

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

SMARTPHONE TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 6:13-cv-807
	§	
ASUSTEK COMPUTER INC.	§	JURY TRIAL DEMANDED
and ASUS COMPUTER INTERNATIONAL,	§	
	§	
Defendants.	§	
	§	
	§	

PLAINTIFF’S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff SmartPhone Technologies LLC (“SmartPhone”) files this second amended complaint against ASUSTeK Computer Inc. and ASUS Computer International (collectively, “Defendants”) for infringement of U.S. Patent Nos. RE 40,459 (“the ’459 patent”), 6,173,316 (“the ’316 patent”), 7,076,275 (“the ’275 patent”), and 6,976,217 (“the ’217 patent”).

THE PARTIES

1. SmartPhone is a Texas limited liability company with its principal place of business in Frisco, Texas.
2. ASUSTeK Computer Inc. is a Taiwan corporation with its principal place of business in Taipei, Taiwan. This Defendant does business in the State of Texas and in the Eastern District of Texas. This Defendant has been served with process and has appeared.
3. ASUS Computer International (with ASUSTeK Computer Inc., “ASUS”) is a California corporation with its principal place of business in Fremont, California. This

Defendant does business in the State of Texas and in the Eastern District of Texas. This Defendant has been served with process and has appeared.

JURISDICTION AND VENUE

4. SmartPhone brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281 and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, has purposely transacted business involving their accused products in this judicial district, and/or has regular and established places of business in this judicial district.

6. Each Defendant 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 its substantial business in this State and judicial district, including: (A) at last part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. RE 40,459)

7. SmartPhone incorporates paragraphs 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

9. SmartPhone is the exclusive licensee of the '459 patent, entitled "METHOD AND APPARATUS FOR COMMUNICATING OVER LOW BANDWIDTH COMMUNICATIONS NETWORKS," with ownership of all substantial rights. Among other things, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude ASUS, the exclusive right to sue ASUS, the exclusive right to settle any claims with ASUS, and the exclusive right to grant a sublicense to ASUS. A true and correct copy of the '459 patent is attached as Exhibit A.

10. The '459 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

11. ASUS is directly and/or indirectly infringing (by inducing infringement) one or more claims of the '459 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 1, 17, and 18, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, Nexus 7 devices (e.g., Nexus 7 and Nexus 7 (2013)), ASUS MeMO Pad devices (e.g., MeMO Pad FHD 10, MeMO Pad HD 7, MeMO Pad Smart 10", MeMO Pad 10 (ME102A), MeMO Pad 8 (ME180A), MeMO Pad 7 (MeMO Pad 176CX), and MeMO Pad (ME181C)), ASUS Transformer Pad devices (e.g., Transformer Pad TF300T, Transformer Pad TF700T, Transformer Pad TF103C, and Transformer Pad TF300TL), Slider Pad devices (e.g., Eee Pad Slider SL101), and PadFone devices (e.g., PadFone X). ASUS and persons who acquire and use such devices, including ASUS's customers, have, at a minimum, directly infringed the '459 patent, and ASUS is thereby liable for direct and/or indirect infringement of the '459 patent pursuant to 35 U.S.C. § 271.

12. ASUS has had knowledge of the '459 patent at least as early as service of Plaintiff's First Amended Complaint for Patent Infringement (Dkt No. 16).

13. On information and belief, ASUS has specifically intended for persons who acquire and use such devices, including ASUS's customers, to acquire and use such devices in such a way that infringes the '459 patent, including at least claims 1, 17, and 18, and knew or should have known that its actions were inducing infringement. In particular, ASUS has and continues to provide instructional materials (e.g. user guides) that specifically instruct its customers to use ASUS's devices in an infringing manner. For example, the MeMO Pad User Guide, available at <http://www.asus.com>, specifically instructs customers who use that device to access a search form in an application (e.g. Google Maps), enter a search keyword, and view content, in a manner that performs each and every step of at least claims 17 and 18. In providing such instructional materials, ASUS intentionally encourages and specifically intends that its customers use ASUS devices to directly infringe the '459 patent, with knowledge that such acts constitute patent infringement.

14. SmartPhone has been damaged as a result of ASUS's infringing conduct described in this Count. ASUS is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for ASUS's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,173,316)

15. SmartPhone incorporates paragraphs 1 through 6 herein by reference.

16. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

17. SmartPhone is the exclusive licensee of the '316 patent, entitled "WIRELESS COMMUNICATION DEVICE WITH MARKUP LANGUAGE BASED MAN-MACHINE INTERFACE," with ownership of all substantial rights. Among other things, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude ASUS, the exclusive right to sue ASUS, the exclusive right to settle any claims with ASUS, and the exclusive right to grant a sublicense to ASUS. A true and correct copy of the '316 patent is attached as Exhibit B.

18. The '316 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

19. ASUS directly infringes one or more claims of the '316 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 1, 2, 3, and 4, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, Nexus 7 devices (e.g., Nexus 7 and Nexus 7 (2013)), ASUS MeMO Pad devices (e.g., MeMO Pad FHD 10, MeMO Pad HD 7, MeMO Pad Smart 10", MeMO Pad 10 (ME102A), MeMO Pad 8 (ME180A), MeMO Pad 7 (MeMO Pad 176CX), and MeMO Pad (ME181C)), ASUS Transformer Pad devices (e.g., Transformer Pad TF300T, Transformer Pad TF700T, Transformer Pad TF103C, and Transformer Pad TF300TL), Slider Pad devices (e.g., Eee Pad Slider SL101), and PadFone devices (e.g., PadFone X). ASUS and persons who acquire and use such devices, including ASUS's customers, have, at a minimum, directly infringed the '316 patent, and ASUS is thereby liable for direct infringement of the '316 patent pursuant to 35 U.S.C. § 271.

20. SmartPhone has been damaged as a result of ASUS's infringing conduct described in this Count. ASUS is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for ASUS's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. 7,076,275)

21. SmartPhone incorporates paragraphs 1 through 6 herein by reference.

22. SmartPhone is the exclusive licensee of the '275 patent, entitled "METHOD AND SYSTEM FOR SINGLE-STEP ENABLEMENT OF TELEPHONY FUNCTIONALITY FOR A PORTABLE COMPUTER SYSTEM," with ownership of all substantial rights in the '275 patent. Among other rights, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude ASUS, the exclusive right to sue ASUS, the exclusive right to settle any claims with ASUS, and the exclusive right to grant a sublicense to ASUS. A true and correct copy of the '275 patent is attached as Exhibit C.

16. The '275 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

17. ASUS has and continues to directly infringe one or more claims of the '275 patent in this judicial district and elsewhere in Texas, including at least claims 1, 2, and 5, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without

limitation, PadFone devices (e.g., PadFone X). ASUS is thereby liable for direct infringement of the '275 patent pursuant to 35 U.S.C. § 271.

18. SmartPhone has been damaged as a result of ASUS's infringing conduct described in this Count. ASUS is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for ASUS's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT IV

(INFRINGEMENT OF U.S. PATENT NO. 6,976,217)

19. SmartPhone incorporates paragraphs 1 through 6 herein by reference.

20. SmartPhone is the exclusive licensee of the '217 patent, entitled "METHOD AND APPARATUS FOR INTEGRATING PHONE AND PDA USER INTERFACE IN A SINGLE PROCESSOR," with ownership of all substantial rights in the '217 patent. Among other rights, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude ASUS, the exclusive right to sue ASUS, the exclusive right to settle any claims with ASUS, and the exclusive right to grant a sublicense to ASUS. A true and correct copy of the '217 patent is attached as Exhibit D.

32. The '217 patent has been subject to re-examination and a re-examination certificate has issued as U.S. Pat. No. 6,976,217 C1 ("217 re-exam certificate"). A true and correct copy of the '217 re-exam certificate is attached as Exhibit E.

33. The '217 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

34. ASUS is directly infringing one or more claims of the '217 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 22, 23, 25 - 28, and 31, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, PadFone devices (e.g., PadFone X). ASUS is thereby liable for direct infringement of the '217 patent pursuant to 35 U.S.C. § 271.

35. SmartPhone has been damaged as a result of ASUS's infringing conduct described in this Count. ASUS is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for ASUS's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

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

PRAYER FOR RELIEF

SmartPhone requests that the Court find in its favor and against ASUS and that the Court grant SmartPhone the following relief:

- a. Judgment that one or more claims of the '459, '316, '275, and '217 patents has been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others whose infringements have been induced by Defendants;
- b. Judgment that Defendants account for and pay to SmartPhone all damages to and costs incurred by SmartPhone because of Defendants' infringing activities and other conduct complained of herein;
- c. Judgment that Defendants account for and pay to SmartPhone a reasonable ongoing, post-judgment royalty because of Defendants' infringing activities and other conduct complained of herein;

- d. That SmartPhone be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and
- e. That SmartPhone be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: June 30, 2014

Respectfully submitted,

/s/ Edward R. Nelson III

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 30th day of June 2014.

/s/ Edward R. Nelson, III