

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

CHRIMAR SYSTEMS, INC. d/b/a CMS
TECHNOLOGIES and CHRIMAR HOLDING
COMPANY, LLC,

Plaintiffs,

v.

ALCATEL-LUCENT, INC.,
ALCATEL-LUCENT USA, INC. and ALCATEL-
LUCENT HOLDINGS, INC.,

Defendants.

Case No. 6:13-cv-880

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT

ChriMar Systems, Inc. d/b/a CMS Technologies (“ChriMar”) and Chrimar Holding Company, LLC (“Holding”) (collectively referred to as “CMS”) files this Complaint against Alcatel-Lucent, Inc., Alcatel-Lucent USA, Inc. and Alcatel-Lucent Holdings, Inc. (“Alcatel” or “Defendants”) for infringement of U.S. Patent No. 8,155,012 (the “’012 patent” or “Asserted Patent”).

THE PARTIES

1. ChriMar is a Michigan Corporation with its principal place of business at 36528 Grand River Ave., Suite A-1, Farmington Hills, Michigan 48335.

2. Holding is a Texas limited liability company with its principal place of business at 303 South Washington Avenue, Marshall, Texas 75670.

ALCATEL-LUCENT, INC.

3. Alcatel-Lucent, Inc. is a France corporation with its principal place of business located at 3 Avenue Octave Greard, Paris 75007 France. This Court has personal jurisdiction over Alcatel-Lucent, Inc. because Alcatel-Lucent, Inc. has committed, and continues to commit, acts of infringement in the state of Texas, has conducted business in the state of Texas, and/or has continuous and systematic activities in the state of Texas.

ALCATEL-LUCENT USA, INC.

4. Alcatel-Lucent USA, Inc. is a Delaware corporation with its principal place of business located at 3400 West Plano Parkway, Plano, Texas 75075. This Court has personal jurisdiction over Alcatel-Lucent USA, Inc. because Alcatel-Lucent USA, Inc. has committed, and continues to commit, acts of infringement in the state of Texas, has conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas.

ALCATEL-LUCENT HOLDINGS, INC.

5. Alcatel-Lucent Holdings, Inc. is a Delaware corporation with its principal place of business located at 3400 West Plano Parkway, Plano, Texas 75075. This Court has personal jurisdiction over Alcatel-Lucent Holdings, Inc. because Alcatel-Lucent Holdings, Inc. has committed, and continues to commit, acts of infringement in the state of Texas, has conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas. Alcatel-Lucent, Inc., Alcatel-Lucent USA, Inc. and Alcatel-Lucent Holdings, Inc. are collectively referred to as “Alcatel.”

JURISDICTION AND VENUE

6. This is an action for patent infringement under Title 35 of the United States Code. CMS is seeking injunctive relief as well as damages.

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States' patent statutes, 35 U.S.C. § 101 *et seq.*

8. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Alcatel has committed acts of infringement in this district and/or are deemed to reside in this district.

9. This Court has personal jurisdiction over Alcatel and venue is proper in this district because Alcatel has committed, and continues to commit acts of infringement in the state of Texas, including in this district and/or have engaged in continuous and systematic activities in the state of Texas, including in this district.

COUNT I **(INFRINGEMENT OF U.S. PATENT NO. 8,155,012)**

10. CMS incorporates paragraphs 1 through 9 herein by reference.

11. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

12. ChriMar is the owner and assignee of the '012 patent, entitled "System and Method for Adapting a Piece of Terminal Equipment" and Holding is the exclusive licensee of the '012 patent. CMS has ownership of all substantial rights in the '012 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '012 patent is attached as Exhibit A.

13. The '012 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

14. CMS has been damaged as a result of Alcatel's infringing conduct described in this Count. Alcatel is, thus, liable to CMS in an amount that adequately compensates it for their infringement, 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.

ALCATEL (DIRECT INFRINGEMENT)

15. On information and belief, Alcatel has and continues to directly infringe one or more claims of the '012 patent in this judicial district and/or elsewhere in Texas and the United States, including at least claim 31, by, among other things, making, using, offering for sale, selling and/or importing Alcatel's Wireless LAN Access Points, including but not limited to OmniAccess model AP-93. Alcatel is thereby liable for infringement of the '012 patent pursuant to 35 U.S.C. § 271.

ALCATEL (INDIRECT INFRINGEMENT – INDUCEMENT)

16. Based on the information presently available to CMS, absent discovery, and in the alternative to direct infringement, CMS contends that Alcatel has and continues to indirectly infringe one or more claims of the '012 patent, including at least claim 31, by inducing others, including end users of Alcatel's Wireless LAN Access Points, including but not limited to OmniAccess model AP-93 to use infringing devices in violation of one or more claims of the '012 patent, including at least claim 31.

17. Alcatel has been on notice of the '012 patent since at least service of this action. In accordance with Fed. R. Civ. P. 11(b)(3), CMS will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

18. On information and belief, since Alcatel has been on notice of the '012 patent, Alcatel has knowingly induced infringement of the '012 patent, including at least claim 31 of the '012 patent, and possessed specific intent to encourage others' infringement.

19. On information and belief, since Alcatel has been on notice of the '012 patent, Alcatel knew or should have known that its action would induce actual infringement of the '012 patent, including at least claim 31 of the '012 patent, by end users of Alcatel's Wireless LAN Access Points, including but not limited to OmniAccess model AP-93.

20. For example, since Alcatel has been on notice of the '012 patent, Alcatel has purposefully and voluntarily placed infringing products in the stream of commerce with the expectation that its products will be purchased by end users in the United States, including end users in the Eastern District of Texas, and used in a way that infringes at least claim 31 of the '012 patent.

21. Since Alcatel has been on notice of the '012 patent, Alcatel has also provided support to users of Alcatel's Wireless LAN Access Points, OmniAccess model AP-93 in the United States, including the users in the Eastern District of Texas.

22. Alcatel has not produced or relied upon an opinion of counsel suggesting that the '012 patent is invalid or is not infringed by Alcatel's Wireless LAN Access Points, including but not limited to Wireless LAN Access Points, OmniAccess model AP-93. In accordance with Fed .R. Civ. P. 11(b)(3), CMS will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

23. Alcatel has not produced any evidence as to any investigation, design around or that any remedial action was taken with respect to the '012 patent. In accordance with Fed .R.

Civ. P. 11(b)(3), CMS will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

ADDITIONAL ALLEGATIONS

24. CMS has been damaged as a result of Defendants' infringing conduct described herein. Defendants are, thus, liable to CMS in an amount that adequately compensates CMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by the Court under 35 U.S.C. § 284.

25. Defendants' actions complained of herein will continue unless Defendants are enjoined by this Court.

26. CMS has complied with 35 U.S.C. § 287.

27. Defendants' actions complained of herein are causing irreparable harm and monetary damage to CMS and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

JURY DEMAND

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

PRAYER FOR RELIEF

CMS requests that this Court find in its favor and against Defendants, and that this Court grant CMS the following relief:

- a. Enter judgment for Plaintiff on this Complaint;
- b. Enter judgment that one or more claims of the '012 patent has been infringed, either directly or indirectly by Defendants;

- c. Enter judgment that Defendants account for and pay to CMS all damages to and costs incurred by CMS because of Defendants' infringing activities and other conduct complained of herein;
- d. Award Plaintiff damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- e. Enter a permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from infringing or inducing infringement of the '012 patent, or, in the alternative, judgment that Defendants account for and pay to CMS a reasonable royalty and an ongoing post judgment royalty because of Defendants' past, present and future infringing activities and other conduct complained of herein;
- f. That CMS be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- g. That CMS be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: November 8, 2013

Respectfully submitted,

THE SIMON LAW FIRM, P.C.

/s/ Anthony G. Simon

Anthony G. Simon

Timothy D. Krieger

Benjamin R. Askew

Michael P. Kella

800 Market Street, Suite 1700

St. Louis, MO 63101

P. 314-241-2929

F. 314-241-2029

asimon@simonlawpc.com

tkrieger@simonlawpc.com

baskew@simonlawpc.com

mkella@simonlawpc.com

T. John Ward, Jr.

Texas State Bar No. 00794818

J. Wesley Hill

Texas State Bar No. 24032294

WARD & SMITH LAW FIRM

P.O. Box 1231

1127 Judson Road, Ste. 220

Longview, Texas 75606-1231

(903) 757-6400

(903) 757-2323 (fax)

jw@wsfirm.com

wh@wsfirm.com

ATTORNEYS FOR PLAINTIFFS

CHRIMAR SYSTEMS, INC. d/b/a CMS

TECHNOLOGIES and CHRIMAR HOLDING

COMPANY, LLC