

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

MOBILE TELECOMMUNICATIONS	§	
TECHNOLOGIES, LLC,	§	
	§	
Plaintiff,	§	CASE NO. 2:13-cv-00886-JRG-RSP
v.	§	
	§	
T-MOBILE USA, INC. AND	§	JURY TRIAL REQUESTED
T-MOBILE US, INC.,	§	
	§	
Defendants.	§	

**PLAINTIFF’S FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

Plaintiff Mobile Telecommunications Technologies, LLC (“MTel”) by and through its undersigned attorneys, hereby pleads the following claims for patent infringement against Defendants T-Mobile US, Inc., and T-Mobile USA, Inc. (collectively, “T-Mobile” or “Defendants”) and alleges as follows:

PARTIES

1. Plaintiff MTel is a Delaware limited liability company having a principal place of business at 1720 Lakepointe Drive, Suite 100, Lewisville, TX 75057. MTel is a wholly owned subsidiary of United Wireless Holdings, Inc. (“United Wireless”). In 2008, United Wireless, through another of its wholly owned subsidiaries, Velocita Wireless, LLC, purchased the SkyTel wireless network from Bell Industries, including assets related to SkyTel’s more than twenty year history as a wireless data company. Velocita Wireless, LLC, continued to operate the SkyTel wireless data network after the acquisition. As a result of that transaction,

United Wireless gained ownership and control over the portfolio of intellectual property, including patents, developed over the years by several SkyTel-related entities, including Mobile Telecommunication Technologies Corp. (“MTEL Corp.”), Destineer Corporation, and SkyTel Communications. United Wireless subsequently assigned certain of the patent assets, including the patents-in-suit, together with all rights of recovery related to those patent assets to its wholly owned subsidiary, MTel, which is the plaintiff here.

2. MTel Corp. was a pioneer of two-way wireless data communications and launched the world’s first two-way wireless paging service, dubbed SkyTel 2-Way. The SkyTel paging operations and business are currently based out of Lewisville, Texas.

3. MTel asserts against T-Mobile in this action U.S. Patent No. 5,590,403 (the “403 Patent”), U.S. Patent No. 5,659,891 (the “891 Patent”), and U.S. Patent No. 5,915,210 (the “210 Patent”) (collectively, the “asserted Patents” or the “Patents-in-Suit”).

4. To protect its intellectual property rights (and also the interests of its licensees), MTel extended an offer to T-Mobile to license the patents-in-suit. T-Mobile has thus far refused to respect MTel’s intellectual property rights, including the rights in the asserted Patents.

5. MTel is informed and believes, and thereon alleges, that defendant T-Mobile US, Inc. is a corporation organized under the laws of the State of Delaware having a principal place of business at 12920 SE 38th Street, Bellevue,

WA 98006; that T-Mobile USA, Inc., a Delaware corporation having its principal place of business at 12920 SE 38th Street, Bellevue, WA 98006, is a wholly-owned subsidiary of T-Mobile US, Inc., and is the U.S. wireless operation of Deutsche Telekom AG, an Aktiengesellschaft organized and existing under the laws of the Federal Republic of Germany.

6. MTel is informed and believes, and thereon alleges, that as a result of a May 2013 merger, T-Mobile wholly-owns and operates networks formerly operated by MetroPCS Communications, Inc. (“MetroPCS”) and T-Mobile USA, Inc. By this civil action MTel seeks to recover damages for the pre-merger infringement by MetroPCS and T-Mobile USA, Inc. of the asserted Patents.

7. MTel is informed and believes, and thereon alleges, that T-Mobile operates 3G UMTS, 3G EVDO, 4G LTE, and Wi-Fi wireless networks in the United States, including within this judicial district, the Eastern District of Texas. MTel is informed and believes, and thereon alleges, that T-Mobile offers its 4G LTE service in at least 154 markets, including Austin, Dallas, and Houston, Texas, and that T-Mobile’s 3G and 4G LTE networks operate in the FCC-licensed 1700 MHz / 2100 MHz, and 1900 MHz spectrums.

8. MTel is informed and believes, and thereon alleges, that T-Mobile’s wireless 3G, 4G, and Wi-Fi networks use multiple-input, multiple-output (“MIMO”) functionality, including but not limited to Universal Mobile Telecommunications System (“UMTS”), High Speed Packet Access Plus (“HSPA+”), Long Term Evolution and Long Term Evolution-Advanced (“LTE” and “LTE-Advanced”), IEEE 802.11

communication technology, multicast capabilities, and certain subcarrier frequency structures.

9. MTel is informed and believes, and thereon alleges, that T-Mobile's LTE and LTE-Advanced networks support or use transmission configurations in accordance with technical standards described in 3rd Generation Partnership Project ("3GPP") UMTS, 3GPP HSPA+, 3GPP Releases 8, 9, 10, and 11.

10. MTel is informed and believes, and thereon alleges, that T-Mobile supports or uses the techniques consistent with the MIMO aspects of the above standards (*e.g.*, as described at <http://www.wi-fi.org/knowledge-center/white-papers/wi-fi-certified%E2%84%A2-n-longer-range-faster-throughput-multimedia-grade-wi-at-5-6>:

A MIMO system has some number of transmitters (N) and receivers (M) ... Signals from each of the N transmitters can reach each of the M receivers via a different path in the channel. A MIMO device with multiple antennas is capable of sending multiple spatial streams – spatially distinct data streams within the same channel. A MIMO device with multiple antennas is capable of receiving multiple spatial streams. Multipath helps decorrelate the received signals enabling transmission of multiple data streams through the same MIMO channel – a technique called spatial multiplexing. MIMO can multiply data rate through a technique called spatial multiplexing - dividing a data stream into several branches and sending it as multiple parallel data streams simultaneously in the same channel.

MIMO can also be used to improve the robustness and range of 802.11n communications through a technique called spatial diversity. When the same data stream is transmitted across multiple spatial streams error rate can be reduced. An additional technique improving range and reliability called Space Time Block Coding (STBC) is also incorporated into Wi-Fi CERTIFIED n.)

11. T-Mobile has voluntarily and purposely placed these and other products and services into the stream of commerce with the expectation that they will be offered for sale and sold in Texas and in this judicial district.

JURISDICTION AND VENUE

12. This is an action for patent infringement under the patent laws of the United States of America, 35 U.S.C. §1 et seq. This Court has subject matter jurisdiction over the matters pleaded herein under 28 U.S.C. §§1331, 1338(a).

13. As detailed in paragraphs 5-11 above, T-Mobile regularly and deliberately engaged in and continues to engage in activities that result in the making, using, selling, offering for sale, or importing of infringing products or processes in the State of Texas and in this judicial district. These activities violate the United States patent rights MTel has under the asserted Patents. In addition, this Court has personal jurisdiction over T-Mobile also because T-Mobile conducts business in Texas and in this judicial district.

14. Venue is proper in this judicial district under 28 U.S.C. §1391(b), (c), and (d), and 28 U.S.C. §1400(b).

FIRST CLAIM FOR RELIEF

(Infringement of United States Patent No. 5,590,403)

15. MTel incorporates by reference paragraphs 1 through 14 of this First Amended Complaint as if set forth here in full.

16. The United States Patent and Trademark Office (“USPTO”) duly and lawfully issued the ’403 Patent, entitled “Method and System for Efficiently Providing Two Way Communication between a Central Network and Mobile Unit,”

on December 31, 1996. MTel is the assignee of all right, title, and interest in and to the '403 Patent and possesses the exclusive right of recovery, including the exclusive right to recover for past, present, and future infringement. Each and every claim of the '403 Patent is valid and enforceable and each enjoys a statutory presumption of validity separate, apart, and in addition to the statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. §282. A true and correct copy of the '403 Patent is attached hereto as Exhibit A.

17. MTel is informed and believes, and thereon alleges, that processes T-Mobile uses in the United States directly infringe one or more claims of the '403 Patent. MTel is informed and believes, and thereon alleges, that T-Mobile's networks and products infringe one or more claims of the '403 Patent literally and/or under the doctrine of equivalents, by, among other things, using MIMO functionality or dynamically reassigning transmitters due to changing conditions within the network or load balancing transmitters to achieve efficient coverage and capacity.

18. MTel is informed and believes, and thereon alleges, that users of T-Mobile's nationwide wireless network, including but not limited to its HSPA+, 4G LTE, and Wi-Fi networks, are also direct infringers, literally and/or under the doctrine of equivalents, of one or more claims of the '403 Patent.

19. MTel is informed and believes, and thereon alleges, that T-Mobile induced the infringement of at least one claim of the '403 Patent, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. §271(b), by, among other

things, actively, knowingly, and/or recklessly aiding and abetting others (including T-Mobile's customers and end users) through activities such as marketing with the specific intent to induce others to directly use without license or authority, processes that fall within the scope of at least one claim of the '403 Patent. MTel is informed and believes, and thereon alleges, that during the relevant period, T-Mobile charged its customers a monthly fee for access to T-Mobile's networks.

20. MTel is informed and believes, and thereon alleges, that T-Mobile contributed to the infringement of at least one claim of the '403 Patent, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. §271(c), by, among other things, providing its 802.11n compliant MIMO-enabled products that embody a material part of the claimed inventions of the '403 Patent, knowing that such products are especially made or especially adapted for use in an infringement of these claims, and that, during the relevant time period, they were not staple articles or commodities of commerce suitable for substantial non-infringing use. T-Mobile also contributed to its users' and customers' infringement of the '403 Patent.

21. T-Mobile contributed to and induced infringement by others when it encouraged them to infringe by providing a subscription service to its network that performs the methods of the '403 Patent, and when it provided wireless devices that are compatible with its network.

22. As a result of T-Mobile's unlawful infringement of the '403 Patent, MTel has suffered damage. MTel is entitled to recover from T-Mobile damages adequate to compensate for such infringement.

Willful Infringement of the '403 Patent

23. MTel is informed and believes, and thereon alleges, that T-Mobile's infringement was deliberate and willful because T-Mobile knew or should have known of the risk of infringement. MTel is informed and believes, and thereon alleges, that T-Mobile was aware of MTel's pioneering '403 Patent because T-Mobile acknowledged receipt of a Notice Letter dated December 31, 2012 (sent via certified United States mail RRR from counsel for MTel to T-Mobile and attached hereto as Exhibit D) officially notifying T-Mobile of the '403 Patent. All infringing activity since at least that time demonstrates a deliberate and conscious decision to infringe the '403 Patent or, at the very least, a reckless disregard of MTel's patent rights. Additionally, T-Mobile did not make changes to its products or provide end users with instructions regarding how to avoid infringement, despite T-Mobile's actual knowledge of the '403 Patent. T-Mobile continuing to use infringing processes following the Notice Letter, constitutes willful infringement for which MTel is entitled to up to treble damages as well as attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

SECOND CLAIM FOR RELIEF

(Infringement of United States Patent No. 5,659,891)

24. MTel incorporates by reference paragraphs 1 through 23 of this First Amended Complaint as if set forth here in full.

25. The USPTO duly and lawfully issued the '891 Patent, entitled "Multicarrier Techniques in Bandlimited Channels," on August 19, 1997. MTel is the assignee of all right, title, and interest in and to the '891 Patent and possesses

the exclusive right of recovery, including the exclusive right to recover for past, present, and future infringement. Each and every claim of the '891 Patent is valid and enforceable and each enjoys a statutory presumption of validity separate, apart, and in addition to the statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. §282. A true and correct copy of the '891 Patent is attached hereto as Exhibit B.

26. MTel is informed and believes, and thereon alleges, that T-Mobile's networks and products directly infringe one or more claims of the '891 Patent literally and/or under the doctrine of equivalents, by among other things, using certain subcarrier frequency structures.

27. MTel is informed and believes, and thereon alleges, that T-Mobile induced and continues to induce the infringement of at least one claim of the '891 Patent, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. §271(b), by, among other things, actively, knowingly, and/or recklessly aiding and abetting others (including T-Mobile's customers and end users) through activities such as marketing with the specific intent to induce others to directly use without license or authority, processes that fall within the scope of at least one claim of the '891 Patent. MTel is informed and believes, and thereon alleges, that T-Mobile charges its customers a monthly fee for access to T-Mobile's networks.

28. MTel is informed and believes, and thereon alleges, that T-Mobile contributed to and continues to contribute to the infringement of at least one claim of the '891 Patent, literally and/or under the doctrine of equivalents, in violation of

35 U.S.C. §271(c), by, among other things, providing equipment compatible with, and access to, networks that embody a material part of the claimed inventions of the '891 Patent, knowing that such products are especially made or especially adapted for use in an infringement of these claims, and that they are not staple articles or commodities of commerce suitable for substantial non-infringing use. T-Mobile also contributes to its users' and customers' infringement of the '891 Patent.

29. MTel is informed and believes, and thereon alleges, that T-Mobile contributes to and induces infringement by others when it encourages them to infringe by providing a subscription service to its network that performs the methods of the '891 Patent, and when it provides wireless devices that are compatible with its network.

30. As a result of T-Mobile's unlawful infringement of the '891 Patent, MTel has suffered and will continue to suffer damage. MTel is entitled to recover from T-Mobile damages adequate to compensate for such infringement.

Willful Infringement of the '891 Patent

31. Any further infringing activity demonstrates a deliberate and conscious decision to infringe the '891 Patent or, at the very least, a reckless disregard of MTel's patent rights. T-Mobile continuing to make, use, offer to sell, sell, or import infringing products constitutes willful infringement for which MTel is entitled to up to treble damages as well as attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

THIRD CLAIM FOR RELIEF

(Infringement of United States Patent No. 5,915,210)

32. MTel incorporates by reference paragraphs 1 through 31 of this First Amended Complaint as if set forth here in full.

33. The USPTO duly and lawfully issued the '210 Patent entitled, "Method and System for Providing Multicarrier Simulcast Transmission," on June 22, 1999. MTel is the assignee of all right, title, and interest in and to the '210 Patent and possesses the exclusive right of recovery, including the exclusive right to recover for past, present, and future infringement. Each and every claim of the '210 Patent is valid and enforceable and each enjoys a statutory presumption of validity separate, apart, and in addition to the statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. §282. A true and correct copy of the '210 Patent is attached hereto as Exhibit C.

34. MTel is informed and believes, and thereon alleges, that T-Mobile's networks and products directly infringe one or more claims of the '210 Patent literally and/or under the doctrine of equivalents when T-Mobile makes, uses, sells, or offers to sell access to its wireless 4G LTE, and Wi-Fi networks and equipment that employ MIMO functionality, multicast capabilities, and certain subcarrier frequency structures.

35. MTel is informed and believes, and thereon alleges, that T-Mobile's use of MIMO configurations in accordance with technical standards described in IEEE 802.11n and HSPA+/LTE also directly infringe literally and/or under the doctrine of equivalents one or more of the claims of the '210 Patent.

36. As a result of T-Mobile's unlawful infringement of the '210 Patent, MTel has suffered and will continue to suffer damage. MTel is entitled to recover from T-Mobile damages adequate to compensate for such infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MTel prays for entry of judgment against T-Mobile as follows:

- A. That T-Mobile has directly infringed each of the asserted Patents under 35 U.S.C. §271(a);
- B. That T-Mobile has induced the infringement by others of the asserted '403 Patent and the asserted '891 Patent under 35 U.S.C. §271(b);
- C. That T-Mobile has contributed to the infringement by others of the asserted '403 Patent and the asserted '891 Patent under 35 U.S.C. §271(c);
- D. That T-Mobile provide to MTel an accounting of all gains, profits, savings, and advantages derived by T-Mobile's direct or indirect infringement of the asserted Patents, and that MTel be awarded damages adequate to compensate for the wrongful infringement by T-Mobile, in accordance with 35 U.S.C. §284;
- E. That the damages awarded to MTel with respect to each of the asserted Patents be increased up to three times, in view of the relevant period of T-Mobile's willful infringement, in accordance with 35 U.S.C. §284;
- F. That this case be declared an exceptional one in favor of MTel under 35 U.S.C. §285, and that MTel be awarded its reasonable attorneys' fees and all other costs and expenses incurred in connection with this civil action in

accordance with 35 U.S.C. §285 and Rule 54(d) of the Federal Rules of Civil Procedure;

- G. That T-Mobile, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from infringing the '891 Patent; and
- H. That MTel receive all other or further relief as this Court may deem just or proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), MTel hereby demands a trial by jury on all issues triable to a jury.

Dated: May 30, 2014

Respectfully Submitted,

/s/ Henning Schmidt
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ATTORNEYS FOR PLAINTIFF

**MOBILE TELECOMMUNICATIONS
TECHNOLOGIES, LLC**

CERTIFICATE OF SERVICE

The undersigned certifies that on this 30th day of May, 2014, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

/s/ Henning Schmidt

Henning Schmidt