

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

BLUEBONNET
TELECOMMUNICATIONS L.L.C.,

Plaintiff,

v.

AVAYA INC,

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Bluebonnet Telecommunications, L.L.C. (“Bluebonnet”) files this original complaint against the above-named Avaya Inc. (“Avaya”), alleging, based on its own knowledge as to itself and its own actions and based on information and belief as to all other matters, as follows:

PARTIES

1. Bluebonnet is a corporation formed under the laws of the State of Texas, with a principal place of business in Longview, Texas.
2. Defendant Avaya is a corporation organized under the laws of the State of Delaware, with a place of business located in Coppell, Texas. Upon information and belief, Avaya is authorized to do business in Texas. Avaya may be served by serving its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §1331 and §1338(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, Avaya has transacted business in this district and has committed, by itself or in concert with others, acts of patent infringement in this district.

5. Avaya 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 Avaya’s substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,485,511

6. On January 16, 1996, United States Patent No. 5,485,511 (“the 511 patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention entitled “Method and Apparatus for Determining the Telephony Features Assigned to a Telephone.”

7. Bluebonnet is the owner of the 511 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 511 patent against infringers, and to collect damages for all relevant times.

8. Avaya, directly or through its customers and/or intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including for example, the Avaya 1140E IP phone and the 1120E IP phone) that infringed one or more claims of the 511 patent. Specifically, Avaya's accused products and/or systems have features that allow a user to determine whether certain telephony features (*e.g.*, call forwarding) are activated.

9. Avaya has and is directly infringing the 511 patent.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 6,400,814

10. On June 4, 2002, United States Patent No. 6,400,814 ("the 814 patent") was duly and legally issued by the United States Patent and Trademark Office for an invention entitled "Telephone with Ringer Silencer Screening Feature."

11. Bluebonnet is the owner of the 814 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 814 patent against infringers, and to collect damages for all relevant times.

12. Avaya, directly or through its customers and/or intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including for example, the Avaya 1140E IP phone and the 1120E IP phone) that infringed one or more claims of the 814 patent. Specifically, Avaya's accused products and/or systems have a ringer silencer screening feature.

13. Avaya has and is directly infringing the 814 patent.

**ADDITIONAL ALLEGATIONS REGARDING INDIRECT AND
WILLFUL INFRINGEMENT**

14. Avaya has and is indirectly infringing the 511 and 814 patents, both as an inducer of infringement and as a contributory infringer.

15. The direct infringement underlying Avaya's indirect infringement consists of the use of the accused component features by end-user customers.

16. Avaya induces end-user customers to use the accused phones, and specifically to use them in a manner that infringes the 511 and 814 patents. Avaya does so by (1) providing instructions to their customers that explain how to use the component features of the accused devices that are accused of infringement (specifically those features that allow a user to determine whether certain telephony features (*e.g.*, call forwarding) are activated and the ringer silencer screening feature); and (2) by directing, touting, and advertising these accused features of its phones.

17. Avaya has contributed to the infringement of the 511 and 814 patents by end-user customers by making and selling the phones with the accused component features. The accused component features of its phones are especially made for use by end-user customers in infringement of the 511 and 814 patents and have no substantial use other than infringing the 511 and 814 patents. In particular, the component feature that allows a user to determine whether certain telephony features (*e.g.*, call forwarding) are activated, and the component feature that allows a user to silence a call without interrupting the on-hook state have no practical use other than uses that infringe the 511 and 814 patents, respectively. These components in the accused products constitute a material part of the invention of one or more asserted claims of the 511 and 814 patents and are not staple articles of commerce suitable for substantial non-infringing use. The use

of these features by end-users of the phones for their intended and directed purpose necessarily results in infringement of the 511 and 814 patents.

18. Avaya has and will have knowledge of the 511 and 814 patents, as well as the fact that its customers' use of its phones infringe the 511 and 814 patents, since at least as early as the filing of this lawsuit.

19. Additionally, through its policies and practices of not investigating whether its phones' various component features infringed the patents of others, Avaya intentionally took steps to avoid learning the extent of its infringement of the intellectual property rights of others, such as Bluebonnet, despite its belief that there was a high probability that its actions constituted infringement. Thus, Avaya was willfully blind to the existence of the 511 and 814 patents prior to the filing of this lawsuit. Avaya, also being extensively involved in the relevant telephone hardware and software systems of its customers and/or suppliers, had sufficiently detailed knowledge of the related activities of its customers and/or suppliers to know that these acts constituted infringement, yet took the above steps to cause infringement regardless.

20. Avaya therefore induces/induced and contributes/contributed to acts of direct infringement with the specific intent that others would infringe the 511 and 814 patents.

21. For the same reasons, Avaya's infringement has been and continues to be willful. Indeed, Avaya has acted and continues to act in the face of an objectively high likelihood that its actions constitute infringement of a valid patent or with reckless disregard of that likelihood.

JURY DEMAND

Bluebonnet hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

Bluebonnet requests that the Court find in its favor and against Avaya and that the Court grant Bluebonnet the following relief:

- a. Judgment that one or more claims of the 511 and 814 patents have been infringed, either literally and/or under the doctrine of equivalents, by Avaya and/or all others acting in concert therewith;
- b. A permanent injunction enjoining Avaya and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of the 511 and 814 patents;
- c. Judgment that Avaya accounts for and pays to Bluebonnet all damages to and costs incurred by Bluebonnet because of Avaya's infringing activities and other conduct complained of herein;
- d. That Bluebonnet be granted pre-judgment and post-judgment interest on the damages caused by Avaya's infringing activities and other conduct complained of herein;
- e. That this Court declare this an exceptional case and award Bluebonnet its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- f. That Bluebonnet be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: February 18, 2014

Respectfully submitted,

/s/ Elizabeth L. DeRieux

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