

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

<p>SELEX COMMUNICATIONS, INC.</p> <p style="text-align: center;">Plaintiff and Counterclaim Defendant,</p> <p style="text-align: center;">v.</p> <p>GOOGLE INC. AND GOOGLE VOICE INC.</p> <p style="text-align: center;">Defendant and Counterclaim Plaintiff.</p>	<p>Civil Action No.: 1:09-cv-2927- TWT</p> <p style="text-align: center;">JURY TRIAL DEMANDED</p>
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THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Selex Communications, Inc. (“Selex”), for its third amended complaint against defendants Google Inc. and Google Voice Inc. alleges as follows:

The Parties

1. Selex is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business located at 10840 Carrara Cove, Alpharetta, GA 30022.

2. Google Inc. is a corporation organized and existing under the laws of the State of Delaware, having offices located at Millennium at Midtown, 10 10th

Street NE, Suite 600, Atlanta GA 30309 and 1600 Amphitheatre Parkway, Mountain View, CA 94043.

3. Google Voice Inc. is a corporation organized and existing under the laws of the State of Delaware, having an office located at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

4. Google Voice Inc. is a wholly-owned subsidiary of Google Inc. (Google Inc. and Google Voice Inc. are collectively, referred to herein as “Google”).

Jurisdiction and Venue

5. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35 of the U.S. Code. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Google is subject to personal jurisdiction in this judicial district.

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

The ‘070 Patent

8. On October 23, 2001, United States Letters Patent No. 6,308,070 (“the ‘070 Patent”), entitled “Method and Apparatus of Minimizing Incurred

Charges by the Remote Origination of Telephone Calls,” was issued in the name of Maurice Scott Laster by the United States Patent and Trademark Office (“PTO”).

9. On or around February 17, 2000, Selex acquired all right, title and interest in and to the ‘070 patent, including the right to collect for past damages. At all relevant times since that date, Selex has owned and continues to own all right, title and interest in and to the ‘070 patent, including the right to collect for past damages.

10. On June 21, 2011, an *Ex Parte* Reexamination Certificate with respect to the ‘070 patent was issued to Selex by the PTO. A true and correct copy of the ‘070 patent, as originally granted on October 23, 2001, together with the *Ex Parte* Reexamination Certificate, as issued on June 21, 2011, are attached as Exhibit A to this complaint.

Google Products and Services

11. Google is and has been providing a service to subscribers in the United States, who have a contractual relationship with Google, referred to as “Google Voice” that was formerly known as “GrandCentral” and that allows subscribers to place calls to domestic and international destinations from mobile telephones enabled with software provided by or on behalf of Google (“Google Voice-enabled mobile telephones”) using a remote telephone call origination

server operated by or on behalf of Google that it has referred to as the “Google Voice Softswitch” in an October 28, 2009 letter to the Federal Communications Commission, attached as Exhibit B to this complaint.

12. Google makes, imports, uses, sells, and/or offers for sale in the United States Google Voice-enabled mobile telephones known as the NEXUS ONE.

13. Google is and has been taking active steps to encourage Google Voice subscribers to use Google Voice in the United States and to encourage third parties, including mobile telephone manufacturers and vendors, to incorporate Google Voice into their mobile telephones imported into and sold in the United States.

14. Google is and has been encouraging Google Voice subscribers in the United States to convert their mobile telephones into Google Voice-enabled mobile telephones by instructing them to download remote telephone call origination software from the Android Market, from m.google.com/voice, from <http://www.google.com/mobile/voice>, and/or from Apple’s iTunes Store, which software is referred to as the “Google Voice Dialer App” on Google’s website. *Google Mobile: Or Get the Voice Dialer App*, <http://www.google.com/mobile/products/voice.html#p=default> (last visited Oct. 16, 2009).

15. On information and belief, Google has also encouraged its subscribers in the United States to use Google Voice by integrating Google Voice with the Android operating system.

16. On information and belief, Google has also encouraged third parties, including mobile telephone manufacturers and vendors, to incorporate the “Google Voice Dialer App” into mobile telephones made in, imported into, offered for sale in, and/or sold in the United States, including but not limited to, the Samsung NEXUS S, the T-Mobile G2 and the Sprint NEXUS 4G.

17. For example, on or around March 21, 2011, Sprint announced that the “NEXUS S 4G...will allow Sprint customers to enable the integrated Google Voice experience and will come preloaded with the Google Voice Android app... ‘As part of our partnership with Google, our customers will appreciate having the easiest set-up experience of any wireless carrier for Google Voice across all of our CDMA phones, using their existing Sprint phone number.’” *See, Sprint and Google to Launch Integrated Google Voice Experience on all Sprint Phones*, available at http://newsroom.sprint.com/article_display.cfm?article_id=1832 (last visited July 18, 2011).

18. According to Google’s October 28, 2009 letter to the Federal Communications Commission, when a subscriber uses a Google Voice-enabled

mobile telephone to place an outbound call, the subscriber enters the number to be called into the “Google Voice Dialer App” and the Google Voice Dialer App “will then call a Google Voice access number which will be . . . converted to SIP [Session Initiation Protocol] and sent to the Google Voice [S]oftswitch, where it will be answered. The Google Voice [S]oftswitch will then originate a call . . . and connect to the number entered by the user. When answered, the two calls are bridged by the Google Voice [S]oftswitch.”

19. Google also is and has been providing to Google Voice subscribers in the United States with a Google Voice remote telephone call origination feature, that may be used with mobile telephones, referred to as “Click2Call” on Google’s website. *Google Voice Help, Google Voice Basics: Making Calls*, <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115079> (last visited Oct. 16, 2009).

20. On information and belief, when a Google Voice subscriber using a mobile telephone chooses the “Click2Call” feature to make a telephone call, Google provides the subscriber, via the Internet, with an interface on the mobile telephone enabling the subscriber to “select the phone you want to use for that call and click the Connect button. Google Voice will call you at that phone and connect you to the number dialed.” *Making Calls*, available at

www.google.com/support/voice/bin/answer.py?hl=en&answer=115079 (last visited Aug. 16, 2011).

21. With respect to the various Google Voice features including, the “Google Voice Dialer App,” and “Click2Call,” Google reserves the “right to restrict calls or connections to any telephone in its sole discretion. These may include, but are not limited to certain geographic locations, special services numbers, satellite telephony services, and other call forwarding services.” *Google Voice: Legal Notices*, <http://www.google.com/googlevoice/legal-notices.html> (last visited July 1, 2011).

22. According to Google’s October 28, 2009 letter to the Federal Communications Commission, Google Voice does not complete all calls. Instead, Google Voice “performs a look-up function of both the source and destination numbers to determine the cost of the call, and how to route it externally...to terminate the call.... Some of these numbers or routes, including those that correspond to certain high-cost international and domestic destinations, may be marked as ‘inactive.’ If the call being attempted involves an inactive number or route, that call is not completed.”

23. On information and belief, Google’s Terms of Service for Google Voice state that Google’s services “are supported by advertising revenue and may

display advertisements and promotions. These advertisements may be targeted to the content of information stored on the Services, queries made through the Services or other Information.” *Google Terms of Service*, § 17.1, <http://www.google.com/accounts/TOS> (last visited Oct. 16, 2009).

24. When a subscriber uses the Google Voice service, “inbound and domestic outbound calls (including calls to Canada, Alaska and Hawaii) are free of charge, while international calls are billed according to a schedule posted on the Google Voice website.” *Google Voice*, Wikipedia, http://en.wikipedia.org/wiki/Google_Voice (last visited Oct. 16, 2009).

Notice of Infringement

25. On or about June 3, 2008, Selex, by letter, provided written notice of infringement of the original ‘070 patent to Google.

26. On or about December 3, 2008, and again on March 12, 2009, Selex offered to license the original ‘070 patent to Google.

27. On May 1, 2009, having received no response from Google, Selex revoked its license offer to Google.

28. On or about May 12, 2009, Selex sent an email to Google forwarding a letter that Selex had sent to a third party stating that offering the “Google Voice

Dialer App” in the United States was “inducing others to infringe the ‘070 patent, a violation of the patent statute, 35 U.S.C. §271(b).”

29. Google never responded to the May 12, 2009 email from Selex.

30. On October 21, 2009, Selex filed a complaint for infringement of the original ‘070 patent against Google in this action.

Reexamination of the ‘070 Patent

31. On December 22, 2009, Google filed a request for *ex parte* reexamination of all claims of the original ‘070 patent in the PTO, U.S. Reexam. No. 90/010,795.

32. On March 3, 2010, the PTO refused to grant reexamination of claims 5-6, 12-13, and 19-20 of the original ‘070 patent, finding that Google had failed to show that there was a substantial new question of patentability with respect to those claims, but the PTO found a substantial new question of patentability with respect to the remaining claims, and ordered reexamination of those claims.

33. On March 25, 2011, the PTO confirmed the patentability of (1) claims 1-6 of the ‘070 patent, as amended during reexamination; (2) claims 7-11, 14-18 and 21, as found in the original ‘070 patent, without amendment; (3) original claims 12, 13, 19 and 20 of the original ‘070 patent, but as rewritten during

reexamination as new claims 123, 124, 148 and 149, respectively; and (4) new claims 22-122, 125-147 and 150-174, first added during reexamination.

34. On June 21, 2011, the PTO issued a final *ex parte* reexamination certificate finding claims 1-6, as amended; claims 7-11, 14-18 and 21, as found in the original '070 patent and without amendment; original claims 12, 13, 19 and 20, rewritten as new claims 123, 124, 148 and 149, respectively; and new claims 22-122, 125-147 and 150-174 first added during reexamination to be patentable.

COUNT I:
INFRINGEMENT OF ORIGINAL CLAIMS OF THE '070 PATENT

35. The allegations contained in each of the above paragraphs are incorporated herein by reference as if set forth in full.

36. Google, without license or authorization to do so, has directly infringed one or more claims of the original '070 patent, including but not limited to claims 7, 9, 11, 12 (now rewritten as claim 123), 13 (now rewritten as claim 124), 14, 16, 18, 19 (now rewritten as claim 148), 20 (now rewritten as claim 149) and 21, by making, using, offering to sell, and/or selling mobile telephones enabled with the "Google Voice Dialer App" feature within the United States, and/or importing such mobile telephones into the United States, in violation of 35 U.S.C. § 271(a).

37. Google Voice subscribers, without license or authorization to do so, have directly infringed one or more of the claims of the original '070 patent, including but not limited to claims 7, 9, 11, 12 (now rewritten as claim 123), 13 (now rewritten as claim 124), 14, 16, 18, 19 (now rewritten as claim 148), 20 (now rewritten as claim 149) and 21, by making and/or using mobile telephones enabled with the "Google Voice Dialer App" feature in the United States in violation of 35 U.S.C. § 271(a).

38. Google Voice subscribers, without license or authorization to do so, have also directly infringed one or more of the claims of the original '070 patent, including but not limited to claims 7, 9, 11, 12 (now rewritten as claim 123), 13 (now rewritten as claim 124), 14, 16, 18, 19 (now rewritten as claim 148), and 20 (now rewritten as claim 149), by placing calls initiated with the "Click2Call" feature from mobile telephones in the United States in violation of 35 U.S.C. § 271(a).

39. Third parties, including mobile telephone manufacturers and vendors, such as T-Mobile, Samsung, and Sprint, without license or authorization to do so, have directly infringed one or more of the claims of the original '070 patent, including but not limited to claims 7, 9, 11, 12 (now rewritten as claim 123), 13 (now rewritten as claim 124), 14, 16, 18, 19 (now rewritten as claim 148), 20 (now

rewritten as claim 149) and 21, by making, offering to sell, and/or selling mobile telephones enabled with the “Google Voice Dialer App” feature within the United States and/or importing such mobile telephones into the United States in violation of 35 U.S.C. § 271(a).

40. Google has had knowledge of the ‘070 patent and notice of infringement since at least June 3, 2008.

41. Since at least June 3, 2008, Google has taken active steps to induce Google Voice subscribers, and/or third parties, including mobile telephone manufacturers and vendors of Google Voice-enabled mobile telephones, to directly infringe, and/or has contributed to direct infringement, of one or more of the claims of the original ‘070 patent, including but not limited to claims 7, 9, 11, 12 (now rewritten as claim 123), 13 (now rewritten as claim 124), 14, 16, 18, 19 (now rewritten as claim 148), 20 (now rewritten as claim 149) and 21, in violation of 35 U.S.C. §§ 271(b) and/or (c).

42. Selex has been damaged by the foregoing infringing activities of Google.

43. Google’s acts of infringement as set forth above have been deliberate and willful, and in reckless disregard of Selex’s patent rights.

44. On information and belief, Google will continue its infringing activities as set forth above, and will continue to damage Selex unless enjoined by this Court.

**COUNT II:
INFRINGEMENT OF AMENDED OR NEWLY ADDED
CLAIMS OF THE REEXAMINED '070 PATENT**

45. The allegations contained in each of the above paragraphs are incorporated herein by reference as if set forth in full.

46. Since June 21, 2011, Google, without license or authorization to do so, has directly infringed one or more of the newly added claims of the reexamined '070 patent, including but not limited to claims 41, 43, 44, 47, 49, 51, 52, 53, 55-57, 60, 64, 66, 67, 71, 73-75, 77-79, 82, 86, 88, 89, 93-97, 101, 105, 106, 127, 137, 143, 145, 152, 165, 166, and 169, by making, using, offering to sell, and/or selling mobile telephones enabled with the "Google Voice Dialer App" feature within the United States and/or importing such mobile telephones into the United States in violation of 35 U.S.C. § 271(a).

47. Since June 21, 2011, Google Voice subscribers, without license or authorization to do so, have directly infringed one or more of the amended or newly added claims of the reexamined '070 patent, including but not limited to claims 37, 41, 43, 44, 47, 49, 51, 52, 53, 55-57, 60, 64, 66, 67, 71, 73-75, 77-79,

82, 86, 88, 89, 93-97, 101, 105, 106, 127, 137, 143, 145, 152, 165, 166, and 169, by making and/or using mobile telephones enabled with the “Google Voice Dialer App” feature in the United States in violation of 35 U.S.C. § 271(a).

48. Since June 21, 2011, Google Voice Subscribers, without license or authorization to do so, have directly infringed one or more of the amended or newly added claims of the reexamined ‘070 patent, including but not limited to claims 37, 41, 43, 44, 47, 49, 51, 52, 53, 55-57, 60, 64, 66, 67, 71, 73-75, 77-79, 127, 137, 143, 145, 152, 165, 166, and 169 by placing calls initiated with the “Click2Call” feature from mobile telephones in the United States in violation of 35 U.S.C. § 271(a).

49. Since June 21, 2011, third parties, including mobile telephone manufacturers and vendors, without license or authorization to do so, have directly infringed one or more of the newly added claims the reexamined ‘070 patent, including but not limited to claims 37, 41, 43, 44, 47, 49, 51, 52, 53, 55-57, 60, 64, 66, 67, 71, 73-75, 77-79, 82, 86, 88, 89, 93-97, 101, 105, 106, 127, 137, 143, 145, 152, 165, 166, and 169, by making, offering to sell, and/or selling mobile telephones enabled with the “Google Voice Dialer App” feature within the United States, and/or importing such mobile telephones into the United States in violation of 35 U.S.C. § 271(a).

50. Google has had knowledge of the reexamined '070 patent and notice of infringement since at least June 2011.

51. Since at least June 2011, Google has taken active steps to induce Google Voice subscribers, and/or third party mobile telephone manufacturers and vendors of Google Voice-enabled mobile telephones, to directly infringe, and/or has contributed to the direct infringement of one or more of the claims of the reexamined '070 patent, including but not limited to , 37, 41, 43, 44, 47, 49, 51-53, 55-57, 60, 64, 66, 67, 71, 73-75, 77-79, 82, 86, 88, 89, 93-97, 101, 105, 106, 127, 137, 143, 145, 152, 165, 166, and 169, in violation of 35 U.S.C. §§ 271(b) and (c).

52. Selex has been damaged by the foregoing infringing activities of Google.

53. Google's acts of infringement as set forth above have been deliberate and willful, and in reckless disregard of Selex's patent rights.

54. On information and belief, Google will continue its infringing activities as set forth above, and will continue to damage Selex unless enjoined by this Court.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues or claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Selex requests this Court enter a final judgment:

- a. finding that Google has infringed one or more claims of the original '070 patent in violation of 35 U.S.C. § 271;
- b. finding that Google has infringed one or more claims of the reexamined '070 patent in violation of 35 U.S.C. § 271;
- c. awarding damages adequate to compensate Selex for the infringement of the '070 patent by Google, together with prejudgment and post-judgment interest and costs as fixed by the Court as provided by 35 U.S.C. § 284;
- d. finding that Google's infringement has been willful and awarding treble damages as provided by 35 U.S.C. § 284;
- e. finding that this is an exceptional case and awarding Selex its reasonable attorney fees incurred in prosecuting this action as provided by 35 U.S.C. § 285;
- f. permanently enjoining Google, and its affiliates, and officers, agents, employees, attorneys, and all other persons in active concert or participation with it, from further infringement of the '070 patent during its term as provided by 35 U.S.C. § 283; and
- g. such other and further relief as the Court deems just and proper.

Respectfully submitted this 19th day of July, 2012.

/s/ Charlie C. Lyu

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FONT CERTIFICATION

I hereby certify that this document is presented in Times New Roman 14.

/s/ Charlie C. Lyu

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

<p>SELEX COMMUNICATIONS, INC.</p> <p style="text-align: center;">Plaintiff and Counterclaim Defendant,</p> <p style="text-align: center;">v.</p> <p>GOOGLE, INC.</p> <p style="text-align: center;">Defendant and Counterclaim Plaintiff.</p>	<p>Civil Action No.: 1:09-cv-2927- TWT</p> <p style="text-align: center;">JURY TRIAL DEMANDED</p>
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing *Third Amended Complaint for Patent Infringement* for Plaintiff Selex Communications, Inc. with the Clerk of Court using the CM/ECF system, which will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated this 20th day of July, 2012.

/s/ Charlie C. Lyu