

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NETWORK APPAREL GROUP, LP,

Plaintiff,

v.

ELAUWIT, LLC,

Defendant.

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Civil Action No. 6:15-CV-00136

PLAINTIFF'S FIRST AMENDED COMPLAINT

Pursuant to the Magistrate Judge's Order (Dkt. 16), Plaintiff Network Apparel Group, LP ("Network Apparel") files this First Amended Complaint against Defendant Elauwit, LLC ("Elauwit") and alleges as follows:

SUMMARY OF THE CASE

1. This is an action to recover both monetary damages and injunctive relief, as well as other appropriate relief, as a result of Elauwit's infringement of Network Apparel's United States Patent No. 7,631,079.

PARTIES

2. Plaintiff Network Apparel is a limited partnership organized under the laws of the State of Texas and having its principal place of business at 13501 Galleria Circle, Suite W-300, Bee Cave, Texas 78738.

3. Elauwit is a corporation organized under the laws of the State of South Carolina, and it may be served with process by serving its registered agent, Robert Rikard, 1803 Hampton Street, Columbia, South Carolina 29201. Elauwit does business throughout the United States,

including through internet sales, promotional events, and advertising, but advertises a principle place of business at 180 Meeting St., Suite 350, Charleston, South Carolina 29401.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. The Court's jurisdiction over this action is proper under these statutes, including 35 U.S.C. § 271 et seq. and 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, this Court has personal jurisdiction over the Defendant because the Defendant has sufficient minimum contacts with the forum as a result of conducting business within the State of Texas and the Western District of Texas, Waco Division. Defendant advertises and solicits purchases through direct sales and service representatives in the Western District of Texas. Personal jurisdiction also exists specifically over the Defendant because it makes, uses, sells, offers to sell, and/or imports infringing products within the State of Texas and the Western District of Texas, Waco Division.

6. Upon information and belief, the products at issue in this case are being used at various multi-dwelling units ("MDUs") serviced by Elauwit within the State of Texas and the Western District of Texas. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d) and 28 U.S.C. § 1400(b).

FACTS

7. Plaintiff Network Apparel repeats and re-alleges the allegations in the foregoing paragraphs as though fully set forth herein.

8. Network Apparel owns all rights, title, and interest in and under United States Patent No. 7,631,079 ("the '079 Patent"), titled "System and Method of Messaging and

Obtaining Message Acknowledgement on a Network,” which duly and legally issued on December 8, 2009. A true and correct copy of the ‘079 Patent is attached hereto as **Exhibit A**.

9. The ‘079 Patent is valid and enforceable.

10. On information and belief, all requisite maintenance fees have been paid, and Network Apparel has complied with the requirements of 35 U.S.C. § 287.

11. Elauwit is a telecommunications company that provides television, internet, and phone services, known as “bulk telecom,” to a variety of customers, including MDU properties such as apartment complexes and dormitories.

12. Elauwit provides services, such as its ARROWpoint Remote Management System, which allow the managers of MDU properties to suspend, slow-down, or resume internet services and send out customized emails and/or text messages to residents, among other features.

13. Specifically, and for example, on information and belief, Elauwit’s services allow the MDU property manager to send a message to a resident who is delinquent on rent payments and reduce the bandwidth speed of that resident until the past-due rent is paid.

14. Further, and for example, on information and belief, Elauwit’s services allow the MDU property manager to send messages to one or more residents relating to inappropriate network use, such as potential copyright infringement, pursuant to the Digital Millennium Copyright Act’s “safe-harbor” provision.

15. On information and belief, the system components and functionality of Elauwit’s ARROWpoint system satisfied each and every element of at least one apparatus claim of the ‘079 patent, as such elements are believed to be applied according to their plain and ordinary meaning, or as properly construed by this Court under prevailing law.

16. On information and belief, the system components, component functionalities, and methods carried out through use of Elauwit's ARROWpoint system satisfied each and every element of at least one process claim of the '079 patent, as such elements are believed to be applied according to their plain and ordinary meaning, or as properly construed by this Court under prevailing law.

17. On information and belief, Elauwit either has known of the '079 Patent, or has been "willfully blind" to its existence since at least near the time that it issued.

18. Elauwit actively promotes the sales to, and use by, third parties, including the managers of MDU properties, of at least its ARROWpoint Remote Management System. *See, e.g.,* <http://elauwit.com/arrowpoint/>.

19. On information and belief, Elauwit sells components of, and/or accessories for use with, its ARROWpoint Remote Management System, which are not a staple article and have no substantial non-infringing use.

20. Elauwit is liable for direct and/or indirect infringement of one or more claims of the '079 Patent by virtue of its making, using, selling, offering for sale, and/or importing in or into the United States, without authority, products or substantial portions of products, that fall within the scope of one or more of the claims of the '079 Patent, including the making, using, selling, offering for sale, and/or importing in or into the United States of one or more of ARROWPoint Remote Management Systems and/or substantial portions of such products.

COUNTS

I. INFRINGEMENT OF THE '079 PATENT UNDER 35 U.S.C. § 271(a)

21. Network Apparel repeats and incorporates by reference preceding Paragraphs 1-20.

22. By making, using, selling, offering for sale, and/or importing in or into the United States, and/or providing to others, without authority, products including its ARROWpoint Resident Management System, which fall within the scope of one or more claims of the '072 Patent, and/or the use of which falls within the scope of one or more of the claims of the '079 Patent, Elauwit is liable for infringing one or more of the claims of the '079 Patent, pursuant to 35 U.S.C. 271(a).

23. As a direct and proximate result of Elauwit's acts of patent infringement, Network Apparel has been and continues to be injured and has sustained and will continue to sustain substantial damages in an amount not presently known.

24. Network Apparel has suffered from Elauwit's infringement, and has lost and will continue to lose profits and/or royalties as a result of Elauwit's infringement.

25. Network Apparel has no adequate remedy at law against these acts of patent infringement. Unless Elauwit is permanently enjoined from its unlawful and willful infringement of the '079 Patent, Network Apparel will suffer irreparable harm.

26. Network Apparel has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action.

27. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and Network Apparel is entitled to recover its reasonable and necessary fees and expenses.

II. INFRINGEMENT OF THE ‘079 PATENT UNDER 35 U.S.C. § 271(b)

28. Network Apparel repeats and incorporates by reference preceding Paragraphs 1-20.

29. By inducing third parties, such as the MDU property managers, to use products, including its ARROWpoint Resident Management System, which fall with the scope of one or more claims of the ‘079 Patent, and practice methods of using products, including its ARROWpoint Resident Management System, the use of which falls within the scope of one or more claims of the ‘079 Patent, with knowledge of (or “willful blindness” to) the ‘079 Patent, and knowledge that (or “willful blindness” to the fact that) such actions of third parties directly infringe one or more claims of the ‘079 Patent, Elauwit is liable for induced infringement of one or more claims of the ‘079 Patent, pursuant to 35 U.S.C. § 271(b).

30. As a direct and proximate result of Elauwit’s acts of patent infringement, Network Apparel has been and continues to be injured and has sustained and will continue to sustain substantial damages in an amount not presently known.

31. Network Apparel has suffered from Elauwit’s infringement, and has lost and will continue to lose profits and/or royalties as a result of Elauwit’s infringement.

32. Network Apparel has no adequate remedy at law against these acts of patent infringement. Unless Elauwit is permanently enjoined from its unlawful and willful infringement of the ‘079 Patent, Network Apparel will suffer irreparable harm.

33. Network Apparel has incurred and will incur attorneys’ fees, costs, and expenses in the prosecution of this action.

34. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and Network Apparel is entitled to recover its reasonable and necessary fees and expenses.

III. INFRINGEMENT OF THE ‘079 PATENT UNDER 35 U.S.C. § 271(c)

35. Network Apparel repeats and incorporates by reference preceding Paragraphs 1-20.

36. By selling and/or offering to sell within the United States and/or importing into the United States components of products, including components of its ARROWpoint Resident Management System, that are material parts of the systems claimed in the ‘079 patent, and/or are for use in practicing material parts of the methods claimed in the ‘079 patent, with knowledge of (or “willful blindness” to) the ‘079 patent, and knowing (or “willfully blind” to the fact) that such components are especially adapted for use in infringement of the claims of the ‘079 patent, and knowing that such components are not staple articles or commodities of commerce for substantial non-infringing use, Elauwit is liable for contributory infringement of one or more claims of the ‘079 patent, pursuant to 35 U.S.C. § 271(c)

37. As a direct and proximate result of Elauwit’s acts of patent infringement, Network Apparel has been and continues to be injured and has sustained and will continue to sustain substantial damages in an amount not presently known.

38. Network Apparel has suffered from Elauwit’s infringement, and has lost and will continue to lose profits and/or royalties as a result of Elauwit’s infringement.

39. Network Apparel has no adequate remedy at law against these acts of patent infringement. Unless Elauwit is permanently enjoined from its unlawful and willful infringement of the ‘079 Patent, Network Apparel will suffer irreparable harm.

40. Network Apparel has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action.

41. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285, and Network Apparel is entitled to recover its reasonable and necessary fees and expenses.

V. PRAYER FOR RELIEF

Network Apparel respectfully requests the Court grant judgment in its favor against Elauwit, and grant Network Apparel the following relief:

- A. Declare that each of the asserted claims of the '079 Patent is valid and enforceable;
- B. Grant judgment in Network Apparel's favor that Elauwit has directly infringed the asserted claims of the '079 Patent under 35 U.S.C. § 271(a);
- C. Grant judgment in Network Apparel's favor that Elauwit has induced infringement of the asserted claims of the '079 Patent under 35 U.S.C. § 271(b);
- D. Grant judgment in Network Apparel's favor that Elauwit has contributorily infringed the asserted claims of the '079 Patent under 35 U.S.C. § 271(c);
- E. Award damages to Network Apparel to which it is entitled for Elauwit's patent infringement;
- F. Declare that Elauwit's infringement has been willful and award Network Apparel increased damages in an amount that is three times the amount of damages found by the jury or assessed by this Court, for Elauwit's willful infringement, pursuant to 35 U.S.C. § 284;
- G. Enter a preliminary, and thereafter a permanent, injunction against Elauwit's infringement of the '079 Patent;
- H. Award Network Apparel its expenses, costs, and attorneys' fees pursuant to 35 U.S.C. § 285;
- I. Award interest on Network Apparel's damages; and

J. Award such other relief as the Court deems just and proper.

JURY DEMAND

In accordance with Rules 38 and 39 of the Federal Rules of Civil Procedure, Network Apparel assert its rights under the Seventh Amendment of the United States Constitution and demands a trial by jury on all issues triable to a jury.

Respectfully Submitted,

By: /s/ David G. Henry, Sr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 14, 2015, a true and correct copy of the foregoing document was served upon all known counsel of record through the Court's ECF system pursuant to Federal Rule of Civil Procedure 5(b)(3) and Local Rule CV-5.

/s/ Michael D. Ellis
Michael D Ellis