

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

<b>TELINIT TECHNOLOGIES, LLC</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>CIVIL ACTION NO. 2:14-cv-370</b>
	§	
<b>v.</b>	§	<b>JURY TRIAL DEMANDED</b>
	§	
<b>DELTATHREE, INC., ACN OPPORTUNITY, LLC (f/k/a ACN, Inc.), and ACN COMMUNICATIONS SERVICES, INC.,</b>	§	
	§	
<b>Defendants.</b>	§	

**COMPLAINT FOR PATENT NFRINGEMENT**

COMES NOW, Plaintiff Telinit Technologies, LLC (“Telinit”), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin Defendants Deltathree, Inc., ACN Opportunity, LLC (f/k/a ACN, Inc.), and ACN Communications Services, Inc., (hereinafter “Defendants”) from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Telinit, from U.S. Patent No. 6,192,123 (the “123 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. §271, and to recover damages, attorneys fees, and costs.

**THE PARTIES**

2. Plaintiff Telinit is a Texas corporation with its principal place of business at 214 W. Fannin Street, Suite 16, Marshall, Texas 75670.

3. Defendant Deltathree, Inc. is a corporation organized under the laws of the state of Delaware with its principal place of business at 1 Bridge Plaza, Fort Lee, New Jersey 07024.

4. Defendant ACN Opportunity, LLC (f/k/a ACN, Inc.) is a corporation organized under the laws of the state of North Carolina with its principal place of business at 1000 Progress Place, Concord, North Carolina 28025.

5. Defendant ACN Communications Services, Inc. is a corporation organized under the laws of the state of Michigan with its principal place of business at 1000 Progress Place, Concord, North Carolina 28025.

6. Defendants ACN Opportunity, LLC (f/k/a ACN, Inc.) and ACN Communication Services, Inc. (collectively "ACN Defendants") conduct a multi-level marketing operation individually, jointly, and/or in concert with one-another for the purpose of marketing, distributing and/or selling network-based telephony initiation systems and/or services throughout the United States, including within this judicial jurisdiction.

7. Defendants are in the business of manufacturing, distributing and/or selling network-based telephony initiation systems and/or services throughout the United States, including within this judicial jurisdiction.

#### **JURISDICTION AND VENUE**

8. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

9. This Court has personal jurisdiction over Defendants by virtue of their systematic and continuous contacts with this jurisdiction, as alleged herein, as well as because of the injury to Telinit, and the cause of action Telinit has risen, as alleged herein.

10. Defendants are 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 their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (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 judicial district.

11. Defendants have conducted and do conduct business within the state of Texas, including the geographic region within the Eastern District of Texas, directly or through intermediaries, resellers or agents, or offer for sale, sell, advertise (including through the use of interactive web pages with promotional material) products or services, or use or induce others to use services or products in Texas, including this judicial district, that infringe the '123 patent.

12. Specifically, Defendants solicit business from and market their services to consumers within Texas by offering to set telephony communication connections for said Texas consumers enabling them to communicate with other parties using said connection.

13. In addition to Defendants' continuously and systematically conducting business in Texas, the causes of action against Defendants are connected (but not limited) to Defendants' purposeful acts committed in the state of Texas, including the geographic region within the Eastern District of Texas, including Defendants' making, using, offering for sale, or selling network-based products and services for initiating telephony communications systems which include features that fall within the scope of at least one claim of the '123 patent.

14. Venue lies in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b).

**JOINDER**

15. Defendants are properly joined under 35 U.S.C. §299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transactions, occurrences, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, and/or selling the same accused products. Specifically, as alleged in detail below, Defendants are alleged to infringe the '123 patent with respect to a number of network-based products and services for initiating telephony communications systems.

16. Defendants are properly joined under 35 U.S.C. §299(a)(2). Questions of fact will arise that are common to all defendants, including for example, whether the network-based products and services for initiating telephony communications systems alleged to infringe have features that meet the features of one or more claims of the '123 patent, and what reasonable royalty will be adequate to compensate the owner of the '123 patent for its infringement.

17. At least one right to relief is asserted against these parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling the same accused products and/or processes.

18. In 2010 Deltathree, Inc signed a North American sales agreement with ACN Opportunity, LLC (f/k/a ACN, Inc.) for Deltathree Inc.'s mobile phone application. Under the terms of the agreement, ACN Opportunity, LLC (f/k/a ACN, Inc.) sells a private label version of joip Mobile (a division of Deltathree, Inc.) under the ACN Mobile World brand. As such, the offering for sale and sale of each accused system under the aforementioned sales agreement constitutes a series of related transactions that warrant joinder of the action. Furthermore, said

agreement implies that there is a substantial evidentiary overlap in the facts giving rise to the cause of action against each defendant.

### **FACTUAL ALLEGATIONS**

19. On February 20, 2001, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ’123 patent, entitled “Method and apparatus for initiating telephone calls using a data network” after a full and fair examination. (Exhibit A). Telinit is presently the owner of the patent, having received all right, title and interest in and to the ’123 patent from the previous assignee of record. Telinit possesses all rights of recovery under the ’123 patent, including the exclusive right to recover for past infringement.

20. The ’123 patent contains two independent claims and six dependent claims. Defendants use methods that perform one or more steps of the claims, and also make, use, sell and/or offer to sell products that encompass one or more of the claims.

21. The invention claimed in the ’123 patent includes a system and process for initiating a telephone call using a data network request, that request signaling a switch, and that switch triggering a means of monitoring and providing status updates to a user of the telephone system.

22. The above described network-based method and process of connecting and monitoring communication by telephony is often accomplished when a user of a computer encounters a web-based interface with a button that it can push in order to be connected with another person, such as another user of the service or a contact stored in a compatible computer application. Meanwhile, the status of their call is monitored for such things as quality and connectivity.

### **DEFENDANTS’S PRODUCTS**

23. Defendants offer voice over internet protocol (VoIP) products and solutions for businesses. Defendants' system (the "Accused System") includes features that: allow a user to receive a network request to initiate telephone calls on a voice network; identify a stored telephone number corresponding to the request; signal a switch to make a call on the voice network to a mobile device identified by the stored or called telephone number; monitor the status of the call; and provide a user with an indication of a change in the status of the call. Thus, Defendants' customers' and end-users' use of the Accused System is facilitated by the system described in the '123 Patent.

#### **INFRINGEMENT OF THE '123 PATENT**

24. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 23.

25. In violation of 35 U.S.C. § 271, Defendants are now, and have been directly and indirectly infringing the '123 Patent.

26. Defendants have had knowledge of infringement of the '123 Patent at least as of the service of the present complaint.

27. Defendants have directly infringed and continue to directly infringe one or more claims of the '123 Patent by making, using, importing, offering for sale, and/or selling the Accused System without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendants' direct infringement of the '123 Patent, Plaintiff has been and continues to be damaged.

28. Defendants have indirectly infringed and continue to indirectly infringe one or more claims of the '123 Patent by actively inducing their respective customers, users, and/or licensees to directly infringe by using, selling, offering to sell and/or importing the Accused

System. Defendants engaged or will have engaged in such inducement having knowledge of the '123 Patent. Furthermore, Defendants knew or should have known that their action would induce direct infringement by others and intended that their actions would induce direct infringement by others. For example, Defendants sell, offers for sale and advertise the Accused System in Texas specifically intending that their customers buy and use said products. Furthermore, Defendants' customers' use of the Accused System is facilitated by the use of the system described in the '123 Patent. As a direct and proximate result of Defendants' indirect infringement by inducement of the '123 Patent, Plaintiff has been and continues to be damaged.

29. Defendants have contributorily infringed and continues to contributorily infringe the '123 Patent by selling and/or offering to sell the Accused System, whose infringing features are not a staple article of commerce and when used by a third-party, such as a customer, can only be used in a way that infringes the '123 Patent. Defendants have done this with knowledge of the '123 Patent and knowledge that the Accused System constitutes a material part of the invention claimed in the '123 Patent. Defendants engaged or will have engaged in such contributory infringement having knowledge of the '123 Patent. As a direct and proximate result of Defendants' contributory infringement of the '123 Patent, Plaintiff has been and continues to be damaged.

30. By engaging in the conduct described herein, Defendants have injured Telinit and are thus liable for infringement of the '123 Patent, pursuant to 35 U.S.C. § 271.

31. Defendants have committed these acts of infringement without license or authorization.

32. As a result of Defendants' infringement of the '123 patent, Telinit has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendants' past infringement, together with interests and costs.

33. Telinit will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court. As such, Telinit is entitled to compensation for any continuing and/or future infringement up until the date that Defendants is finally and permanently enjoined from further infringement.

**DEMAND FOR JURY TRIAL**

34. Telinit demands a trial by jury of any and all causes of action.

**PRAYER FOR RELIEF**

WHEREFORE, Telinit prays for the following relief:

1. That Defendants be adjudged to have infringed the '123 patent, directly and/or indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;

2. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly and/or indirectly infringing the '123 patent;

3. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Telinit for the Defendants' past infringement and any continuing or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;



4. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

5. That Defendants be directed to pay enhanced damages, including Telinit's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

6. That Telinit have such other and further relief as this Court may deem just and proper.

Dated: April 16, 2014

Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFF  
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