

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

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|---------------------------|---|------------------------|
| MOBILE TELECOMMUNICATIONS | § | |
| TECHNOLOGIES, LLC, | § | |
| | § | |
| Plaintiff, | § | Civil Action No. _____ |
| v. | § | |
| | § | |
| APPLE INC. | § | JURY TRIAL REQUESTED |
| | § | |
| Defendant. | § | |

**PLAINTIFF MOBILE TELECOMMUNICATIONS
TECHNOLOGIES, LLC’S ORIGINAL COMPLAINT**

Plaintiff Mobile Telecommunications Technologies, LLC (“MTEL” or “Plaintiff”) files this Complaint against Apple Inc. (“Apple”) for infringement of U.S. Patent Nos. 5,809,428 (the “428 Patent”) and 5,754,946 (the “946 Patent”) pursuant to 35 U.S.C. § 271 and alleges as follows.

THE PARTIES

1. Plaintiff MTEL is a Delaware corporation with its principal place of business at 1720 Lakepointe Drive, Suite 100 Lewisville, TX 75057.
2. MTEL owns and controls a portfolio of patents developed by Mobile Telecommunication Technologies Corp. (“MTEL Corp.”) and its related entities, such as Destineer and SkyTel Communications.
3. MTEL Corp. was a pioneer in wireless communications and is credited with launching the world’s first two-way wireless data messaging service, dubbed SkyTel 2-Way. In 1993, MTEL Corp was awarded by the Federal Communications Commission a “Pioneer Preference” for its innovative 2-way data messaging network.

4. Apple Inc. is incorporated under the laws of the state of California with its principal place of business at 1 Infinite Loop, M/S 38-3TX, Cupertino, California 95014. Apple may be served with process by serving C T Corp. System, 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234.

JURISDICTION AND VENUE

5. This is an action for patent infringement under the Patent Laws of the United States, Title 35 of the United States Code. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

6. This Court has personal jurisdiction over Apple under the laws of the State of Texas, including the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE § 17.042.

7. Plaintiff incorporates all statements of jurisdiction in the preceding paragraphs. In addition to continuous and systematically doing business in Texas, including announcing plans to build a multi-million dollar campus in Texas and establishing and promoting sales at its at least eighteen stores throughout Texas including the Eastern District of Texas, the claims against Apple in this Complaint arise from or are connected with acts purposefully committed by Apple in Texas. Apple has conducted and continues to conduct business within the State of Texas, directly or through intermediaries or agents, or offers for sale, sells, or advertises (including through the provision of interactive web pages) products or services, or uses or induces others to use products or services in Texas that infringe the '428 Patent and the '946 Patent or knowingly contributes to infringement of the '428 Patent and the '946 Patent.

THE PATENTS-IN-SUIT

8. On September 15, 1998, the United States Patent and Trademark (“USPTO”) duly and legally issued United States Patent No. 5,809,428, titled “Method and Device for Processing Undelivered Data Messages in a Two-Way Wireless Communications System,” after a full and fair examination. A true and correct copy of the ’428 Patent is attached hereto as Exhibit A. Plaintiff is the assignee of all right, title, and interest in and to the ’428 Patent and possesses the exclusive right of recovery under the ’428 Patent, including the exclusive right to recover for past and future damages for past and future infringement of the ’428 Patent. The ’428 Patent is valid and enforceable.

9. The ’428 Patent describes and claims, among other things, methods, systems, and devices for storing undeliverable messages, such as e-mail and SMS messages.

10. On May 19, 1998, the USPTO duly and legally issued United States Patent No. 5,754,946 titled “Nationwide Communication System,” after a full and fair examination. A true and correct copy of the ’946 Patent is attached hereto as Exhibit B. Plaintiff is the assignee of all right, title and interest in and to the ’946 Patent and possesses the exclusive right of recovery under the ’946 Patent, including the exclusive right to recover for past and future damages for past and future infringement of the ’946 Patent. The ’946 Patent is valid and enforceable.

11. The ’946 Patent describes and claims, among other things, devices and networks that provide for the transmission of unreceived portions of a message.

INFRINGEMENT OF THE PATENTS-IN-SUIT

12. Plaintiff reincorporates Paragraphs 1 through 11 as though fully restated herein.

13. Apple without authorization or license, has been and is now directly and/or indirectly infringing multiple claims of the ’428 Patent and the ’946 Patent (together, the

“Patents-in-Suit”) in violation of 35 U.S.C. § 271 as stated below. Apple’s infringement has been and will continue to be willful at least since its knowledge of the Patents-in-Suit.

14. Apple’s customers are likewise direct infringers of the Patents-in-Suit when Apple’s customers use Apple’s products and services.

15. On November 17, 2014, MTel received a favorable jury verdict in *Mobile Telecomms. Techs., LLC v. Apple* No. 2:13-CV-258-RSP (E.D. Tex.). See Verdict attached as Exhibit C. The jury in that case found the accused features of iOS 7 and of the various accused Apple devices infringed the same Patents-in-Suit asserted here. Apple’s iPhone 6 and 6 Plus and all versions of Apple’s iPad running iOS 8 contain similar features that are not colorably different from those found to be infringing in *Mobile Telecomms. Techs., LLC v. Apple*.

INFRINGEMENT OF U.S. PATENT NO. 5,809,428

16. Apple has directly and willfully infringed and will continue to directly and willfully infringe claims of the ’428 Patent by making, using, selling, offering for sale, and/or importing in the United States mobile devices using iOS and networks that provide Apple’s iMessage communication service and other messaging services, including MMS text messaging services, XMPP-based messaging services and email services such as Google gmail, Yahoo mail, AOL, Microsoft Exchange, Hotmail and Apple’s iCloud and other email and messaging solutions and apps provided by or through Apple or its App Store (collectively “Messaging Services”). The networks include one or more Messaging Service network operations centers provided by or through Apple.

17. End users with mobile units enabled by Messaging Service applications use the Apple Messaging Service operations center embodied by the claims of the ’428 Patent. Such use by the end users is direct patent infringement of the claims of the ’428 Patent. Apple has and

will continue to contribute to and induce the infringement of others of claims of the '428 Patent based on this direct infringement by instructing and otherwise encouraging infringement by end users and providing Messaging Service software and mobile devices specially enabled for utilizing the Messaging Service communication service. The Messaging Service software and mobile devices have features that have substantially no non-infringing uses other than to operate as claimed in the '428 Patent. Apple encourages the end users to use the Messaging Service operations center and intends the end users use infringing systems as contemplated by the claims of the '428 Patent.

18. Apple directly and willfully infringes and will continue to directly and willfully infringe claims of the '428 Patent by making, using, selling, offering for sell, and/or importing in the United States wireless mobile units compatible with Messaging Services that embody at one or more claim of the '428 Patent and/or practice the methods of the '428 Patent. Infringing mobile units with compatible Messaging Services include without limitation Apple-branded mobile phones and tablets (*e.g.*, all versions of Apple's iPhone 6 and 6 Plus and all versions of Apple's iPad running iOS 8).

19. End users use infringing mobile units enabled by Messaging Services, and such mobile units embody claims of the '428 Patent and/or practice the methods of the '428 Patent. Such use by the end users is direct patent infringement of the '428 Patent. Apple has and will continue to contribute to and induce the infringement of end users by instructing and otherwise encouraging infringement and by providing infringing mobile units and compatible Messaging Services preinstalled and for installation after activation on Apple-branded mobile phones and tablets. The Messaging Services and mobile devices have features relevant to the end user's direct infringement that have no substantially non-infringing uses other than to operate and

perform as claimed in the '428 Patent. The Apple-branded mobile devices are specially enabled for utilizing the Messaging Services. Apple encourages end users to use the Messaging Services and intends the end users to use its Apple-branded mobile units enabled with at least one Messaging Service application as contemplated by the claims of the '428 Patent.

20. Apple has had knowledge of the '428 Patent and of its infringement of that patent since at least April 2, 2013, the date on which MTel filed its Original Complaint in *Mobile Telecomms. Techs., LLC v. Apple* No. 2:13-CV-258-RSP (E.D. Tex.). Despite having knowledge of the '428 Patent and of its infringement, Apple has (1) continued to infringe, including continuing to make, use, sell, offer for sale and/or importing the accused mobile devices; (2) continued to advertise the accused mobile devices on its website; (3) continued to provide instructions on the accused devices' use. Apple continued to do so despite being informed by MTel's Original Complaint in *Mobile Telecomms. Techs., LLC v. Apple* No. 2:13-CV-258-RSP (E.D. Tex.), in sufficient detail of both the identity of the accused devices and the manner in which they infringe. Apple could have ended its sale of these accused devices to avoid the infringement alleged in that Original Complaint after service, but did not. Apple's actions are at least objectively reckless as to the infringement risk and this objective risk was known by Apple. Apple's infringement of the '428 Patent is willful, intentional, and in conscious disregard of MTel's rights under the patent.

INFRINGEMENT OF U.S. PATENT NO. 5,754,946

21. Apple has directly and willfully infringed and will continue to directly and willfully infringe by making, using, selling, offering for sale, and/or importing in the United States mobile devices using iOS that embody claims and/or practice the methods of the '946

Patent, including but not limited to all versions of Apple's iPhone 6 and 6 Plus and all versions of Apple's iPad running iOS 8 and compatible Messaging Services.

22. End users with mobile devices utilizing iOS and Messaging Services on Apple's mobile units, such as all versions of Apple's iPhone 6 and 6 Plus and all versions of Apple's iPad running iOS 8, are direct infringers of the claims of the '946 Patent by using mobile units that infringe the claims of the '946 Patent. Apple has and will continue to contribute to and induce the infringement of end users by instructing and otherwise encouraging infringement by end users by providing manuals and similar instructions on the operation of its mobile units and compatible Messaging Services. Apple instructs end users on ways and methods of retrieving portions of email and other messages. The messaging features utilized by the mobile units to infringe the '946 Patent have no substantial non-infringing uses other than to operate as claimed in the '946 Patent. Apple intends the end users to use the infringing mobile devices as contemplated by the '946 Patent.

23. Apple has had knowledge of the '946 Patent and of its knowledge of that patent since at least April 2, 2013, the date on which MTel filed its Original Complaint in *Mobile Telecomms. Techs., LLC v. Apple* No. 2:13-CV-258-RSP (E.D. Tex.). Despite having knowledge of this patent and of its infringement, Apple has (1) continued to infringe, including continuing to make, use, sell, offer for sale and/or importing the accused mobile devices; (2) continued to advertise the accused mobile devices on its website; (3) continued to provide instructions on the accused devices' use. Apple continued to do so despite being informed by MTel's Original Complaint in *Mobile Telecomms. Techs., LLC v. Apple* No. 2:13-CV-258-RSP (E.D. Tex.), in sufficient detail of both the identity of the accused devices and the manner in which they infringe. Apple could have ended its sale of these accused devices to avoid the

infringement alleged in the Original Complaint after service, but did not. Apple's actions are at least objectively reckless as to the infringement risk and this objective risk was known by Apple. Apple's infringement of the '946 Patent is willful, intentional, and in conscious disregard of MTel's rights under the patent.

PRELIMINARY INJUNCTION

24. Plaintiff reincorporates Paragraphs 1 through 23 as though fully restated herein.

25. MTel has a high likelihood of success on the merits of the claims asserted herein and a high likelihood of success with respect to the validity, enforceability, and infringement of the Patents-in-Suit. On November 17, 2014, MTel obtained a favorable jury verdict in *Mobile Telecomms. Techs., LLC v. Apple* No. 2:13-CV-258-RSP (E.D. Tex.), in which the '428 and '946 Patents were found valid, enforceable, and infringed. *See* Verdict attached as Exhibit C.

26. Apple's infringement of the '428 and '946 Patents is willful, intentional, and in conscious disregard of MTel's rights under the patent. Apple's continued willful infringement has caused and will continue to cause MTel irreparable harm by, among other things, exploiting MTel's exclusive property without authorization.

27. A balancing of the equities confirms that the harm to MTel without injunctive relief far outweighs any potential harm to Apple which has willfully and intentionally infringed the Patents-in-Suit with full knowledge of MTel's prior rights.

28. MTel requests this Court preliminarily enjoin Apple its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, from directly or indirectly infringing the Patents-in-Suit.

29. MTel requests this Court preliminarily enjoin Apple from continuing to make, use, sell, offer for sale, and/or import the accused infringing products, including the iPhone 6 and 6 Plus and all versions of the iPad running iOS 8.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. That Apple be adjudged to have willfully infringed the Patents-in-Suit, directly and indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;

B. That Apple 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 directly or indirectly infringing the Patents-in-Suit;

C. That Plaintiff be awarded damages sufficient to compensate Plaintiff for Apple's infringement, pursuant to 35 U.S.C. § 284;

D. That Apple be directed to pay Plaintiff pre-judgment and post-judgment interest and costs for Plaintiff bringing this lawsuit, in accordance with 35 U.S.C. § 284;

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

F. That Plaintiff receives such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury of any and all issues triable of right before a jury.

Dated: November 19, 2014

Respectfully Submitted,

/s/ Daniel R. Scardino

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