the caller ID or calling party number (“CPN”) (“caller ID” and “CPN” collectively hereafter,  
10 “caller ID”) of that call to appear to the receiving party as a telephone number from the receiving  
11 party’s local geographical region (e.g., area code) instead of the calling party’s actual telephone  
12 number that would have a caller ID from the calling party’s geographical region.

13           U.S. Patent No. 8,565,399 Patent

14           11.       On October 22, 2013, the United States Patent and Trademark Office issued United  
15 States Patent No. 8,565,399 (“the ‘399 patent”), entitled “SYSTEM AND METHOD FOR  
16 MODIFYING COMMUNICATION INFORMATION (MCI),” a copy of which is attached hereto  
17 as Exhibit C.

18           12.       NobelBiz is the assignee of the ‘399 patent.

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

24           14.       In practice, the invention of the ‘399 patent allows a calling party’s number to  
25 appear local or from the same area code as the receiving party.

26           Award-Winning Patented Service

27           15.       NobelBiz has embodied features of the ‘122 and ‘399 patents in its LocalTouch™  
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1 service.

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

5 17. For example, by implementing the novel process of the ‘122 and ‘399 patents,  
6 LocalTouch™ has been shown to increase contact rates between calling parties and receiving  
7 parties by over thirty percent (30%).

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

11 **DEFENDANT’S INFRINGING SYSTEM**  
12 **INCLUDING A “LOCAL TOUCH” FEATURE**

13 19. Defendant is a global provider of on-demand call center software for telemarketing,  
14 customer service and business continuity.

15 20. Defendant offers various call center services (virtual, outbound, and blended for  
16 example) which include a local caller ID management feature (hereafter the “Five9 Services”).

17 21. Upon information and belief, the Five9 Services contain a database for storing  
18 outgoing telephone numbers.

19 22. Upon information and belief, the Five9 Services contain a processor to process a  
20 trigger comprising a telephone number of the call target.

21 23. Upon information and belief, the Five9 Services contain a processor to select from  
22 the database a telephone number that has the same area code as the call target’s area code.

23 24. Upon information and belief, the Five9 Services contain a processor to set caller ID  
24 data to the selected number.

25 25. Upon information and belief, the Five9 Services contain a processor to transmit the  
26 caller ID data to the call target.

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1 (b) Defendant also knowingly induced infringement and possessed specific  
2 intent to encourage another's infringement which led to direct infringement by a third party of one  
3 or more claims of the '122 patent, e.g., call centers, by use of the Five9 Services, and by soliciting  
4 end users to purchase and use the Five9 Services, in this district and elsewhere in the United  
5 States.

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

9 (d) On information and belief, as another example, Defendant further offers a  
10 website (<https://login.five9.com/index.htm>), available in this jurisdiction, where customers can log  
11 onto the site and learn or be instructed on how the Local Caller ID Feature operate, including  
12 downloading user manuals. Ex. G.

13 (e) On information and belief, as an additional example, Defendant offers a  
14 Five9 University where customers can review "a collection of online training modules that cover  
15 every capability of the Five9 Virtual Contact Center solution. . . . Each module reviews essential  
16 features and best practices for contact center operations, and gives your team the information they  
17 need to become Five9 Certified." Ex. H.

18 (f) By following the materials (and the Local Caller ID Feature), these  
19 customers can, are intended to, and do practice the '122 patent.

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

23 (a) constitute a material part of the invention of the '122 patent;

24 (b) are known by Defendant to be especially adapted for use in infringing the  
25 '122 patent. Exs. C-G (and the above allegations referencing these exhibits); and

26 (c) are not suitable for substantial noninfringing use. The Local Caller ID  
27 Feature allows a calling party's number to appear local or from the same area code as the  
28

1 receiving party and thus, have no substantial use that do not infringe one or more claims of the  
2 '122 patent.

3 **COUNT II – PATENT INFRINGEMENT OF THE '399 PATENT**

4 32. NobelBiz restates and incorporates by reference paragraphs 1 through 31 as if  
5 stated fully herein.

6 33. On information and belief, and in violation of 35 U.S.C. § 271(a), Defendant has,  
7 literally and under the doctrine of equivalents, infringed the '399 patent and still is, literally and  
8 under the doctrine of equivalents, infringing the '399 patent, by, among other things, making,  
9 using, offering for sale, and/or selling its Five9 Services and will continue to do so unless such  
10 infringing activities are enjoined by this Court.

11 34. In violation of 35 U.S.C. § 271(b), Defendant is indirectly infringing the '399  
12 patent since the service of this Amended Complaint by offering to sell and selling the Five9  
13 Services in the United States, including within this judicial district.

14 (a) Defendant had knowledge of the '399 patent at least as of upon service of  
15 this Amended Complaint, including the '399 patent.

16 (b) Defendant also knowingly induced infringement and possessed specific  
17 intent to encourage another's infringement which led to direct infringement by a third party of one  
18 or more claims of the '399 patent, e.g., call centers, by use of the Five9 Services, and by soliciting  
19 end users to purchase and use the Five9 Services, in this district and elsewhere in the United  
20 States.

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

24 (d) On information and belief, as another example, Defendant further offers a  
25 website (<https://login.five9.com/index.htm>), available in this jurisdiction, where customers can log  
26 onto the site and learn or be instructed on how the Local Caller ID Feature operate, including  
27 downloading user manuals. Ex. G.

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(e) On information and belief, as an additional example, Defendant offers a Five9 University where customers can review “a collection of online training modules that cover every capability of the Five9 Virtual Contact Center solution. . . . Each module reviews essential features and best practices for contact center operations, and gives your team the information they need to become Five9 Certified.” Ex. H.

(f) By following the materials (and the Local Caller ID Feature), these customers can, are intended to, and do practice the ‘399 patent.

35. In violation of 35 U.S.C. § 271(c), Defendant has contributorily infringed and continues to contributorily infringe since the service of this Amended 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 Amended Complaint, including the ‘399 patent, to be especially adapted for use in infringing the ‘399 patent. Exs. C-G (and the above allegations referencing these exhibits); 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, have no substantial use that do not infringe one or more claims of the ‘399 patent.

36. NobelBiz will be substantially and irreparably harmed if Defendant’s infringement of the ‘122 and ‘399 patents is not enjoined. NobelBiz does not have an adequate remedy at law.

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

**PRAYER FOR RELIEF**

Plaintiff requests that:

(a) Judgment be entered that Defendant has directly and indirectly infringed the ‘122 and 399 patents;



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1 (b) An accounting be had for the damages resulting from Defendant’s  
2 infringement of the ‘122 patent, including, without limitation, lost profits caused by the infringing  
3 activities of Defendant, and that the damages so ascertained be awarded together with interest and  
4 costs;

5 (c) An accounting be had for the damages resulting from Defendant’s  
6 infringement of the ‘399 patent, including, without limitation, lost profits caused by the infringing  
7 activities of Defendant, and that the damages so ascertained be awarded together with interest and  
8 costs;

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

11 (e) A permanent injunction be issued, restraining and enjoining Defendant, its  
12 officers, agents, attorneys, and employees, and those acting in privity or concert with them, from  
13 engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or  
14 importation into the United States, of systems claimed in the ‘122 and ‘399 patents; and

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

17 DATED: October 23, 2013

COBLENTZ PATCH DUFFY & BASS LLP

19 By: /s/ Julia D. Greer

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21 Attorneys for Plaintiff  
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