UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TracBeam, LLC, Plaintiff, v. T-Mobile US, Inc., et al., Defendants.	Case No. 6:14-cv-678-RWS **LEAD CASE**
TracBeam, LLC, Plaintiff, v. Apple Inc., Defendant.	Case No. 6:14-cv-680-RWS **Consolidated case**

First Amended Complaint for Patent Infringement as to Apple, Inc.

Plaintiff TracBeam, LLC files suit against Defendant Apple Inc. and alleges the following on information and belief.

Introduction

1. Plaintiff TracBeam owns the inventions described and claimed in the following United States Patents:

- US Patent No. 8,032,153, entitled "Multiple Location Estimators for Wireless Location" (the '153 patent);
- US Patent No. 7,764,231, entitled "Wireless Location Using Multiple Mobile Station Location Techniques" (the '231 patent);
- US Patent No. 7,525,484, entitled "Gateway and Hybrid Solutions for Wireless Location" (the '484 patent); and
- US Patent No. 7,298,327, entitled "Geographic Location Using Multiple Location Estimators" (the '327 patent).

2. Defendant Apple has used and continues to use Plaintiff's patented technology in (a) products and services that it makes, uses, imports, sells, and offers to sell, and (b) have contributed to and induced, and continue to contribute to and/or induce others to use Plaintiff's patented technology. TracBeam seeks damages for patent infringement and an injunction preventing Defendant from (a) making, using, selling, or offering to sell products and services claimed by the asserted patents without Plaintiff's permission, and from (b) contributing to and inducing others to make, use, sell or offer to sell, Plaintiff's patented technology without permission.

Plaintiff TracBeam

3. Plaintiff TracBeam is an inventor-owned company that has been awarded numerous patents relating to fundamental innovations in wireless location technology for use in consumer and enterprise settings, and for both outdoor and indoor location. TracBeam is a limited liability company organized and existing under the laws of the State of Colorado.

Defendant Apple

4. Defendant Apple Inc. is a California corporation with a principal place of business in Cupertino, California.

The Asserted Patents

5. The United States Patent and Trademark Office issued the '153 patent on October 4, 2011 (exhibit A); the '231 patent (exhibit B) on July 27, 2010; the '484 patent (exhibit C) on April 28, 2009; and the '327 patent (exhibit D) on November 20, 2007. Plaintiff TracBeam is the owner of all right, title, and interest in the patents, including all rights to pursue and collect damages for infringement of the patents.

Jurisdiction and Venue

6. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq*. The Court has original jurisdiction over this patent infringement action under 28 U.S.C. § 1338(a).

7. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and §1400. Apple has committed acts and continues to commit acts within this judicial district giving rise to this action. In addition, this Court has presided over other matters involving the asserted '231 and '484 patents: *TracBeam, LLC v. AT&T, Inc., et al.*, case no. 6:11-cv-96 (LED) and *TracBeam, LLC v. Google Inc.*, case no. 6:13-cv-93 (LED), which recently settled. This Court is also currently presiding over the recently filed action *TracBeam, LLC v. T-Mobile US, Inc., et al.*, case no. 6:14-cv-00678 (E.D. Tex.), in which each of the four asserted patents are also asserted against T-Mobile.

First Claim for Patent Infringement
('153 patent)

8. Plaintiff incorporates by reference each of the allegations in paragraphs 1-7 above and further alleges as follows.

9. On October 4, 2011, the United States Patent and Trademark Office issued US Patent No. 8,032,153, which discloses and claims "Multiple Location Estimators for Wireless Location."

10. Plaintiff TracBeam is the owner of the '153 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

11. Each claim of the '153 patent is valid and enforceable.

12. Defendant Apple has directly infringed the '153 patent (including direct infringement under *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2015

WL 4760450 (Fed. Cir. Aug. 13, 2015))[1], and will continue to do so unless enjoined, by making, using, providing, selling, and offering for sale products and services that infringe the claims of the '153 patent, including Apple's location service for the iOS and Mac OS devices and the applications and services that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services).

13. Apple has actively induced and will continue to actively induce infringement of the '153 patent by others, including (a) users of Apple's location service for the iOS and Mac OS devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple offered and continues to offer its infringing products and/or services for sale, and instructed and continues to instruct others to use and operate the products in an infringing manner, including through instruction, documentation, and support provided to users of Apple's products and services (including application and service providers). Apple knew of the '153 patent since at least the date of the original complaint's filing, and knew that its actions would induce and will continue to induce infringement of the '153 patent by others. As a result of Apple's inducement, users (including application and service providers) of Apple's infringing products and/or services have infringed and continue to infringe the '153 patent.

[1] Reliance on the control or direction standard is not necessary in this case, nor is it necessary to plead allegations that the standard is met. However, to the extent Apple denies infringement based on a joint or divided infringement contention, that contention fails because there is no joint or divided infringement and furthermore the standard under *Akamai* is satisfied.

14. Apple has contributed to and continues to contribute to the infringement of the '153 patent by others, including (a) users of Apple's location service for the iOS and Mac OS devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple provided and continues to provide devices that use Apple's location service for iOS and Mac OS, the software for the iOS and Mac OS, software for its location services, and software for applications and services that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple knew that its products and services were especially made for infringement of the '153 patent, that they were not a staple article or commodity of commerce, and that they have no substantial non-infringing use.

15. Plaintiff TracBeam has been damaged by Apple's infringement of the '153 patent.

16. Plaintiff demands trial by jury of all issues relating to this claim.

Second Claim for Patent Infringement
('231 patent)

17. Plaintiff incorporates by reference each of the allegations in paragraphs 1-7 above and further alleges as follows.

18. On July 27, 2010, the United States Patent and Trademark Office issued US Patent No. 7,764,231, which discloses and claims "Wireless Location Using Multiple Mobile Station Location Techniques."

19. Plaintiff TracBeam is the owner of the '231 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover

past and future damages.

20. Each claim of the '231 patent is valid and enforceable.

21. Defendant Apple has directly infringed the '231 patent (including direct infringement under *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2015 WL 4760450 (Fed. Cir. Aug. 13, 2015))[2], and will continue to do so unless enjoined, by making, using, providing, selling, and offering for sale products and services that infringe the claims of the '231 patent, including Apple's location service for the iOS and Mac OS devices and the applications and services that consume or make use of the location information collected and provided by the Apple location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services).

22. Apple has actively induced and will continue to actively induce infringement of the '231 patent by others, including (a) users of Apple's location service for the iOS and Mac OS devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple offered and continues to offer its infringing products and/or services for sale, and instructed and continues to instruct others to use and operate the products in an infringing manner, including through instruction, documentation, and support provided to users of Apple's products and services (including application and service providers). Apple knew of the '231 patent since at least March 2014, and knew that its actions would induce and will continue to induce infringement of the '231 patent by others. As a result of Apple's inducement, users

[2] Reliance on the control or direction standard is not necessary in this case, nor is it necessary to plead allegations that the standard is met. However, to the extent Apple denies infringement based on a joint or divided infringement contention, that contention fails because there is no joint or divided infringement and furthermore the standard under *Akamai* is satisfied.

(including application providers) of Apple's infringing products and/or services have infringed and continue to infringe the '231 patent.

23. Apple has contributed to and continues to contribute to the infringement of the '231 patent by others, including (a) users of Apple's location service for the iOS and Mac OS devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple provided and continues to provide devices that use Apple's location service for iOS and Mac OS, the software for the iOS and Mac OS, software for its location services, and software for applications and services that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple knew that its products and services were especially made for infringement of the '231 patent, that they were not a staple article or commodity of commerce, and that they have no substantial non-infringing use.

24. Plaintiff TracBeam has been damaged by Apple's infringement of the '231 patent.

25. Apple's infringement of the '231 patent has been and continues to be willful. Apple has had knowledge of the '231 patent since at least March 2014 when the '231 patent was cited by the Examiner as prior art to Apple's own patent application No. 13/153,069. Apple has disregarded an objectively high likelihood that its actions infringe the '231 patent. This risk has been known to Apple or is otherwise so obvious that it should have been known to Apple.

26. Plaintiff demands trial by jury of all issues relating to this claim.

Third Claim for Patent Infringement
('484 patent)

27. Plaintiff incorporates by reference each of the allegations in paragraphs 1-7 above and further alleges as follows.

28. On April 28, 2009, the United States Patent and Trademark Office issued US Patent No. 7,525,484 which discloses and claims "Gateway and Hybrid Solutions for Wireless Location."

29. Plaintiff TracBeam is the owner of the '484 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

30. Each claim of the '484 patent is valid and enforceable.

31. Apple has directly infringed the '484 patent (including direct infringement under *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2015 WL 4760450 (Fed. Cir. Aug. 13, 2015))[3], and will continue to do so unless enjoined, by making, using, providing, selling, and offering for sale products and services that infringe the claims of the '484 patent, including Apple's location service for the iOS and Mac OS devices and the applications and services that consume or make use of the location information collected and provided by the Apple location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services).

32. Plaintiff TracBeam has been damaged by Apple's infringement of the '484 patent.

33. Apple has actively induced and will continue to actively induce infringement of the '484 patent by others, including (a) users of Apple's location service for the iOS and Mac OS

[3] Reliance on the control or direction standard is not necessary in this case, nor is it necessary to plead allegations that the standard is met. However, to the extent Apple denies infringement based on a joint or divided infringement contention, that contention fails because there is no joint or divided infringement and furthermore the standard under *Akamai* is satisfied.

devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple offered and continues to offer its infringing products and/or services for sale, and instructed and continues to instruct others to use and operate the products in an infringing manner, including through instruction, documentation, and support provided to users of Apple's products and services. Apple knew of the '484 patent since at least March 2010, and knew that its actions would induce and will continue to induce infringement of the '484 patent by others. As a result of Apple's inducement, users of Apple's infringing products and/or services have infringed and continue to infringe the '484 patent.

34. Apple has contributed to and continues to contribute to the infringement of the '484 patent by others, including (a) users of Apple's location service for the iOS and Mac OS devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple provided and continues to provide devices that use Apple's location service for iOS and Mac OS, the software for the iOS and Mac OS, software for its location services, and software for applications and services that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple knew that its products and services were especially made for infringement of

the '484 patent, that they were not a staple article or commodity of commerce, and that they have no substantial non-infringing use.

35. Apple's infringement of the '484 patent has been and continues to be willful. Apple has had knowledge of the '484 patent since at least March 2010 when the '484 patent was cited by the Examiner as prior art to Apple's own patent application No. 11/827,119. Apple has disregarded an objectively high likelihood that its actions infringe the '484 patent. This risk has been known to Apple or is otherwise so obvious that it should have been known to Apple.

36. Plaintiff demands trial by jury of all issues relating to this claim.

Fourth Claim for Patent Infringement
('327 patent)

37. Plaintiff incorporates by reference each of the allegations in paragraphs 1-7 above and further alleges as follows.

38. On November 20, 2007, the United States Patent and Trademark Office issued US Patent No. 7,298,327 which discloses and claims "Geographic Location Using Multiple Location Estimators."

39. Plaintiff TracBeam is the owner of the '327 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

40. Each claim of the '327 patent is valid and enforceable.

41. Apple has directly infringed the '327 patent (including direct infringement under *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, 2015 WL 4760450 (Fed. Cir. Aug. 13, 2015))[4], and will continue to do so unless enjoined, by making, using, providing,

[4] Reliance on the control or direction standard is not necessary in this case, nor is it necessary to plead allegations that the standard is met. However, to the extent Apple denies infringement based on a joint or divided infringement contention, that contention fails because there is no joint or divided infringement and furthermore the standard under *Akamai* is satisfied.

selling, and offering for sale products and services that infringed the claims of the '327 patent, including Apple's location service for the iOS and Mac OS devices and the applications and services that consume or make use of the location information collected and provided by the Apple location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services).

42. Apple has actively induced and will continue to actively induce infringement of the '327 patent by others, including (a) users of Apple's location service for the iOS and Mac OS devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple offered and continues to offer its infringing products and/or services for sale, and instructed and continues to instruct others to use and operate the products in an infringing manner, including through instruction, documentation, and support provided to users of Apple's products and services (including application and service providers). Apple knew of the '327 patent since at least March 2010, and knew that its actions would induce and will continue to induce infringement of the '327 patent by others. As a result of Apple's inducement, users (including application and service providers) of Apple's infringing products and/or services have infringed and continue to infringe the '327 patent.

43. Apple has contributed to and continues to contribute to the infringement of the '327 patent by others, including (a) users of Apple's location service for the iOS and Mac OS devices (including application and service providers), and (b) users of the applications and services (including application and service providers) that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri,

Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple provided and continues to provide devices that use Apple's location service for iOS and Mac OS, the software for the iOS and Mac OS, software for its location services, and software for applications and services that consume or make use of the location information collected and provided by Apple's location service, including Maps, Siri, Safari, Find My iPhone, Camera, and the iAds network (as well as third party applications and services). Apple knew that its products and services were especially made for infringement of the '327 patent; that they were not a staple article or commodity of commerce; and that they have no substantial non-infringing use.

44. Plaintiff TracBeam has been damaged by Apple's infringement of the '327 patent.

45. Apple's infringement of the '327 patent has been and continues to be willful. Apple has had knowledge of the '327 patent since at least March 2010 when the '327 patent was cited by the Examiner as prior art to Apple's own patent application No. 11/827,119. Apple has disregarded an objectively high likelihood that its actions infringe the '327 patent. This risk has been known to Apple or is otherwise so obvious that it should have been known to Apple.

46. Plaintiff demands trial by jury of all issues relating to this claim.

Prayer for Relief

WHEREFORE, Plaintiff prays for judgment as follows:

A. A judgment in favor of Plaintiff that Apple has infringed each of the four asserted patents and that the patents are valid and enforceable;

B. A judgment that Apple has willfully infringed the '231, '484, and '327 patents;

C. A decree preliminarily and permanently enjoining Apple as well as its officers, directors, employees, agents, and all persons in active concert with Apple, from infringing the asserted patents;

D. A judgment and order requiring Apple to pay Plaintiff compensatory damages, costs, expenses, and pre- and post-judgment interest for Apple's infringement of the asserted patents occurring through the time of trial, as provided under 35 U.S.C. §284;[5]

E. A judgment and order finding that this patent infringement case is exceptional within the meaning of 35 U.S.C. §285 and awarding Plaintiff its reasonable attorneys' fees and costs; and

F. Any and all other relief to which Plaintiff may be entitled.

Dated: September 10, 2015

Respectfully submitted,

By: */s/ Jeff Eichmann*

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[5] TracBeam reserves the right to seek damages for post-verdict infringement or to ask that an ongoing royalty be imposed in this proceeding or a separately filed proceeding or lawsuit.

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ATTORNEYS FOR PLAINTIFF
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Certificate of Service

I certify that this document is being filed electronically and, as a result, is being served on counsel of record through the Electronic Filing System on the filing date listed above.

/s/ *Jeff Eichmann*