

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

BLUEBONNET
TELECOMMUNICATIONS L.L.C.,

Plaintiff,

v.

KYOCERA COMMUNICATIONS, INC.,

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Bluebonnet Telecommunications, L.L.C. (“Bluebonnet”) files this first amended complaint against Kyocera Communications, Inc., 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 Kyocera Communications, Inc. (“Kyocera”) is a limited liability company organized under the laws of the state of Delaware, with a principal place of business at 9520 Towne Centre Dr., San Diego, California 92121. Kyocera can be served with process by serving its registered agent: Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

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, Kyocera has transacted business in this district and has committed, by itself or in concert with others, acts of patent infringement in this district.

5. Kyocera 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 Kyocera’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. 6,560,274

6. On May 6, 2003, United States Patent No. 6,560,274 (“the 274 patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention entitled “Transceiver.”

7. Bluebonnet is the owner of the 274 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 274 patent against infringers, and to collect damages for all relevant times.

8. Kyocera, 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 Hydro XTRM) that infringed one or more claims of the 274 patent. Specifically, Kyocera's accused products and/or systems have an airplane mode feature.

9. Kyocera has and is directly infringing the 274 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. Kyocera, 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 Hydro XTRM) that infringed one or more claims of the 814 patent. Specifically, Kyocera's accused products and/or systems have a ringer silencer screening feature.

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

ADDITIONAL ALLEGATIONS REGARDING INDIRECT INFRINGEMENT

14. Kyocera has and is indirectly infringing the 274 and 814 patents, both as an inducer of infringement and as a contributory infringer.

15. The direct infringement underlying Kyocera's indirect infringement consists of the use of the accused smartphones by end-user customers.

16. Kyocera induces end-user customers to use the accused smartphones, and specifically to use them in a manner that infringes the 274 and 814 patents. They do so by (1) providing instructions to their customers that explain how to use the features of the accused devices that are accused of infringement (specifically the airplane mode feature and the ringer silencer screening feature); and (2) by touting and advertising the accused features of the smartphones.

17. Kyocera has contributed to the infringement of the 274 and 814 patents by end-user customer by making and selling the accused smartphones. The accused features of the accused smartphones have no substantial use other than infringing the 274 and 814 patents. In particular, the airplane mode feature and the 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 274 and 814 patents, respectively. The use of these features by end-users of the accused smartphones for their intended purpose necessarily results in infringement of the 274 and 814 patents.

18. Kyocera has or will have knowledge of the 274 and 814 patents, as well as the fact that its customers' use of its smartphones infringes the 274 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, Kyocera 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, Kyocera was willfully blind to the existence of the 274 and 814 patents, prior to the filing of this lawsuit. Kyocera, 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. Kyocera therefore induces/induced and contributes/contributed to acts of direct infringement with the specific intent that others would infringe the 274 and 814 patents.

21. For the same reasons, Kyocera's infringement has been or will be willful.

PRAYER FOR RELIEF

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

a. Judgment that one or more claims of the 274 and 814 patents have been infringed, either literally and/or under the doctrine of equivalents, by Kyocera and/or all others acting in concert therewith;

b. A permanent injunction enjoining Kyocera and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of the 274 and 814 patents;

c. Judgment that Kyocera accounts for and pays to Bluebonnet all damages to and costs incurred by Bluebonnet because of Kyocera'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 Kyocera'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: March 19, 2014

Respectfully submitted,

/s/ Elizabeth L. DeRieux

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