

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

**CHARLES C. FREENY III, BRYAN E.  
FREENY, and JAMES P. FREENY,**

**Plaintiffs,**

**v.**

**KYOCERA  
COMMUNICATIONS, INC.,**

**Defendant.**

Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their Complaint against Defendant Kyocera Communications, Inc., hereby allege as follows:

**THE PARTIES**

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.
2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.
3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.
4. On information and belief, Defendant Kyocera Communications, Inc.

(“Kyocera”) is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 9520 Towne Centre Drive, San Diego, California 92121.

**JURISDICTION AND VENUE**

5. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 et seq. This Court has jurisdiction over Plaintiffs' federal law claims under 28 U.S.C. §§1331 and 1338(a).

6. This Court has specific and/or general personal jurisdiction over Defendant Kyocera because it has committed acts giving rise to this action within this judicial district and/or has established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over each would not offend traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because Kyocera has committed acts within this judicial district giving rise to this action, and continues to conduct business in this district, and/or has committed acts of patent infringement within this District giving rise to this action.

**COUNT I**

**(INFRINGEMENT OF U.S. PATENT NO. 6,490,443)**

8. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

9. On December 3, 2002, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,490,443 ("the '443 patent"), entitled "Communication and Proximity Authorization Systems." A true and correct copy of the '443 patent is attached hereto as **Exhibit A**.

10. The named inventor of the '443 patent is Charles C. Freeny, Jr., who is now deceased.

11. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '443 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

12. On information and belief, Kyocera has been and now is directly infringing the '443 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States mobile devices that embody one or more of the inventions claimed in the '443 patent, including but not limited to the Kyocera Hydro Elite smartphone and all reasonably similar products ("the accused Kyocera products"), in violation of 35 U.S.C. § 271(a).

13. On information and belief, Kyocera has had knowledge of the '443 patent and its contents since at least around May 10, 2010, when the '443 patent was cited as prior art by the United States Patent and Trademark Office ("PTO") in the prosecution of U.S. Patent No. 7,761,087 ("the '087 patent"). The named inventors on the '087 patent are Yash Kharia, Anupam Junega, Atul Suri, and Scott Jarvis. On information and belief, these individuals were employees of Kyocera Wireless Corporation ("KWC") during the time that the '087 patent was being prosecuted, and in-house patent attorneys at KWC were involved in prosecuting the '087 patent. On information and belief, KWC merged with Kyocera sometime in early 2010, and as part of that merger information regarding the prosecution of the '087 patent, including the PTO's identification of the '443 patent as prior art to the '087 patent, was transferred to Kyocera.

14. On information and belief, based on Kyocera's knowledge of the '443 patent acquired from the prosecution of the '087 patent, Kyocera knew or should have known that there was an objectively high risk that the accused Kyocera products infringe the '443 patent.

15. Kyocera has also been on notice of the '443 patent and Plaintiffs' allegations of infringement in this action since at least the date of service of this Complaint.

16. Despite being on notice of the '443 patent and its direct infringement of the patent, Kyocera has continued with its infringing activities.

17. On information and belief, Kyocera is inducing and/or has induced infringement of one or more claims of the '443 patent as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused Kyocera products in an infringing manner in violation of 35 U.S.C. § 271(b). Despite its knowledge of the '443 patent, Kyocera has continued to engage in activities to encourage and assist its customers in the use of the accused Kyocera products. For example, through its website at [www.kyoceramobile.com](http://www.kyoceramobile.com), Kyocera advertises the accused Kyocera products and provides instructions and technical support on the use the accused Kyocera products. On information and belief, by using the accused Kyocera products as encouraged and assisted by Kyocera, Kyocera's customers have directly infringed and continue to directly infringe one or more claims of the '443 patent. On information and belief, Kyocera knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Kyocera products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '443 patent.

18. On information and belief, Kyocera will continue to infringe the '443 patent unless enjoined by this Court.

19. Kyocera acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Kyocera's infringement of Plaintiffs'

rights under the '443 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

20. On information and belief, Kyocera's infringement of the '443 patent has been willful, thereby entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in litigating this action under 35 U.S.C. § 285.

## COUNT II

### **(INFRINGEMENT OF U.S. PATENT NO. 6,806,977)**

21. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

22. On October 19, 2004, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,806,977 ("the '977 patent"), entitled "Multiple Integrated Machine System." A true and correct copy of the '977 patent is attached hereto as **Exhibit B**.

23. Plaintiffs are the owners and assignees of all right, title and interest in and to the '977 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

24. On information and belief, Kyocera has been and now is directly infringing the '977 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States mobile devices that embody one or more of the inventions claimed in the '977 patent, including but not limited to the accused Kyocera products, in violation of 35 U.S.C. § 271(a).

25. On information and belief, Kyocera is inducing and/or has induced infringement of one or more claims of the '977 patent as a result of, among other activities, instructing,

encouraging, and directing its customers on the use of the accused Kyocera products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, Kyocera has had knowledge of the '977 patent since at least the date of service of this Complaint. Despite this knowledge of the '977 patent, Kyocera has continued to engage in activities to encourage and assist its customers in the use of the accused Kyocera products. For example, through its website at [www.kyoceramobile.com](http://www.kyoceramobile.com), Kyocera advertises the accused Kyocera products and provides instructions and technical support on the use the accused Kyocera products. On information and belief, by using the accused Kyocera products as encouraged and assisted by Kyocera, Kyocera's customers have directly infringed and continue to directly infringe one or more claims of the '977 patent. On information and belief, Kyocera knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Kyocera products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '977 patent.

26. On information and belief, Kyocera will continue to infringe the '977 patent unless enjoined by this Court.

27. Kyocera acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Kyocera infringement of Plaintiffs' rights under the '977 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

### **COUNT III**

#### **(INFRINGEMENT OF U.S. PATENT NO. 7,301,664)**

28. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

29. On November 27, 2007, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 7,301,664 (“the ’664 patent”), entitled “Multiple Integrated Machine System.” A true and correct copy of the ’664 patent is attached hereto as **Exhibit C**.

30. Plaintiffs are the owners and assignees of all right, title and interest in and to the ’664 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

31. On information and belief, Kyocera has been and now is directly infringing the ’664 patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States mobile devices that embody one or more of the inventions claimed in the ’664 patent, including but not limited to the accused Kyocera products, in violation of 35 U.S.C. § 271(a).

32. On information and belief, Kyocera is inducing and/or has induced infringement of one or more claims of the ’664 patent as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused Kyocera products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, Kyocera has had knowledge of the ’664 patent since at least the date of service of this Complaint. Despite this knowledge of the ’664 patent, Kyocera has continued to engage in activities to encourage and assist its customers in the use of the accused Kyocera products. For example, through its website at [www.kyoceramobile.com](http://www.kyoceramobile.com), Kyocera advertises the accused Kyocera products and provides instructions and technical support on the use the accused Kyocera products. On information and belief, by using the accused Kyocera products as encouraged and assisted by Kyocera, Kyocera’s customers have directly infringed and continue to directly infringe one or

more claims of the '664 patent. On information and belief, Kyocera knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Kyocera products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '664 patent.

33. On information and belief, Kyocera will continue to infringe the '664 patent unless enjoined by this Court.

34. Kyocera acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Kyocera infringement of Plaintiffs' rights under the '664 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

#### **COUNT IV**

##### **(INFRINGEMENT OF U.S. PATENT NO. 8,072,637)**

35. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

36. On December 6, 2011, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 8,072,637 ("the '637 patent"), entitled "Multiple Integrated Machine System." A true and correct copy of the '637 patent is attached hereto as **Exhibit D.**

37. Plaintiffs are the owners and assignees of all right, title and interest in and to the '637 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

38. On information and belief, Kyocera has been and now is directly infringing the '637 patent in the State of Texas, in this judicial district, and elsewhere in the United States by,



among other things, making, using, selling, offering for sale, and/or importing into the United States mobile devices that embody one or more of the inventions claimed in the '637 patent, including but not limited to the accused Kyocera products, in violation of 35 U.S.C. § 271(a).

39. On information and belief, Kyocera is inducing and/or has induced infringement of one or more claims of the '637 patent as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused Kyocera products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, Kyocera has had knowledge of the '637 patent since at least the date of service of this Complaint. Despite this knowledge of the '637 patent, Kyocera has continued to engage in activities to encourage and assist its customers in the use of the accused Kyocera products. For example, through its website at [www.kyoceramobile.com](http://www.kyoceramobile.com), Kyocera advertises the accused Kyocera products and provides instructions and technical support on the use the accused Kyocera products. On information and belief, by using the accused Kyocera products as encouraged and assisted by Kyocera, Kyocera's customers have directly infringed and continue to directly infringe one or more claims of the '637 patent. On information and belief, Kyocera knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Kyocera products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '637 patent.

40. On information and belief, Kyocera will continue to infringe the '637 patent unless enjoined by this Court.

41. Kyocera acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Kyocera infringement of Plaintiffs' rights

under the '637 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Kyocera as follows:

- a. For judgment that Kyocera has infringed and continues to infringe the claims of the '443, '977, '664, and '637 patents;
- b. For judgment that Kyocera's infringement of the '443 patent has been and is willful;
- c. For a permanent injunction against Kyocera and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '443, '977, '664, and '637 patents;
- d. For an accounting of all damages caused by Kyocera acts of infringement;
- e. For a judgment and order requiring Kyocera to pay Plaintiffs' damages (including enhanced damages for Kyocera's willful infringement), costs, expenses, and pre- and post-judgment interest for its infringement of the '443, '977, '664, and '637 patents as provided under 35 U.S.C. § 284;
- f. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- g. For such other relief at law and in equity as the Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: July 9, 2014

Respectfully submitted,

/s/ Christopher D. Banys

Christopher D. Banys - *Lead Attorney*

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