

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**EMSAT ADVANCED GEO-LOCATION  
TECHNOLOGY, LLC**

and

**LOCATION BASED SERVICES LLC,**

Plaintiffs,

v.

**VIRGIN MOBILE USA, L.P. and  
KAJEET, INC.,**

Defendants.

**Case No. 4:09-cv-2815**

**PATENT CASE**

**JURY TRIAL DEMANDED**

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**FIRST AMENDED COMPLAINT**

Plaintiffs EMSAT Advanced Geo-Location Technology, LLC (“EMSAT”) and Location Based Services LLC (“LBS”) file this First Amended Complaint against Virgin Mobile USA, L.P. (“Virgin Mobile”) and kajeet, Inc., (“kajeet”) or (collectively “Defendants”) for infringement of U.S. Patent No. 6,847,822 (the “’822 patent”).

**THE PARTIES**

1. Plaintiff EMSAT is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business located at 101 Southbend Court, Loveland, Ohio.

2. Plaintiff LBS is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 500 Newport Center Drive, Newport Beach, California.

3. Defendant Virgin Mobile is a Delaware limited partnership with its principal place of business at 10 Independence Boulevard, Warren, New Jersey 07059.

4. Defendant kajeet is a Delaware corporation with its principal place of business at 8800 Clifford Ave, Suite 1000, Chevy Chase, Maryland 20815.

### **JURISDICTION AND VENUE**

5. This is an action for infringement of United States patents arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of the action under Title 28 U.S.C. §1331 and §1338(a).

6. The Court has personal jurisdiction over Defendants, and venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). Defendants have substantial contacts with the forum as a result of pervasive business activities conducted within the State of Ohio and within this District, including but not limited to: (i) the marketing, sale and distribution of cellular telephones and (ii) the marketing and sale of services for cellular telephone communications.

7. Defendants have committed acts of patent infringement, directly and/or through agents and intermediaries, by using, shipping, distributing, importing, offering for sale, and/or selling certain infringing products, services, and systems in Ohio and, particularly, the Northern District of Ohio. Specifically, Defendants have purposefully and voluntarily placed one or more of their infringing products, services, and/or systems into the stream of commerce with the expectation that they will be purchased and used by consumers in this District, which products, services, and/or systems have been purchased and used by consumers in this District. Defendants also provided support for their infringing products, services, and systems to their respective customers in the District.

### **BACKGROUND**

8. On January 25, 2005, United States Patent No. 6,847,822 (“the ’822 patent”) was issued for a “Cellular Telephone System That Uses Position of a Mobile Unit to Make Call Management Decisions.” A true and correct copy of the ’822 patent is attached hereto as Exhibit “A” and made a part hereof.

9. Plaintiff EMSAT is the assignee of the ’822 patent. Plaintiff LBS is the exclusive licensee of the ’822 patent and possesses all rights of recovery under it, including the right to prosecute this action and to collect damages for all relevant times.

10. The ’822 patent relates to systems and methods for combining certain features of cellular, or “wireless,” telephone systems with location-finding technology to create location-aware networks that can determine the exact geographic locations of telephones and, in turn, use that information to improve network operations. In particular, the ’822 patent allows for increased accuracy in determining the location of a mobile phone for the purpose of transmitting location information to nearby emergency call centers, known as “Public Safety Answering Points” (or “PSAPs”).

11. In 1996, the Federal Communications Commission (“FCC”) established the Enhanced 911 (“E911”) program. Under “Phase 2” of the E911 program, all cellular telephone service providers in the United States must be capable of providing the location of cellular telephones to PSAPs with a specified accuracy for a specified percentage of wireless calls.

12. The methods and systems involved in deploying a mobile E911 system, as described above, are substantially similar to those required to deploy so-called “commercial” location-based services to cell phone subscribers. In fact, commentators have asserted that the FCC-required development of mobile E911 systems allowed the wireless carriers, such as

Defendants, to develop and deploy commercial location-based services. These location-based services permit the cell phone user, often for a fee, to use his or her cell phone as a navigation device, to locate nearby products and services, and to find friends, among other things.

13. Upon information and belief, and at all pertinent times, Defendants made, had made, deployed, used, operated, sold, and offered for sale the above-described E911 systems for cellular telephones. These systems infringe the '822 patent.

14. Representative claim 21 of the '822 patent (which depends from claim 10) is comprised of the following elements:

A cellular communications network comprising:

a cellular communication network comprising a plurality of cell sites and a plurality of mobile units, for radio frequency communication between said cell sites and mobile units, at least one of said cell sites receiving an identification of a specific mobile unit, said cellular communication network communicating with said specific mobile unit via a cell site chosen based upon signal strength,

a positioning system obtaining a position for said specific mobile unit identifying an exact geographic location of the specific mobile unit,

a data storage system for recording said exact geographic location and specific mobile unit identification for use in subsequent services.

The cellular communication system of claim 10 wherein said data storage system makes said exact geographic location information accessible for emergency services provisioning.

15. The United States Patent and Trademark Office has confirmed the validity of claims of the '822 patent at least four times.

16. Exhibit B, attached hereto, is a phone manual from Virgin Mobile's website detailing how their GPS technology works: "When you place an emergency 911 call, the GPS feature of your phone seeks information to calculate your approximate location."

17. Exhibit C, attached hereto, also from Virgin Mobile's website, details Virgin Mobile's compliance with the FCC's specific latitude and longitude location requirements (Automatic Location Identification = ALI). "The UTStarcom is an ALI-capable phone equipped with a GPS receiver supporting a satellite-based GPS ALI-capable network to comply with the FCC's ALI requirements."

18. Exhibit D, attached hereto, is an Amended Compliance Plan that kajeet filed on May 15, 2012 before the Federal Communications Commission ("FCC") detailing its plans to comply with the FCC's E911 requirements.

19. There are no non-infringing alternatives to the inventions described in claims 21 and 31 of the '822 patent that also meet the FCC E911 requirements.

**COUNT I**  
**(INFRINGEMENT OF U.S. PATENT NO. 6,847,822)**

20. Plaintiffs incorporate each of the allegations in paragraphs 1 through 19 as if fully set forth herein.

21. The asserted claims of the '822 patent are valid, enforceable, and were duly issued in full compliance with Title 35 of the United States Code.

22. During the relevant time period, Defendants directly infringed one or more claims of the '822 patent (namely, claims 21 and 31) without Plaintiffs' consent or authorization. Such acts of infringement include Defendants' making, having made, offering for sale, selling, and/or use of infringing mobile E911 systems.

23. Plaintiffs have been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Plaintiffs in an amount that adequately compensates them for Defendants' infringements, which by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court pursuant to 35 U.S.C. § 284.

**COUNT II**  
**(INDIRECT INFRINGEMENT - INDUCEMENT)**

24. Plaintiffs incorporate paragraphs 1 through 23 herein by reference.

25. Based on information presently available to Plaintiffs, absent discovery, and in the alternative to direct infringement, Plaintiffs contend that Defendants have indirectly infringed claims 21 and 31 of the '822 patent by (i) inducing their respective subscribers' and customers' use of the infringing E911 systems, and/or (ii) inducing network owner/operators' use of the infringing E911 systems when providing network services to Defendants' subscribers and customers.

26. Defendants have been on notice of the '822 patent since at least service of the original complaint against them. Plaintiffs will likely have additional evidentiary support after a reasonable opportunity for further investigation on this issue.

27. On information and belief, since Defendants have been on notice of the '822 patent, Defendants have knowingly induced infringement of claims 21 and 31 and specifically intended (i) that their respective subscribers and customers use the infringing E911 systems when placing 911 calls, and/or (ii) that the network owner/operators use the infringing E911 systems when processing 911 calls made by Defendants' subscribers and customers.

28. On information and belief, since Defendants have been on notice of the '822 patent, Defendants knew or should have known that their actions would induce actual infringement of claims 21 and 31 of the '822 patent (i) by their respective subscribers and

customers that use the infringing systems when making 911 calls and/or (ii) by network owner/operators that use the infringing systems to process 911 calls made by Defendants' respective subscribers and customers.

**COUNT III**  
**(INDIRECT INFRINGEMENT - CONTRIBUTORY)**

29. Plaintiffs incorporate paragraphs 1 through 28 herein by reference.

30. Based on information presently available to Plaintiffs, absent discovery, and in the alternative to direct infringement, Plaintiffs contend that Defendants have indirectly infringed claims 21 and 31 of the '822 patent by offering to sell and selling within the United States components (namely, the claimed mobile units) of the patented systems of claims 21 and 31. These components constituted a material part of the inventions described in claims 21 and 31.

31. Defendants have been on notice of the '822 patent since at least service of the original complaint against them. Plaintiffs will likely have additional evidentiary support after a reasonable opportunity for further investigation on this issue.

32. Defendants knew that the system components were especially made or especially adapted for use in infringing claims 21 and 31 of the '822 patent and that such system components were not a staple article or commodity of commerce suitable for substantial non-infringing use.

**JURY DEMAND**

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

**PRAYER FOR RELIEF**

Plaintiffs request that the Court find in their favor and against Defendants, and that the Court grant Plaintiffs the following relief:

- a. Judgment that one or more claims of United States Patent No. 6,847,822 has been infringed, either literally and/or under the doctrine of equivalents, either directly or indirectly, by Defendants;
- b. Judgment that Defendants account for and pay to Plaintiffs all damages to and costs incurred by them because of Defendants' infringing activities and other conduct complained of herein;
- c. That Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and
- d. That Plaintiffs be granted such other and further relief as the Court may deem just and proper under the circumstances.

**Dated: April 7, 2014**

Respectfully submitted,

**THE SIMON LAW FIRM, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon all counsel of record via the Court's CM/ECF service on April 7, 2014.

/s/ Timothy D. Krieger  
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