

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BRANDYWINE COMMUNICATIONS
TECHNOLOGIES, LLC,

Plaintiff,

v.

HICKORYTECH CORPORATION,

Defendant.

Case No. 12-cv-3187-ADM/FLN

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Brandywine Communications Technologies, LLC (“Brandywine” or “Plaintiff”), for its Amended Complaint against Defendant HickoryTech Corporation (“HickoryTech” or “Defendant”), alleges and states as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code, as hereinafter more fully appears. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

2. HickoryTech is subject to the jurisdiction of this Court because it is incorporated in this State.

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

THE PARTIES

4. Brandywine is a limited liability company organized under the laws of the State of Delaware, with a place of business located at 1612 Mt. Pleasant Road, Villanova, Pennsylvania, 19085.

5. HickoryTech is a corporation organized under the laws of the State of Minnesota with its principal place of business located at 221 E. Hickory Street, P.O. Box 3248, Mankato, Minnesota 56002.

FACTUAL BACKGROUND

6. On April 27, 1993, U.S. Patent No. 5,206,854 (“the ‘854 Patent”), entitled “Detecting Loss of Echo Cancellation” was duly and legally issued by the United States Patent and Trademark Office to inventors William L. Betts and Robert A. Day, II (collectively “the ‘854 Inventors”). The ‘854 Patent has been duly and legally assigned to Brandywine. A copy of the ‘854 Patent is attached as Exhibit A.

7. On October 5, 1993, U.S. Patent No. 5,251,328 (“the ‘328 Patent”), entitled “Predistortion Technique for Communications Systems,” was duly and legally issued by the United States Patent and Trademark Office to inventor David G. Shaw (“the ‘328 Inventor”). The ‘328 Patent and has been duly and legally assigned to Brandywine. A copy of the ‘328 Patent is attached as Exhibit B.

8. On September 22, 1998, U.S. Patent No. 5,812,537 (“the ‘537 Patent”), entitled “Echo Canceling Method and Apparatus for Data Over Cellular,” was duly and legally issued by the United States Patent and Trademark Office to inventors William Lewis Betts, Ramon B. Hazen, and Robert Earl Scott (collectively “the ‘537 Inventors”). The ‘537 Patent has been duly and legally assigned to Brandywine. A copy of the ‘537 Patent is attached as Exhibit C.

9. On October 27, 1998, U.S. Patent No. 5,828,657 (“the ‘657 Patent”), entitled “Half Duplex Echo Canceler Training Using a Pilot Signal,” was duly and legally issued by the United States Patent and Trademark Office to inventors William Lewis Betts, Ramon B. Hazen, and Robert Earl Scott (collectively “the ‘657 Inventors”). The ‘657 Patent has been duly and legally assigned to Brandywine. A copy of the ‘657 Patent is attached as Exhibit D.

10. On November 29, 2005, U.S. Patent No. 6,970,501 (“the ‘501 Patent”), entitled “Method and Apparatus For Automatic Selection and Operation of a Subscriber Line Spectrum Class Technology,” was duly and legally issued by the United States Patent and Trademark Office to inventors Gordon Bremer and Philip J. Kyees (collectively “the ‘501 Inventors”). The ‘501 Patent and has been duly and legally assigned to Brandywine. A copy of the ‘501 Patent is attached as Exhibit E.

11. On February 22, 2011, U.S. Patent No. 7,894,472 (“the ‘472 Patent”), entitled “Method and Apparatus For Automatic Selection and Operation of a Subscriber Line Spectrum Class Technology,” was duly and legally issued by the United States Patent and Trademark Office to inventors Gordon Bremer and Philip J. Kyees (collectively “the ‘472 Inventors”). The ‘472 Patent and has been duly and legally assigned to Brandywine. A copy of the ‘472 Patent is attached as Exhibit F.

12. On December 10, 2012, Brandywine sent a letter to Defendant notifying Defendant that it has been infringing the ‘854, ‘328, ‘537, ‘657, ‘501, and ‘472 Patents through the operation of its Digital Subscriber Line (“DSL”) business. This letter was sent by certified mail with return receipt requested. Upon information and belief, Defendant has received the letter.

**FIRST CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 5,206,854**

13. Brandywine restates and realleges the allegations contained in paragraphs 1 through 12 and incorporates them herein by reference.

14. Upon information and belief, Defendant has infringed one or more claims of the ‘854 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for

sale services and products that infringe and/or perform processes that infringe one or more claims of the '854 Patent ("Accused Services and Products for the '854 Patent").

15. Upon information and belief, Defendant's Accused Service and Products for the '854 Patent include but are not limited to Defendant's DSL service and equipment.

16. Defendant had actual knowledge of the '854 Patent and its alleged infringement of that patent since at least the time it received Brandywine's December 10, 2012, notice of infringement letter.

17. Because of Defendant's infringement of the '854 Patent, Brandywine has suffered damages, the precise amount to be determined at trial, but in no event less than a reasonable royalty.

**SECOND CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 5,251,328**

18. Brandywine restates and realleges the allegations contained in paragraphs 1 through 17 and incorporates them herein by reference.

19. Upon information and belief, Defendant has infringed one or more claims of the '328 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for sale services and products that infringe and/or perform processes that infringe one or more claims of the '328 Patent ("Accused Services and Products for the '328 Patent").

20. Upon information and belief, Defendant's Accused Service and Products for the '328 Patent include but are not limited to Defendant's DSL service and equipment.

21. Defendant had actual knowledge of the '328 Patent and its alleged infringement of that patent since at least the time it received Brandywine's December 10, 2012, notice of infringement letter.

22. Because of Defendant's infringement of the '328 Patent, Brandywine has suffered damages, the precise amount to be determined at trial, but in no event less than a reasonable royalty.

**THIRD CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 5,812,537**

23. Brandywine restates and realleges the allegations contained in paragraphs 1 through 22 and incorporates them herein by reference.

24. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '537 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for sale services and products that infringe and/or perform processes that infringe one or more claims of the '537 Patent ("Accused Services and Products for the '537 Patent").

25. Upon information and belief, Defendant's Accused Service and Products for the '537 Patent include but are not limited to Defendant's DSL service, modems, and equipment.

26. Defendant had actual knowledge of the '537 Patent and its alleged infringement of that patent since at least the time it received Brandywine's December 10, 2012, notice of infringement letter.

27. Upon information and belief, since at least the time it received Brandywine's December 10, 2012, notice letter, Defendant has committed and continues to commit acts of contributory infringement of the '537 Patent under 35 U.S.C. § 271(c) by providing products, including the Accused Services and Products to others, including but not limited to its customers and partners, knowing or willfully blind to the fact that that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '537 Patent, and have no substantial non-infringing uses.

28. In particular, the Accused Services and Products include DSL modems, which constitute a especially adapted component to receive Defendant's DSL service. These modems are used by Defendant's partners and customers to perform all of the steps recited in at least one claim of the '537 Patent. These modems have no substantial non-infringing uses at least because they contain components whose only purpose is to practice the claimed method of providing the infringing DSL service. The use of these modems by Defendant's partners and customers constitutes direct infringement of at least one claim of the '537 Patent. Defendant has known or remained willfully blind to these facts since at least the date it received the notice letter from Brandywine notifying Defendant that such activities infringed the '537 Patent.

29. Upon information and belief, since at least the time it received Brandywine's December 10, 2012, notice letter, Defendant has induced and continues to induce others to infringe at least one claim of the '537 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Defendant's partners and customers, whose use of the Accused Services and Products constitutes direct infringement of at least one claim of the '537 Patent.

30. In particular, Defendant's actions that aid and abet others such as its partners and customers to infringe include advertising and distributing the Accused Services and Products and providing instruction materials, training, and consulting services regarding the Accused Services and Products. On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Defendant has had actual knowledge of the '537 Patent and that its acts were inducing its customers to infringe the '537 Patent since at least the date it received the notice letter from Brandywine notifying Defendant that such activities infringed the '537 Patent.

31. Despite Brandywine's notice regarding the '537 Patent, Defendant has continued to infringe the '537 Patent. On information and belief, Defendant's infringement has been and continues to be willful.

32. Because of Defendant's infringement of the '537 Patent, Brandywine has suffered damages, the precise amount to be determined at trial, but in no event less than a reasonable royalty.

**FOURTH CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 5,828,657**

33. Brandywine restates and realleges the allegations contained in paragraphs 1 through 32 and incorporates them herein by reference.

34. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '657 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for sale services and products that infringe and/or perform processes that infringe one or more claims of the '657 Patent ("Accused Services and Products for the '657 Patent").

35. Upon information and belief, Defendant's Accused Service and Products for the '657 Patent include but are not limited to Defendant's DSL service, modems, and equipment.

36. Defendant had actual knowledge of the '657 Patent and its alleged infringement of that patent since at least the time it received Brandywine's December 10, 2012, notice of infringement letter.

37. Upon information and belief, since at least the time it received Brandywine's December 10, 2012, notice letter, Defendant has committed and continues to commit acts of contributory infringement of the '657 Patent under 35 U.S.C. § 271(c) by providing products, including the Accused Services and Products to others, including but not limited to its customers

and partners, knowing or willfully blind to the fact that that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '657 Patent, and have no substantial non-infringing uses.

38. In particular, the Accused Services and Products include DSL modems, which constitute a especially adapted component to receive Defendant's DSL service. These modems are used by Defendant's partners and customers to perform all of the steps recited in at least one claim of the '657 Patent. These modems have no substantial non-infringing uses at least because they contain components whose only purpose is to practice the claimed method of providing the infringing DSL service. The use of these modems by Defendant's partners and customers constitutes direct infringement of at least one claim of the '657 Patent. Defendant has known or remained willfully blind to these facts since at least the date it received the notice letter from Brandywine notifying Defendant that such activities infringed the '657 Patent.

39. Upon information and belief, since at least the time it received Brandywine's December 10, 2012, notice letter, Defendant has induced and continues to induce others to infringe at least one claim of the '657 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Defendant's partners and customers, whose use of the Accused Services and Products constitutes direct infringement of at least one claim of the '657 Patent.

40. In particular, Defendant's actions that aid and abet others such as its partners and customers to infringe include advertising and distributing the Accused Services and Products and providing instruction materials, training, and consulting services regarding the Accused Services and Products. On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because

Defendant has had actual knowledge of the '657 Patent and that its acts were inducing its customers to infringe the '657 Patent since at least the date it received the notice letter from Brandywine notifying Defendant that such activities infringed the '657 Patent.

41. Despite Brandywine's notice regarding the '657 Patent, Defendant has continued to infringe the '657 Patent. On information and belief, Defendant's infringement has been and continues to be willful.

42. Because of Defendant's infringement of the '657 Patent, Brandywine has suffered damages, the precise amount to be determined at trial, but in no event less than a reasonable royalty.

**FIFTH CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 6,970,501**

43. Brandywine restates and realleges the allegations contained in paragraphs 1 through 42 and incorporates them herein by reference.

44. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '501 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for sale services and products that infringe and/or perform processes that infringe one or more claims of the '501 Patent ("Accused Services and Products for the '501 Patent").

45. Upon information and belief, Defendant's Accused Service and Products for the '501 Patent include but are not limited to Defendant's DSL service, modems, and equipment.

46. Defendant had actual knowledge of the '501 Patent and its alleged infringement of that patent since at least the time it received Brandywine's December 10, 2012, notice of infringement letter.

47. Upon information and belief, since at least the time it received Brandywine's December 10, 2012, notice letter, Defendant has induced and continues to induce others to infringe at least one claim of the '501 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Defendant's partners and customers, whose use of the Accused Services and Products constitutes direct infringement of at least one claim of the '501 Patent.

48. In particular, Defendant's actions that aid and abet others such as its partners and customers to infringe include advertising and distributing the Accused Services and Products and providing instruction materials, training, and consulting services regarding the Accused Services and Products. On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Defendant has had actual knowledge of the '501 Patent and that its acts were inducing its customers to infringe the '501 Patent since at least the date it received the notice letter from Brandywine notifying Defendant that such activities infringed the '501 Patent.

49. Despite Brandywine's notice regarding the '501 Patent, Defendant has continued to infringe the '501 Patent. On information and belief, Defendant's infringement has been and continues to be willful.

50. Because of Defendant's infringement of the '501 Patent, Brandywine has suffered damages, the precise amount to be determined at trial, but in no event less than a reasonable royalty.

**SIXTH CAUSE OF ACTION
INFRINGEMENT OF U.S. PATENT NO. 7,894,472**

51. Brandywine restates and realleges the allegations contained in paragraphs 1 through 50 and incorporates them herein by reference.

52. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the ‘472 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for sale services and products that infringe and/or perform processes that infringe one or more claims of the ‘472 Patent (“Accused Services and Products for the ‘472 Patent”).

53. Upon information and belief, Defendant’s Accused Service and Products for the ‘472 Patent include but are not limited to Defendant’s DSL service, modems, and equipment.

54. Defendant had actual knowledge of the ‘472 Patent and its alleged infringement of that patent since at least the time it received Brandywine’s December 10, 2012, notice of infringement letter.

55. Upon information and belief, since at least the time it received Brandywine’s December 10, 2012, notice letter, Defendant has induced and continues to induce others to infringe at least one claim of the ‘472 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Defendant’s partners and customers, whose use of the Accused Services and Products constitutes direct infringement of at least one claim of the ‘472 Patent.

56. In particular, Defendant’s actions that aid and abet others such as its partners and customers to infringe include advertising and distributing the Accused Services and Products and providing instruction materials, training, and consulting services regarding the Accused Services and Products. On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Defendant has had actual knowledge of the ‘472 Patent and that its acts were inducing its

customers to infringe the '472 Patent since at least the date it received the notice letter from Brandywine notifying Defendant that such activities infringed the '472 Patent.

57. Despite Brandywine's notice regarding the '472 Patent, Defendant has continued to infringe the '472 Patent. On information and belief, Defendant's infringement has been and continues to be willful.

58. Because of Defendant's infringement of the '472 Patent, Brandywine has suffered damages, the precise amount to be determined at trial, but in no event less than a reasonable royalty.

JURY DEMAND

Brandywine demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brandywine Communications Technologies, LLC respectfully requests that this Court enter judgment for Brandywine and against Defendant HickoryTech Corporation as follows:

1. Finding that Defendant has infringed the '854, '328, '537, '657, '501, and '472 Patents;
2. Awarding damages to Plaintiff to be paid by Defendant in an amount adequate to compensate Brandywine for Defendant's past infringement of the '854, '328, '537, '657, '501, and '472 Patents, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
3. Ordering that Defendant pay an ongoing royalty in an amount to be determined for any continued infringement of the '854, '328, '537, '657, '501, and '472 Patents after the date judgment is entered;

4. Awarding treble damages under 35 U.S.C. § 284 for Defendant's willful infringement of the '537, '657, '501, and '472 Patents;
5. A declaration finding this to be an exceptional case, and awarding Brandywine its reasonable attorneys' fees under 35 U.S.C. § 285; and
6. For such further relief at law and in equity as the Court may deem just and proper.

Dated: December 27, 2012.

/s/Alan M. Anderson

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