

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

**INTELLECTUAL VENTURES I LLC and  
INTELLECTUAL VENTURES II LLC**

*Plaintiffs,*

v.

**SALLY BEAUTY HOLDINGS, INC., and  
SALLY BEAUTY SUPPLY LLC,**

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

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

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Intellectual Ventures I LLC and Intellectual Ventures II LLC (collectively “Intellectual Ventures”) file this Original Complaint for Patent Infringement against Sally Beauty Holdings, Inc. and Sally Beauty Supply LLC (collectively “Sally Beauty” or “Defendants”) and allege as follows:

**I. NATURE OF THE SUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

**II. THE PARTIES**

2. Plaintiff **Intellectual Ventures I LLC** (“Intellectual Ventures I”) is a Delaware limited liability company having its principal place of business at 3150 139th Avenue Southeast, Bellevue, Washington 98005.

3. Plaintiff **Intellectual Ventures II LLC** (“Intellectual Ventures II”) is a Delaware limited liability company having its principal place of business at 3150 139th Avenue Southeast,

Bellevue, Washington 98005.

4. Defendant **Sally Beauty Holdings, Inc.** is a Delaware corporation having its principal place of business in this District at 3001 Colorado Boulevard, Denton, Texas 76210 in Denton County, Texas. Sally Beauty Holdings, Inc. can be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

5. Defendant **Sally Beauty Supply LLC** is a Delaware limited liability company having its principal place of business in this District at 3001 Colorado Boulevard, Denton, Texas 76210 in Denton County, Texas. Sally Beauty Supply LLC can be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

### **III. JURISDICTION AND VENUE**

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Sally Beauty is an international specialty retailer and distributor of professional beauty supplies that does business in the State of Texas, including in the Eastern District of Texas. Sally Beauty operates primarily through two business units, Sally Beauty Supply and Beauty Systems Group (also known as BSG). Defendants maintain their principal offices in the State of Texas, within this District.

8. Sally Beauty Supply is the largest open-line distributor of professional beauty supplies in the U.S. based on store count. As of March 31, 2015, Sally Beauty Supply operated 3,612 company-operated retail stores, 2,836 of which are located in the United States. Defendants have many stores in the State of Texas, and specifically within the Eastern District of Texas, including, on information and belief, at least at the following forty locations:

- a. Sally Beauty Supply, 1711 South East End Boulevard, Marshall, Texas;
- b. Sally Beauty Supply, 4550 South Broadway Avenue, Tyler, Texas;
- c. Sally Beauty Supply, 3846 TX-64, Tyler, Texas;
- d. Sally Beauty Supply, 3080 North Eastman Road, Longview, Texas;
- e. Sally Beauty Supply, 2414 Gilmer Road #4, Longview, Texas;
- f. Sally Beauty Supply, 232 Richmond Ranch Road, Texarkana, Texas;
- g. Sally Beauty Supply, 4505 South Medford Drive #101, Lufkin, Texas;
- h. Sally Beauty Supply, 3051 South John Redditt Drive, Lufkin, Texas;
- i. Sally Beauty Supply, 622 South Jefferson Avenue, Mt. Pleasant, Texas;
- j. Sally Beauty Supply, 1707 South Broadway Street, Sulphur Springs, Texas;
- k. Sally Beauty Supply, 1402 Mockingbird Lane, Sulphur Springs, Texas;
- l. Sally Beauty Supply, 828 Steger Towne Road Rockwall, Texas;
- m. Sally Beauty Supply, 3536 Lamar Avenue, Paris, Texas;
- n. Sally Beauty Supply, 4919 North Street, #102, Nacogdoches, Texas;
- o. Sally Beauty Supply, 1762 West Church Street, Livingston, Texas;
- p. Sally Beauty Supply, 1311 South Jackson Street #C, Jacksonville, Texas;
- q. Sally Beauty Supply, 1395 East Tyler Street, Athens, Texas;
- r. Sally Beauty Supply, 2213 South Loop 256, Palestine, Texas;
- s. Sally Beauty Supply, 4105 Dowlen Road, Beaumont, Texas;
- t. Sally Beauty Supply, 3779 College Street, Beaumont, Texas;
- u. Sally Beauty Supply, 8445 Memorial Drive, Port Arthur, Texas;
- v. Sally Beauty Supply, 3109 Edgar Brown Drive, Orange, Texas;
- w. Sally Beauty Supply, 2301 North Main Street, Liberty, Texas;
- x. Sally Beauty Supply, 1100 West Main Street, #C, Gun Barrel City, Texas;
- y. Sally Beauty Supply, 301 East Highway 243, #125, Canton, Texas;
- z. Sally Beauty Supply, 1751 North Central Expressway, McKinney, Texas;
- aa. Sally Beauty Supply, 1705 West University Drive, #108, McKinney, Texas;
- bb. Sally Beauty Supply, 8930 State Hwy 121, Suite 508, McKinney, Texas;
- cc. Sally Beauty Supply, 3400 East FM 544, Suite 610, Wylie, Texas;
- dd. Sally Beauty Supply, 549 West McDermott Drive, Allen, Texas;
- ee. Sally Beauty Supply, 1501 North Grand Ave., Gainesville, Texas;
- ff. Sally Beauty Supply, 4713 State Highway 121, The Colony, Texas;
- gg. Sally Beauty Supply, 2929 Custer Road, STE 330, Plano, Texas;

- hh. Sally Beauty Supply, 6505 West Park Boulevard, STE 308, Plano, Texas;
- ii. Sally Beauty Supply, 1110 East Parker Road, #107, Plano, Texas;
- jj. Sally Beauty Supply, 2930 Preston Road, Frisco, Texas;
- kk. Sally Beauty Supply, 1288 West Main Street, Suite 144, Lewisville, Texas;
- ll. Sally Beauty Supply, 721 Hebron Parkway, Lewisville, Texas;
- mm. Sally Beauty Supply, 301 East U.S. Highway 82, #C, Sherman, Texas; and
- nn. Sally Beauty Supply, 2842 U.S. Highway 82 East, Sherman, Texas.

9. Though their presence in the State of Texas, their operation of stores in and throughout Texas and in the Eastern District of Texas, and the location of their headquarters in this District, Defendants have purposefully availed themselves of the benefits and privileges of conducting business in Texas and within this District. Defendants maintain continuous and systematic contacts with the State of Texas and with this District. And at least some of the acts forming the basis of this lawsuit occurred in the State of Texas and within this District.

10. This Court has personal jurisdiction over Defendants because Defendants are headquartered in this District. Defendants, directly or through intermediaries, have conducted and conduct substantial business in this forum, including but not limited to: (i) engaging in at least part of the infringing acts alleged herein; (ii) purposefully and voluntarily placing one or more infringing products or services into the stream of commerce with the expectation that they will be purchased and/or used by consumers in this forum; and/or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

11. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(d) because this Court has personal jurisdiction over Defendants, which reside in this District.

12. Venue is proper in this Court under 28 U.S.C. § 1400(b) because this is a patent infringement lawsuit, Defendants reside in this District, Defendants have committed acts of

infringement in this District, and Defendants maintain regular places of business in this District.

#### **IV. BACKGROUND**

13. Intellectual Ventures was founded in 2000 on the fundamental premise that inventions are valuable. Since its founding, Intellectual Ventures has built on this premise by working to ensure that a market for invention continues to thrive. Intellectual Ventures creates inventions and files patent applications for those inventions, collaborates with others to develop and patent inventions, and acquires and licenses patents from individual inventors, universities, and other institutions.

14. Intellectual Ventures' business includes purchasing important inventions from individual inventors and institutions and then licensing the inventions to those who need them. Through this business, Intellectual Ventures allows inventors to reap a financial reward from their innovations, which is frequently difficult for individual inventors to do. To date, Intellectual Ventures has acquired more than 70,000 IP assets and, in the process, has paid individual inventors hundreds of millions of dollars for their inventions. Intellectual Ventures has committed over \$6 billion in capital for inventions. Intellectual Ventures, in turn, has earned more than \$3 billion by licensing these patents to some of the world's most innovative and successful technology companies who continue to use them to make computer equipment, software, semiconductor devices, and a host of other products.

15. Intellectual Ventures also creates inventions. Intellectual Ventures has a staff of scientists and engineers who develop ideas in a broad range of fields, including agriculture, computer hardware, life sciences, medical devices, semiconductors, and software. Intellectual Ventures has invested millions of dollars developing such ideas and files hundreds of patent applications on its inventions every year, making it one of the top patent filers in the world.

Intellectual Ventures has also invested in laboratory facilities to assist with the development and testing of new ideas.

16. Intellectual Ventures also invents by collaborating with inventors and research institutions around the world. Intellectual Ventures has developed inventions by selecting a technical challenge, requesting proposals for inventions to solve the challenge from inventors and institutions, selecting the most promising ideas, rewarding the inventors and institutions for their contributions, and filing for patents on the ideas. Intellectual Ventures has invested millions of dollars in this way and has created a network of more than 4,000 inventors worldwide.

17. This case involves three patents that Intellectual Ventures acquired as part of creating a market for important inventions. These important patents include U.S. Patent No. 5,969,324, entitled “Accounting Methods And Systems Using Transaction Information Associated With A Nonpredictable Bar Code” (the “’324 Patent”); U.S. Patent No. RE43,715, entitled “System and Method for Integrating Public and Private Data” (the “RE’715 Patent”); and U.S. Patent No. 6,633,900, entitled “Mobile Crew Management System For Distributing Work Order Assignments To Mobile Field Crew Units” (the “’900 Patent”) (collectively the “Patents-in-Suit”).

18. The ’324 Patent was duly and lawfully issued by the United States Patent & Trademark Office (“USPTO”) to original assignee Motorola, Inc. on October 19, 1999. A copy of the ’324 Patent is attached hereto as Exhibit A.

19. Plaintiff Intellectual Ventures I LLC is the owner and assignee of all rights, title, and interest in and to the ’324 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

20. The RE’715 Patent was duly and lawfully reissued by the USPTO on October 2,

2012. The RE'715 Patent is reissue of U.S. Patent No. 6,941,376, which was duly and lawfully issued by the USPTO on September 6, 2005 to original assignee American Express Travel Related Services Company, Inc. A copy of the RE'715 Patent is attached hereto as Exhibit B.

21. Plaintiff Intellectual Ventures I LLC is the owner and assignee of all rights, title, and interest in and to the RE'715 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

22. The '900 Patent was duly and lawfully issued by the USPTO to original assignee ABB Inc. on October 14, 2003. A copy of the '900 Patent is attached hereto as Exhibit C.

23. Plaintiff Intellectual Ventures II LLC is the owner and assignee of all rights, title, and interest in and to the '900 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

24. Sally Beauty provides its customers with a wide variety of leading third-party branded and exclusive-label professional beauty supplies, including hair color products, hair care products, styling appliances, skin and nail care products and other beauty items. Customers can purchase products online or in stores throughout the United States, including in this District.

25. Sally Beauty advertises itself as the largest distributor of professional beauty supplies in the United States based on store count. BSG advertises that it has one of the largest networks of professional distributor sales consultants in North America. Sally Beauty Supply stores target retail consumers and salon professionals, while BSG exclusively targets salons and salon professionals. Through its stores and its online offerings, Sally Beauty provides full-service/exclusive distribution and open-line channels for individuals and salons needing to make beauty supply purchases.

26. According to Sally Beauty, salon professionals primarily rely on just-in-time

inventory due to capital constraints and a lack of warehouse and shelf space at salons. Booth renters, who comprise a significant percentage of total U.S. salon professionals, often must purchase their own supplies. The number of booth renters has significantly increased as a percentage of total salon professionals over time, and Sally Beauty expects this trend to continue. Sally Beauty states that booth renters likely depend on frequent trips to professional beauty supply stores, like BSG and Sally Beauty Supply, and Sally Beauty further states that it expects that these factors will drive demand for conveniently-located professional beauty supply stores.

27. Sally Beauty recognizes the importance of anticipating and responding to trends and changing consumer demands in the marketplace for beauty products. Sally Beauty acknowledges that changes in consumer tastes and fashion trends can affect Sally Beauty's financial performance, and that its continued success depends largely on anticipating, gauging, and reacting in a timely and effective manner to changes in consumer spending patterns and preferences. Sally Beauty continuously adapts its marketing and merchandising initiatives to expand its market reach and respond to changing consumer preferences.

28. To ensure that it is able to anticipate and respond to marketplace trends and changing consumer demands, Sally Beauty has implemented multiple systems and methods that infringe the Patents-in-Suit.

29. Sally Beauty collects customer data through both online and point-of-sale purchases. For example, and without limitation, Sally Beauty collects information such as sales transaction information and purchase history. At the point-of-sale, this information is associated with various types of nonpredictable bar codes. For example, the products sold are identified with and associated with product bar codes, and nonpredictable bar codes are printed on a customer's receipt. Sally Beauty stores this information, and it may readily be retrieved using the



nonpredictable barcode, such as when a customer desires to return items previously purchased.

30. Sally Beauty also utilizes the Sally “Beauty Club” loyalty program to collect customer data. The data captured online and at the point-of-sale is transmitted and stored as part of the systems and methods implemented by Sally Beauty. Captured and created data enables Sally Beauty to track customer sales, track store inventory activity, recommend particular items, and provide refunds/returns when items are brought back to a Sally Beauty store.

31. This stored data also enables Sally Beauty to personalize its customers’ online shopping experience by using a past shopping history, tracking customers’ on-site behavior, and establishing patterns among like-minded shoppers to provide online recommendations.

32. To help meet customer and store demand, Sally Beauty implements an automated labor scheduling solution, which enables Sally Beauty to manage employees’ time records and schedules, which can be done remotely using mobile devices. This allows Sally Beauty to align labor to meet anticipated store demand levels and ultimately reduce labor costs.

## V. CLAIMS

33. All preceding paragraphs are incorporated by reference.

34. Based on the above-described services and products, Plaintiffs assert the following against Defendants:

### **CLAIM 1 Direct Patent Infringement of the ’324 Patent**

35. Sally Beauty has directly infringed and continues to infringe at least claim 1 of the ’324 Patent in violation of 35 U.S.C. § 271(a) by making and using in the United States, without Plaintiffs’ authority, system(s) used with non-predictable barcodes to collect transaction information and at the point-of-sale. By way of example only and without limiting Plaintiffs’ claims to this specific example, Sally Beauty’s implementation and use of non-predictable

barcodes with its point-of-sale system, including its Next Generation Point of Sale (POS) system, infringes at least claim 1 of the '324 Patent. Sally Beauty's point of sale system associates non-predictable barcodes with transaction information related to product purchases and returned items.

36. Intellectual Ventures has been injured and seeks damages to adequately compensate it for Defendants' infringement of the '324 Patent. Such damages should be no less than a reasonable royalty under 35 U.S.C. § 284.

37. Defendants will continue to infringe the '324 Patent unless enjoined by this Court. Intellectual Ventures therefore requests that this Court enter an order under 35 U.S.C. § 283 permanently enjoining Defendants from continuing to make, use, and/or import into the United States the products and processes accused of infringing the '324 Patent and from further infringement, contributory infringement, and/or inducing infringement of the '324 Patent.

**CLAIM 2**  
**Direct Patent Infringement of the RE'715 Patent**

38. Sally Beauty has directly infringed and continues to infringe at least claim 20 of the RE'715 Patent in violation of 35 U.S.C. § 271(a) by making and/or using in the United States, without Plaintiffs' authority, system(s) used to integrate and deliver product and sales data over a network. By way of example only and without limiting Plaintiffs' claims to this specific example, Sally Beauty's implementation and use of recommendations on its Internet shopping website <http://www.sallybeauty.com> infringes at least claim 20 of the RE'715 Patent.

39. Intellectual Ventures has been injured and seeks damages to adequately compensate it for Defendants' infringement of the RE'715 Patent. Such damages should be no less than a reasonable royalty under 35 U.S.C. § 284.

40. Defendants will continue to infringe the RE'715 Patent unless enjoined by this

Court. Intellectual Ventures therefore requests that this Court enter an order under 35 U.S.C. § 283 permanently enjoining Defendants from continuing to make, use, and/or import into the United States the products and processes accused of infringing the RE'715 Patent and from further infringement, contributory infringement, and/or inducing infringement of the RE'715 Patent.

**CLAIM 3**  
**Direct Patent Infringement of the '900 Patent**

41. Sally Beauty has directly infringed and continues to infringe at least claim 1 of the '900 Patent in violation of 35 U.S.C. § 271(a) by making and/or using in the United States, without Plaintiffs' authority, methods and system(s) used to implement workforce management applications. By way of example only and without limiting Plaintiffs' claims to this specific example, Sally Beauty's implementation and use of workforce management applications for managing work crew tasks, such as scheduling, using mobile devices infringes at least claim 1 of the '900 Patent.

42. Intellectual Ventures has been injured and seeks damages to adequately compensate it for Defendants' infringement of the '900 Patent. Such damages should be no less than a reasonable royalty under 35 U.S.C. § 284.

43. Defendants will continue to infringe the '900 Patent unless enjoined by this Court. Intellectual Ventures therefore requests that this Court enter an order under 35 U.S.C. § 283 permanently enjoining Defendants from continuing to make, use, and/or import into the United States the products and processes accused of infringing the '900 Patent and from further infringement, contributory infringement, and/or inducing infringement of the '900 Patent.

**VI. VICARIOUS LIABILITY**

44. All preceding paragraphs are incorporated by reference.

45. Defendant Sally Beauty Holdings, Inc. conducts substantial business through the conduct of its subsidiaries, including but not limited to Sally Beauty Supply LLC. Plaintiffs contend that through control of its subsidiaries, Defendant Sally Beauty Holdings, Inc. engages in business throughout the world, and this District, and markets and offers its products and services through its subsidiaries to consumers. Defendants Sally Beauty Holdings, Inc. and Sally Beauty Supply LLC engage in the above-described conduct jointly and as part of an overall business strategy. As such, all Defendants are both individually liable for their infringing conduct and vicariously liable for the infringing conduct of each other, as well as the conduct of their subsidiary entities.

#### **VII. NOTICE**

46. All preceding paragraphs are incorporated by reference.

47. At least by filing and serving this Original Complaint for Patent Infringement, Plaintiffs have given Defendants written notice of their infringement, and Defendants have had actual knowledge of the Patents-in-Suit at least as early as the date they received a copy of this Complaint.

#### **VIII. DAMAGES**

48. All preceding paragraphs are incorporated by reference.

49. For the above-described infringement, Plaintiffs have suffered injury and seek a permanent injunction and damages to compensate Plaintiffs adequately for Defendants' infringement of the Patents-in-Suit. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

#### **IX. JURY DEMAND**

50. Plaintiffs request a jury trial of all issues triable of right by a jury.

## **X. PRAYER FOR RELIEF**

51. WHEREFORE, Plaintiffs respectfully request the following relief:

a. A judgment in favor of Plaintiffs that Defendants have infringed the '324 Patent, whether literally or under the doctrine of equivalents, as described herein;

b. A judgment in favor of Plaintiffs that Defendants have infringed the RE'715 Patent, whether literally or under the doctrine of equivalents, as described herein;

c. A judgment in favor of Plaintiffs that Defendants have infringed the '900 Patent, whether literally or under the doctrine of equivalents, as described herein;

d. A judgment and order requiring Defendants to pay Plaintiffs' damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the '324 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;

e. A judgment and order requiring Defendants to pay Plaintiffs' damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the RE'715 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;

f. A judgment and order requiring Defendants to pay Plaintiffs' damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the '900 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;

g. An order under 35 U.S.C. § 283 permanently enjoining Defendants from continuing to make, use, sell, offer to sell, and/or import into the United States the products and processes accused of infringing the '324 Patent and from further infringement, contributory infringement, and/or inducing infringement of the '324 Patent;

h. An order under 35 U.S.C. § 283 permanently enjoining Defendants from continuing to make, use, sell, offer to sell, and/or import into the United States the products and processes accused of infringing the RE'715 Patent and from further infringement, contributory infringement, and/or inducing infringement of the RE'715 Patent;

i. An order under 35 U.S.C. § 283 permanently enjoining Defendants from continuing to make, use, sell, offer to sell, and/or import into the United States the products and processes accused of infringing the '900 Patent and from further infringement, contributory infringement, and/or inducing infringement of the '900 Patent; and

j. Such other and further relief as the Court deems just and proper.

DATED: August 14, 2015

Respectfully submitted,



---

**DEREK GILLILAND**  
**ATTORNEY-IN-CHARGE**  
TEXAS STATE BAR NO. 24007239  
dgilliland@nixlawfirm.com  
**NIX PATTERSON & ROACH, L.L.P.**  
205 Linda Dr.  
Daingerfield, Texas 75638  
Telephone: (903) 645-7333  
Facsimile: (903) 645-5389

**BEN KING**

TEXAS STATE BAR NO. 24048592

benking@nixlawfirm.com

**NIX PATTERSON & ROACH, L.L.P.**

2900 St. Michael Dr., Ste. 500

Texarkana, Texas 75503

Telephone: (903) 223-3999

Facsimile: (903) 223-8520

**EDWARD CHIN**

TEXAS STATE BAR NO. 50511688

edchin@me.com

**KIRK VOSS**

TEXAS STATE BAR NO. 24075229

kirkvoss@me.com

**WINN CUTLER**

TEXAS STATE BAR NO. 24084364

winncutler@nixlawfirm.com

**CHRISTIAN HURT**

TEXAS STATE BAR NO. 24059987

christianhurt@nixlawfirm.com

**ROSS LEONOUDAKIS**

TEXAS STATE BAR NO. 24087915

rossl@nixlawfirm.com

**NIX PATTERSON & ROACH, L.L.P.**

5215 N. O'Connor Blvd., Ste. 1900

Irving, Texas 75039

Telephone: (972) 831-1188

Facsimile: (972) 444-0716

**COUNSEL FOR PLAINTIFFS**

**INTELLECTUAL VENTURES I LLC and**

**INTELLECTUAL VENTURES II LLC**