

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

**OPTIS WIRELESS TECHNOLOGY, LLC
and PANOPTIS PATENT MANAGEMENT,
LLC,**

Plaintiffs,

v.

**BLACKBERRY LIMITED and
BLACKBERRY CORPORATION,**

Defendants.

CIVIL ACTION NO.

2:16-cv-62

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Optis Wireless Technology, LLC and PanOptis Patent Management, LLC, (collectively, “Plaintiffs” or “PanOptis”), file this Original Complaint for Patent Infringement under 35 U.S.C. § 271 against BlackBerry Limited and BlackBerry Corporation, (collectively, “Defendants” or “BlackBerry”), and allege as follows:

THE PARTIES

1. Plaintiff Optis Wireless Technology, LLC (“Optis Wireless”) is a limited liability company organized and existing under the laws of the State of Delaware, and

maintains its principal place of business at 7160 Dallas Parkway, Suite 250, Plano, Texas 75024.

2. Plaintiff PanOptis Patent Management, LLC (“PPM”) is a limited liability company organized and existing under the laws of the State of Delaware, and maintains its principal place of business at 7160 Dallas Parkway, Suite 250, Plano, Texas 75024.

3. On information and belief, Defendant BlackBerry Limited (“BlackBerry Ltd”) is a corporation organized and operating under the laws of the country of Canada with its principal place of business at 2200 University Ave. E. Waterloo, Ontario, Canada N2K 0A7. BlackBerry Ltd. manufactures, imports into the United States, sells and/or offers for sale in the United States mobile telephones and tablets for use in a mobile communications network. In addition, BlackBerry Ltd.’s mobile telephones and tablets for use in a mobile communications network are marketed, offered for sale, and/or sold throughout the United States, including within this District. BlackBerry Ltd. can be served with process by serving the Texas Secretary of State.

4. On information and belief, Defendant BlackBerry Corporation (“BlackBerry Corp.”) is a corporation organized under the laws of the state of Delaware with its principal place of business at 5000 Riverside Drive, Irving, Texas 75039. BlackBerry Corp. manufactures, imports into the United States, sells and/or offers for sale in the United States mobile telephones and tablets for use in a mobile communications network. In addition, BlackBerry Corp.’s mobile telephones and tablets for use in a mobile communications network are marketed, offered for sale, and/or sold throughout the United States, including within this District. BlackBerry Corp. can be served with process through its registered

service agent, Corporate Creations Network Inc. at 4265 San Felipe #1100, Houston, TX 77027.

JURISDICTION AND VENUE

5. This is an action arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 1338(a), 2201, and 2202.

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

7. This Court has personal jurisdiction over Defendants. Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), ship, distribute, offer for sale, and/or sell, and advertise (including the provision of an interactive web page) their products and/or services in the United States, the State of Texas, and the Eastern District of Texas. Defendants, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), have purposefully and voluntarily placed one or more of their infringing products and/or services, as described below, into the stream of commerce with the expectation that they will be purchased and used by consumers in the Eastern District of Texas. These infringing products and/or services have been and continue to be purchased and used by consumers in the Eastern District of Texas. Defendants have committed acts of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

THE PATENTS

8. United States Letters Patent No. 8,064,919 (“the ’919 Patent”), entitled “Radio Communication Base Station Device and Control Channel Arrangement Method,”

was duly and legally issued after full and fair examination to inventors Masaru Fukuoka, Akihiko Nishio, Seigo Nakao, and Alexander Golitschek Edler Von Elbwart on November 22, 2011. Optis Wireless owns by assignment the entire right, title, and interest in the '919 Patent, is entitled to sue for past and future infringement and possesses the right to license the '919 Patent, a copy of which is attached as Exhibit A.

9. United States Letters Patent No. 8,199,792 (“the '792 Patent”), entitled “Radio Communication Apparatus and Response Signal Spreading Method,” was duly and legally issued after full and fair examination to inventors Seigo Nakao, Daichi Imamura, Akihiko Nishio, and Masayuki Hoshino on June 12, 2012. Optis Wireless owns by assignment the entire right, title, and interest in the '792 Patent, is entitled to sue for past and future infringement and possesses the right to license the '792 Patent, a copy of which is attached as Exhibit B.

10. United States Letters Patent No. 7,783,949 (“the '949 Patent”), entitled “Method and Apparatus for Controlling a Transport Format of a Retransmission,” was duly and legally issued after full and fair examination to inventors Joachim Lohr, Eiko Seidel and Dragan Petrovic on August 24, 2010. Optis Wireless owns by assignment the entire right, title, and interest in the '949 Patent, is entitled to sue for past and future infringement and possesses the right to license the '949 Patent, a copy of which is attached as Exhibit C.

11. United States Letters Patent No. 6,865,191 (“the '191 Patent”), entitled “System and Method for Sending Multimedia Attachments to Text Messages in Radiocommunication Systems,” was duly and legally issued after full and fair examination to inventors Henrik Bengtsson and Ivan Medved on March 8, 2005. Optis Wireless owns by assignment the entire right, title, and interest in the '191 Patent, is entitled to sue for past

and future infringement and possesses the right to license the '191 Patent, a copy of which is attached as Exhibit D.

12. The '919, '792, '949, and '191 Patents (collectively, the "Asserted Patents") are each valid and enforceable.

13. By way of written agreement between PPM and Optis Wireless, PPM possesses the rights to negotiate and execute licenses for each of the Asserted Patents.

FACTUAL BACKGROUND

14. The Asserted Patents cover inventions relating to wireless communications, mobile telephones and other devices for use in a mobile communications network.

15. The Defendants have imported into the United States, marketed, offered for sale and/or sold in the United States, mobile telephones and tablets for use in a mobile communications network that infringe the Asserted Patents, or induce or contribute to the infringement of the Asserted Patents by others.

16. The Defendants have been placed on actual notice of one or more of the Asserted Patents. The filing of this Complaint also constitutes notice in accordance with 35 U.S.C. § 287. Despite such notice, the Defendants continue to import into, market, offer for sale and/or sell in the United States products that infringe the Asserted Patents.

17. The Defendants have, and continue to, directly and indirectly infringe the Asserted Patents by engaging in acts constituting infringement under 35 U.S.C. § 287(a), (b), (c), and/or (f), including but not necessarily limited to one or more of making, using, testing, selling and/or offering to sell, in this District and elsewhere in the United States, and importing into this District and elsewhere in the United States, certain infringing mobile communication devices, including but not limited to Defendants' mobile phones and tablets,

which incorporate the functionalities and compositions described in detail in Counts I-IV (collectively, “BlackBerry Mobile Communication Devices”).

18. The infringing BlackBerry Mobile Communication Devices include, but are not limited to, BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P’9982, Porsche Design P’9983, and all variations thereof.

19. Defendants’ acts of infringement have caused damage to Plaintiffs. Plaintiffs are entitled to recover from Defendants the damages sustained by Plaintiffs as a result of Defendants’ wrongful acts.

PLAINTIFFS’ LTE STANDARDS-ESSENTIAL PATENTS

20. Plaintiffs incorporate by reference paragraphs 1-19 as if fully set forth herein.

21. The European Telecommunications Standards Institute (“ETSI”) is a standard setting organization (“SSO”) that produces globally-accepted standards for the telecommunications industry. ETSI is an organizational partner of the Third Generation Partnership Project (“3GPP”), which maintains and develops globally applicable technical specifications for mobile systems, including the specifications for implementation and use of wireless communications for high-speed data referred to as the Long Term Evolution (“LTE”) Standards.

22. Implementation and use of the LTE Standards, including but not limited to use of wireless communications for high-speed data compliant with the LTE specifications as detailed in the 3GPP specification series TS 36.101-36.978, has increased in recent years and continues to increase at a rapid pace.

23. ETSI has developed and promulgated an IPR Policy (found at Annex 6 to the ETSI Rules of Procedure, published November 19, 2014). This policy is intended to strike a balance between the needs of standardization for public use in the field of telecommunications on the one hand, and the rights of IPR owners on the other hand. ETSI requires its members to disclose the patents that “are or become, and remain ESSENTIAL to practice” its standards or technical specifications. Clause 15.6 of the ETSI IPR Policy defines the term “ESSENTIAL” to mean that “it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate EQUIPMENT or METHODS which comply with a STANDARD without infringing that IPR.”

24. Optis Wireless is the assignee of numerous patents, originally assigned to either Telefonaktiebolaget LM Ericsson (“Ericsson”) or Panasonic Corporation (“Panasonic”), that are, and remain, essential (as defined by ETSI) to practicing the LTE Standards.

25. Panasonic, the original assignee of the ’919, ’949 and ’792 Patents (collectively, “LTE Essential Patents”), declared these patents as essential to practicing the LTE Standards. Optis Wireless, upon acquisition of the ’919, ’949 and ’792 Patents from Panasonic, re-declared these patents to ETSI as essential to practicing the LTE Standards, in conformance with ETSI’s IPR Policy.

26. Plaintiffs, in conformance with ETSI’s IPR Policy, have informed Defendants that Plaintiffs are prepared to grant Defendants an irrevocable license under the

LTE Essential Patents on terms and conditions that are Fair, Reasonable and Non-Discriminatory (“FRAND”).

27. Defendants require a license to Plaintiffs’ LTE Essential Patents because BlackBerry Mobile Communication Devices are configured to, and do, operate in compliance with the LTE Standards, and thus infringe the LTE Essential Patents.

28. Since April 17, 2014, Plaintiffs have engaged in good-faith efforts to license BlackBerry on FRAND terms. On May 28, 2014, representatives from Plaintiffs met face-to-face with BlackBerry representatives at BlackBerry’s offices in Irving, Texas. During that meeting, Plaintiffs presented, in good faith, material concerning Plaintiffs’ LTE Essential Patents, along with FRAND terms and conditions for license of the LTE Essential Patents. In addition to meeting with BlackBerry, Plaintiffs have initiated and exchanged written correspondence with BlackBerry and have contacted BlackBerry by phone on numerous occasions, which have gone unanswered.

29. To date, BlackBerry has not reciprocated Plaintiffs’ good-faith efforts. BlackBerry has instead resisted taking a license to Plaintiffs’ valuable intellectual property.

30. BlackBerry has been operating and continues to operate without a license to Plaintiffs’ LTE Essential Patents. Given BlackBerry’s unwillingness to engage in meaningful discussions to license Plaintiffs’ LTE Essential Patents, or to cease infringing Plaintiffs’ patents, Plaintiffs have filed this lawsuit for the purpose of protecting their patent rights in the United States.

COUNT I.

CLAIM FOR PATENT INFRINGEMENT OF THE ’919 PATENT

31. PanOptis repeats and realleges the allegations in paragraphs 1-30 as though fully set forth herein.

32. Defendants have directly infringed and continue to directly infringe the '919 Patent by making, using, selling, offering for sale, or importing into the United States, or by intending that others make, use, import into, offer for sale, or sell in the United States, products and/or methods covered by one or more claims of the '919 Patent including, but not limited to, mobile telephones and tablets. The accused wireless communication devices that infringe the one or more claims of the '919 Patent include, but are not limited to, BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983. Further discovery may reveal additional infringing products and/or models.

33. Defendants have and continue to indirectly infringe the '919 Patent by inducing infringement by others of one or more claims, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States.

34. BlackBerry received actual notice of the '919 Patent at least as early as May 28, 2014, by way of a presentation that Optis Wireless made to BlackBerry.

35. BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices have engaged in and currently engage in activities that constitute direct infringement of one or more claims of the '919 Patent.

36. For example and without limitation, operation and use of the BlackBerry Mobile Communication Devices (including but not limited to BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983), which incorporate functionalities and associated software

and hardware components installed and configured by BlackBerry in compliance with the LTE Standards, including but not limited to 3GPP TS 36.201 Sections 1 and 4, 3GPP TS 36.331 Section 4, 3GPP TS 36.211 Section 6, 3GPP TS 36.212 Section 5, 3GPP TS 36.213 Sections 8 and 9, infringe one or more claims of the '919 Patent, including but not limited to claim 1.¹ The use and operation of these BlackBerry Mobile Communication Devices by BlackBerry, its resellers, manufacturers, or end-user customers constitutes direct infringement of one or more claims of the '919 Patent.

37. BlackBerry's affirmative acts of selling the BlackBerry Mobile Communication Devices, causing the BlackBerry Mobile Communication Devices to be manufactured, and providing instruction manuals and support for the BlackBerry Mobile Communication Devices have induced and continue to induce BlackBerry's manufacturers, resellers, and end-users to make or use the BlackBerry Mobile Communication Devices in their normal and customary way to infringe one or more claims of the '919 Patent.

38. Through its manufacture and sale of the BlackBerry Mobile Communication Devices, Defendants specifically intend that BlackBerry's manufacturers, resellers and end-users directly infringe one or more claims of the '919 Patent. BlackBerry has knowledge of the '919 Patent and actually induces others, such as resellers, manufacturers and end-use customers, to directly infringe by using, selling exporting, supplying and/or distributing within the United States BlackBerry Communication Devices for resale to others, such as resellers and end-use customers. BlackBerry is aware that such actions would induce actual infringement. Further, Defendants remain aware that these normal and customary activities would infringe the '919 Patent.

¹ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

39. For example and without limitation, in connection with its sale, offering to sell, importation into the United States, and distributing within the United States of the BlackBerry Mobile Communication Devices, Defendants willfully provide manuals and support to resellers and end-use customers regarding the use and operation of BlackBerry's products in a way that infringes one or more claims of the '919 Patent. Specifically, BlackBerry willfully provides manuals and support through sales of the BlackBerry Communication Devices, through its website <http://help.blackberry.com/>², by telephone, and through other means of communication. When resellers and end-use customers follow such instructions and support, they directly infringe the '919 Patent. BlackBerry knows or should have known that by willfully providing such instructions and support, resellers and end-use customers follow those instructions and support, and directly infringe the '919 Patent.

40. Accordingly, BlackBerry has performed and continues to perform the acts that constitute indirect infringement, and would induce actual infringement, with the knowledge of the '919 Patent and with knowledge or willful blindness to the fact that the induced acts would constitute infringement.

41. BlackBerry indirectly infringes one or more claims of the '919 Patent by contributing to infringement by others, such as manufacturers, resellers and end-use customers, in accordance with 35 U.S.C. § 271(c) in this District and elsewhere in the United States.

² For example, the BlackBerry Passport manual is available at <https://help.blackberry.com/en/blackberry-passport-series/10.3.2/user-guide-pdf/BlackBerry-Passport-Smartphone-10.3.2-User-Guide-en.pdf> (last accessed December 3, 2015). BlackBerry includes instructions to a user or reseller of the Passport, and is aware that the '919 Patent is infringed when those instructions are followed. Manuals and support for each of the infringing BlackBerry Mobile Communications Devices are available at help.blackberry.com.

42. Direct infringement of one or more claims of the '919 Patent is the result of activities performed by BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices.

43. The BlackBerry Mobile Communication Devices (including but not limited to BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983), which incorporate functionalities and associated software and hardware components installed and configured by BlackBerry in compliance with the LTE Standards, including but not limited to 3GPP TS 36.201 Sections 1 and 4, 3GPP TS 36.331 Section 4, 3GPP TS 36.211 Section 6, 3GPP TS 36.212 Section 5, 3GPP TS 36.213 Sections 8 and 9, infringe one or more claims of the '919 Patent, including but not limited to claim 1.³ On information and belief, these functions and operations cannot work in an acceptable manner absent these software and hardware components that Defendants configure, install, and include in the BlackBerry Mobile Communication Devices for the purposes of performing such functions and operations. On information and belief, BlackBerry has designed, configured, and installed such software and hardware to entice users of the BlackBerry Mobile Communication Devices to use and operate these functionalities and to do so in a manner compliant with the LTE Standards.

44. The software and hardware components installed and configured by BlackBerry in compliance with above LTE Standards do not constitute a staple article or commodity of commerce. Moreover, use of the same is required for the operation of a

³ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

BlackBerry Mobile Communication Device. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

45. The software and hardware components installed and configured by Defendants in compliance with the above LTE Standards are each a material part of the invention of the '919 Patent, are especially made for the infringing manufacture, sale and use of BlackBerry Mobile Communication Devices, and have no substantial non-infringing uses.

46. Accordingly, Defendants offer to sell, or sell within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing the '919 Patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. Defendants provide to others BlackBerry Mobile Communication Devices with distinct and separate components that have no substantial non-infringing uses.

47. Defendants' continued infringement of the '919 Patent has damaged and will continue to damage PanOptis.

COUNT II.

CLAIM FOR PATENT INFRINGEMENT OF THE '792 PATENT

48. PanOptis repeats and realleges the allegations in paragraphs 1-47 as though fully set forth herein.

49. Defendants have directly infringed and continue to directly infringe the '792 Patent by making, using, selling, offering for sale, or importing into the United States, or by intending that others make, use, import into, offer for sale, or sell in the United States,

products and/or methods covered by one or more claims of the '792 Patent including, but not limited to, mobile telephones and tablets. The accused wireless communication devices that infringe the one or more claims of the '792 Patent include, but are not limited to, at least BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983. Further discovery may reveal additional infringing products and/or models.

50. Defendants indirectly infringe the '792 Patent by inducing infringement by others of one or more claims, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States.

51. BlackBerry will receive actual notice of the '792 Patent at least as early as the filing date of this suit.

52. BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices have engaged in and currently engage in activities that constitute direct infringement of one or more claims of the '792 Patent.

53. For example and without limitation, operation and use of the BlackBerry Mobile Communication Devices (including but not limited to BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983), which incorporate functionalities and associated software and hardware components installed and configured by BlackBerry in compliance with the LTE Standards, including but not limited to 3GPP TS 36.201 Sections 1 and 4, 3GPP TS 36.211 Section 5, 3GPP TS 36.212 Section 5, 3GPP TS 36.213 Section 10, and 3GPP TS

36.331 Section 6, infringe one or more claims of the '792 Patent, including but not limited to claim 1.⁴ The manufacture, use and operation, sale, offer to sell, and importation of these BlackBerry Mobile Communication Devices by BlackBerry constitutes direct infringement of one or more claims of the '792 Patent.

54. BlackBerry's affirmative acts of selling the BlackBerry Mobile Communication Devices, causing the BlackBerry Mobile Communication Devices to be manufactured, and providing instruction manuals and support for the BlackBerry Mobile Communication Devices have induced and continue to induce BlackBerry's manufacturers, resellers, and end-users to make or use the BlackBerry Mobile Communication Devices in their normal and customary way to infringe one or more claims of the '792 Patent.

55. Through its manufacture and sale of the BlackBerry Mobile Communication Devices, Defendants specifically intend that BlackBerry's manufacturers, resellers and end-users directly infringe one or more claims of the '792 Patent. BlackBerry has knowledge of or will have knowledge of the '792 Patent and actually induces others, such as resellers, manufacturers and end-use customers, to directly infringe by using, selling exporting, supplying and/or distributing within the United States BlackBerry Communication Devices for resale to others, such as resellers and end-use customers. BlackBerry is aware or will be aware that such actions would induce actual infringement. Further, Defendants remain aware that these normal and customary activities would infringe the '792 Patent.

56. For example and without limitation, in connection with its sale, offering to sell, importation into the United States, and distributing within the United States of the BlackBerry Mobile Communication Devices, Defendants willfully provide manuals and

⁴ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

support to resellers and end-use customers regarding the use and operation of BlackBerry's products in a way that infringes one or more claims of the '792 Patent. Specifically, BlackBerry willfully provides manuals and support through sales of the BlackBerry Communication Devices, through its website <http://help.blackberry.com/>⁵, by telephone, and through other means of communication. When resellers and end-use customers follow such instructions and support, they directly infringe the '792 Patent. BlackBerry knows or should have known that by willfully providing such instructions and support, resellers and end-use customers follow those instructions and support, and directly infringe the '792 Patent.

57. Accordingly, BlackBerry continues to perform the acts that constitute indirect infringement, and would induce actual infringement, with the knowledge of the '792 Patent and with knowledge or willful blindness to the fact that the induced acts would constitute infringement.

58. BlackBerry indirectly infringes one or more claims of the '792 Patent by contributing to infringement by others, such as manufacturers, resellers and end-use customers, in accordance with 35 U.S.C. § 271(c) in this District and elsewhere in the United States.

59. Direct infringement of one or more claims of the '792 Patent is the result of activities performed by BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices.

⁵ For example, the BlackBerry Passport manual is available at <https://help.blackberry.com/en/blackberry-passport-series/10.3.2/user-guide-pdf/BlackBerry-Passport-Smartphone-10.3.2-User-Guide-en.pdf> (last accessed December 3, 2015). BlackBerry includes instructions to a user or reseller of the Passport, and is aware that the '792 Patent is infringed when those instructions are followed. Manuals and support for each of the infringing BlackBerry Mobile Communications Devices are available at help.blackberry.com.

60. The BlackBerry Mobile Communication Devices (including but not limited to BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983), which incorporate functionalities and associated software and hardware components installed and configured by BlackBerry in compliance with the LTE Standards, including but not limited to 3GPP TS 36.201 Sections 1 and 4, 3GPP TS 36.211 Section 5, 3GPP TS 36.212 Section 5, 3GPP TS 36.213 Section 10, and 3GPP TS 36.331 Section 6, infringe one or more claims of the '792 Patent, including but not limited to claim 1.⁶ On information and belief, these functions and operations cannot work in an acceptable manner absent these software and hardware components that Defendants configure, install, and include in the BlackBerry Mobile Communication Devices for the purposes of performing such functions and operations. On information and belief, BlackBerry has designed, configured, and installed such software and hardware to entice users of the BlackBerry Mobile Communication Devices to use and operate these functionalities and to do so in a manner compliant with the LTE Standards.

61. The software and hardware components installed and configured by BlackBerry in compliance with above LTE Standards do not constitute a staple article or commodity of commerce. Moreover, use of the same is required for the operation of a BlackBerry Mobile Communication Device. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

62. The software and hardware components installed and configured by Defendants in compliance with the above LTE Standards are each a material part of the

⁶ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

invention of the '792 Patent, are especially made for the infringing manufacture, sale and use of BlackBerry Mobile Communication Devices, and have no substantial non-infringing uses.

63. Accordingly, Defendants offer to sell, or sell within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing the '792 Patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. Defendants provide to others BlackBerry Mobile Communication Devices with distinct and separate components that have no substantial non-infringing uses.

64. Defendants' continued infringement of the '792 Patent has damaged and will continue to damage PanOptis.

COUNT III.

CLAIM FOR PATENT INFRINGEMENT OF THE '949 PATENT

65. PanOptis repeats and realleges the allegations in paragraphs 1-64 as though fully set forth herein.

66. Defendants have directly infringed and continue to directly infringe the '949 Patent by making, using, selling, offering for sale, or importing into the United States, or by intending that others make, use, import into, offer for sale, or sell in the United States, products and/or methods covered by one or more claims of the '949 Patent including, but not limited to, mobile telephones and tablets. The accused wireless communication devices that infringe the one or more claims of the '949 Patent include, but are not limited to, at least the BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5,

BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983. Further discovery may reveal additional infringing products and/or models.

67. Defendants indirectly infringe the '792 Patent by inducing infringement by others of one or more claims, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States.

68. BlackBerry will receive actual notice of the '792 Patent at least as early as the filing date of this suit.

69. BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices have engaged in and currently engage in activities that constitute direct infringement of one or more claims of the '792 Patent.

70. For example and without limitation, operation and use of the BlackBerry Mobile Communication Devices (including but not limited to the BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983), which incorporate functionalities and associated software and hardware components installed and configured by BlackBerry in compliance with the LTE Standards, including but not limited to 3GPP TS 36.321 Section 5, 3GPP TS 36.211 Section 6, and 3GPP TS 36.213 Sections 8 and 9, infringe one or more claims of the '949 Patent, including but not limited to claim 18.⁷ The manufacture, use and operation, sale, offer to sell, and importation of these BlackBerry Mobile Communication Devices by BlackBerry constitutes a direct infringement of one or more claims of the '949 Patent.

⁷ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

71. BlackBerry's affirmative acts of selling the BlackBerry Mobile Communication Devices, causing the BlackBerry Mobile Communication Devices to be manufactured, and providing instruction manuals and support for the BlackBerry Mobile Communication Devices have induced and continue to induce BlackBerry's manufacturers, resellers, and end-users to make or use the BlackBerry Mobile Communication Devices in their normal and customary way to infringe one or more claims of the '949 Patent.

72. Through its manufacture and sale of the BlackBerry Mobile Communication Devices, Defendants specifically intend that BlackBerry's manufacturers, resellers and end-users directly infringe one or more claims of the '949 Patent. BlackBerry has knowledge of or will have knowledge of the '949 Patent and actually induces others, such as resellers, manufacturers and end-use customers, to directly infringe by using, selling exporting, supplying and/or distributing within the United States BlackBerry Communication Devices for resale to others, such as resellers and end-use customers. BlackBerry is aware or will be aware that such actions would induce actual infringement. Further, Defendants remain aware that these normal and customary activities would infringe the '949 Patent.

73. For example and without limitation, in connection with its sale, offering to sell, importation into the United States, and distributing within the United States of the BlackBerry Mobile Communication Devices, Defendants willfully provide manuals and support to resellers and end-use customers regarding the use and operation of BlackBerry's products in a way that infringes one or more claims of the '949 Patent. Specifically, BlackBerry willfully provides manuals and support through sales of the BlackBerry Communication Devices, through its website <http://help.blackberry.com/>⁸, by telephone,

⁸ For example, the BlackBerry Passport manual is available at <https://help.blackberry.com/en/blackberry-passport-series/10.3.2/user-guide-pdf/BlackBerry-Passport-Smartphone-10.3.2-User-Guide-en.pdf> (last

and through other means of communication. When resellers and end-use customers follow such instructions and support, they directly infringe the '949 Patent. BlackBerry knows or should have known that by willfully providing such instructions and support, resellers and end-use customers follow those instructions and support, and directly infringe the '949 Patent.

74. Accordingly, BlackBerry continues to perform the acts that constitute indirect infringement, and would induce actual infringement, with the knowledge of the '949 Patent and with knowledge or willful blindness to the fact that the induced acts would constitute infringement.

75. BlackBerry indirectly infringes one or more claims of the '949 Patent by contributing to infringement by others, such as manufacturers, resellers and end-use customers, in accordance with 35 U.S.C. § 271(c) in this District and elsewhere in the United States.

76. Direct infringement of one or more claims of the '949 Patent is the result of activities performed by BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices.

77. The BlackBerry Mobile Communication Devices (including but not limited to BlackBerry 4G LTE PlayBook, BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983), which incorporate functionalities and associated software and hardware components installed and configured by BlackBerry in

accessed December 3, 2015). BlackBerry includes instructions to a user or reseller of the Passport, and is aware that the '949 Patent is infringed when those instructions are followed. Manuals and support for each of the infringing BlackBerry Mobile Communications Devices are available at help.blackberry.com.

compliance with the LTE Standards, including but not limited to 3GPP TS 36.321 Section 5, 3GPP TS 36.211 Section 6, and 3GPP TS 36.213 Sections 8 and 9, infringe one or more claims of the '949 Patent, including but not limited to claim 18.⁹ On information and belief, these functions and operations cannot work in an acceptable manner absent these software and hardware components that Defendants configure, install, and include in the BlackBerry Mobile Communication Devices for the purposes of performing such functions and operations. On information and belief, BlackBerry has designed, configured, and installed such software and hardware to entice users of the BlackBerry Mobile Communication Devices to use and operate these functionalities and to do so in a manner compliant with the LTE Standards.

78. The software and hardware components installed and configured by BlackBerry in compliance with above LTE Standards do not constitute a staple article or commodity of commerce. Moreover, use of the same is required for the operation of a BlackBerry Mobile Communication Device. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

79. The software and hardware components installed and configured by Defendants in compliance with the above LTE Standards are each a material part of the invention of the '949 Patent, are especially made for the infringing manufacture, sale and use of BlackBerry Mobile Communication Devices, and have no substantial non-infringing uses.

80. Accordingly, Defendants offer to sell, or sell within the United States a component of a patented machine, manufacture, combination, or composition, or a material

⁹ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

or apparatus for use in practicing the '949 Patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. Defendants provide to others BlackBerry Mobile Communication Devices with distinct and separate components that have no substantial non-infringing uses.

81. Defendants' continued infringement of the '949 Patent has damaged and will continue to damage PanOptis.

PLAINTIFFS' NON-STANDARDS-ESSENTIAL PATENT

COUNT IV.

CLAIM FOR PATENT INFRINGEMENT OF THE '191 PATENT

82. PanOptis repeats and realleges the allegations in paragraphs 1-81 as though fully set forth herein.

83. The '191 Patent, originally assigned to Ericsson and subsequently assigned to Plaintiffs, is not, and has not been declared, a standards-essential patent and accordingly is not subject to FRAND.

84. Defendants have directly infringed and continues to directly infringe the '191 Patent by making, using, selling, offering for sale, or importing into the United States, or by intending that others make, use, import into, offer for sale, or sell in the United States, products and/or methods covered by one or more claims of the '191 Patent including, but not limited to, mobile telephones. The accused wireless communication devices that infringe the one or more claims of the '191 Patent include, but are not limited to, at least BlackBerry Priv, BlackBerry Leap, BlackBerry Classic, BlackBerry Passport, Porsche Design P'9982,

Porsche Design P'9983, BlackBerry Z10, BlackBerry Z30, BlackBerry Q10, and BlackBerry Q5. Further discovery may reveal additional infringing products and/or models.

85. BlackBerry has engaged in and currently engages in activities that constitute direct infringement of one or more claims of the '191 Patent.

86. For example and without limitation, operation and use of the BlackBerry Mobile Communication Devices (including but not limited to BlackBerry Priv, BlackBerry Leap, BlackBerry Classic, BlackBerry Passport, Porsche Design P'9982, Porsche Design P'9983, BlackBerry Z10, BlackBerry Z30, BlackBerry Q10, and BlackBerry Q5), which incorporate multimedia messaging functionalities and associated telephony software interfaces, and other software and hardware that BlackBerry configures, installs, and includes in the BlackBerry Mobile Communication Devices for the function of transmitting text messages with multimedia attachments, infringes one or more claims of the '191 Patent, including but not limited to claim 17.¹⁰ The manufacture, use and operation, sale, offer to sell, and importation of these BlackBerry Mobile Communication Devices by BlackBerry constitutes direct infringement of one or more claims of the '191 Patent.

87. Defendants have and continue to indirectly infringe the '191 Patent by inducing infringement by others of one or more claims, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States.

88. BlackBerry received actual notice of the '191 Patent at least as early as May 28, 2014, by way of a presentation that Optis Wireless made to BlackBerry.

¹⁰ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

89. BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices have engaged in and currently engage in activities that constitute direct infringement of one or more claims of the '191 Patent.

90. For example and without limitation, operation and use of the BlackBerry Mobile Communication Devices (including but not limited to the BlackBerry Priv, BlackBerry Passport, BlackBerry Q5, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, BlackBerry Classic, BlackBerry Leap, Porsche Design P'9982, Porsche Design P'9983), which incorporate multimedia messaging functionalities and associated telephony software interfaces, and other software and hardware that BlackBerry configures, installs, and includes in the BlackBerry Mobile Communication Devices for the function of transmitting text messages with multimedia attachments, infringes one or more claims of the '191 Patent, including but not limited to claim 17.¹¹ The use and operation of these BlackBerry Mobile Communication Devices by BlackBerry, its resellers, manufacturers, or end-user customers constitutes direct infringement of one or more claims of the '191 Patent.

91. BlackBerry's affirmative acts of selling the BlackBerry Mobile Communication Devices, causing the BlackBerry Mobile Communication Devices to be manufactured, and providing instruction manuals and support for the BlackBerry Mobile Communication Devices have induced and continue to induce BlackBerry's manufacturers, resellers, and end-users to make or use the BlackBerry Mobile Communication Devices in their normal and customary way to infringe one or more claims of the '191 Patent.

92. Through its manufacture and sale of the BlackBerry Mobile Communication Devices, Defendants specifically intend that BlackBerry's manufacturers, resellers and end-

¹¹ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

users directly infringe one or more claims of the '191 Patent. BlackBerry has knowledge of the '191 Patent and actually induces others, such as resellers, manufacturers and end-use customers, to directly infringe by using, selling exporting, supplying and/or distributing within the United States BlackBerry Communication Devices for resale to others, such as resellers and end-use customers. BlackBerry is aware that such actions would induce actual infringement. Further, Defendants remain aware that these normal and customary activities would infringe the '191 Patent.

93. For example and without limitation, in connection with its sale, offering to sell, importation into the United States, and distributing within the United States of the BlackBerry Mobile Communication Devices, Defendants willfully provide manuals and support to resellers and end-use customers regarding the use and operation of BlackBerry's products in a way that infringes one or more claims of the '191 Patent. Specifically, BlackBerry willfully provides manuals and support through sales of the BlackBerry Communication Devices, through its website <http://help.blackberry.com/>¹², by telephone, and through other means of communication. When resellers and end-use customers follow such instructions and support, they directly infringe the '191 Patent. BlackBerry knows or should have known that by willfully providing such instructions and support, resellers and end-use customers follow those instructions and support, and directly infringe the '191 Patent.

¹² For example, the BlackBerry Passport manual is available at <https://help.blackberry.com/en/blackberry-passport-series/10.3.2/user-guide-pdf/BlackBerry-Passport-Smartphone-10.3.2-User-Guide-en.pdf> (last accessed December 3, 2015). BlackBerry includes instructions to a user or reseller of the Passport, and is aware that the '191 Patent is infringed when those instructions are followed. Manuals and support for each of the infringing BlackBerry Mobile Communications Devices are available at help.blackberry.com.

94. Accordingly, BlackBerry has performed and continues to perform the acts that constitute indirect infringement, and would induce actual infringement, with the knowledge of the '191 Patent and with the knowledge or willful blindness to the fact that the induced acts would constitute infringement.

95. BlackBerry indirectly infringes one or more claims of the '191 Patent by contributing to infringement by others, such as manufacturers, resellers and end-use customers, in accordance with 35 U.S.C. § 271(c) in this District and elsewhere in the United States.

96. Direct infringement of one or more claims of the '191 Patent is the result of activities performed by BlackBerry, its manufacturers, resellers, distributors and end-users of the BlackBerry Mobile Communication Devices.

97. The BlackBerry Mobile Communication Devices (including but not limited to the BlackBerry Priv, BlackBerry Leap, BlackBerry Classic, BlackBerry Passport, Porsche Design P'9982, Porsche Design P'9983, BlackBerry Z10, BlackBerry Z30, BlackBerry Q10, BlackBerry Q5), which incorporate multimedia messaging functionalities and associated telephony software interfaces, and other software and hardware that BlackBerry configures, installs, and includes in the BlackBerry Mobile Communication Devices for the function of transmitting text messages with multimedia attachments, infringes one or more claims of the '191 Patent, including but not limited to claim 17.¹³ On information and belief, these functions and operations cannot work in an acceptable manner absent these software and hardware components that Defendants configure, install, and include in the BlackBerry Mobile Communication Devices for the purposes of performing such functions and

¹³ PanOptis incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3-1.

operations. On information and belief, BlackBerry has designed, configured, and installed such software and hardware to entice users of the BlackBerry Mobile Communication Devices to use and operate these functionalities and to do so in a manner that infringes the '191 Patent.

98. The software and hardware components installed and configured by BlackBerry to practice the patented operations and structures, do not constitute a staple article or commodity of commerce. Moreover, use of the same is required for the operation of a BlackBerry Mobile Communication Device. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

99. The software and hardware components installed and configured by Defendants are each a material part of the invention of the '191 Patent, are especially made for the infringing manufacture, sale and use of BlackBerry Mobile Communication Devices, and have no substantial non-infringing uses.

100. Accordingly, Defendants offer to sell, or sell within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing the '191 Patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. Defendants provide to others BlackBerry Mobile Communication Devices with distinct and separate components that have no substantial non-infringing uses.

101. Defendants' continued infringement of the '191 Patent has damaged and will continue to damage PanOptis.

COUNT V.

WILLFUL INFRINGEMENT

102. PanOptis repeats and realleges the allegations in paragraphs 1-101 as though fully set forth herein.

103. Defendants have willfully infringed and/or do willfully infringe each of the '919 and '191 Patents.

104. Defendants received actual notice of each of the '919 and '191 Patents at least as early as May 28, 2014 by way of a presentation that Optis Wireless gave to BlackBerry.

105. After receiving such actual notice of the '919 and '191 Patents, BlackBerry proceeded to make, use, test, sell and offer to sell in this District and elsewhere in the United States, and import into this District and elsewhere in the United States, the BlackBerry Mobile Communication Devices.

106. On information and belief, BlackBerry engaged in such activities despite an objectively high likelihood that its actions constituted infringement of valid patents. BlackBerry knew or should have known that its actions would cause direct infringement of each of the '919 and '191 Patents.

COUNT VI.

DECLARATORY JUDGMENT

107. PanOptis repeats and realleges the allegations in paragraphs 1-106 as though fully set forth herein.

108. Optis Wireless owns patents essential to the GSM, UMTS, and LTE standards ("Essential Patents"), and PPM possesses the full rights to license these patents to BlackBerry. Without a license, BlackBerry will infringe upon Plaintiffs' Essential Patents.

109. Plaintiffs, as possessing the full rights in patents that are essential and remain essential to the GSM, UMTS, and/or LTE standards, are obligated to offer BlackBerry a license to Plaintiffs' Essential Patents on FRAND terms.

110. BlackBerry makes, has made, sells, leases, disposes of, repairs, uses, and operates products and uses methods that practice the GSM, UMTS, and/or LTE standards and is therefore required to obtain a license under Plaintiffs' Essential Patents.

111. There is a case or controversy, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment, as to whether Plaintiffs have complied with their commitments to offer a license their Essential Patents on FRAND terms. Plaintiffs have in good faith presented BlackBerry with FRAND terms for a worldwide license under Plaintiffs' entire portfolio of Essential Patents. BlackBerry, however, has rebuffed and continues to rebuff Plaintiffs' good faith efforts to negotiate a license with BlackBerry.

112. Plaintiffs are entitled to a declaratory judgment that they have complied with their obligations arising from their licensing declarations to ETSI, ETSI's IPR Policy, and any applicable laws during their negotiations with BlackBerry concerning a worldwide license under Plaintiffs' Essential Patents.

DEMAND FOR JURY TRIAL

PanOptis hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, PanOptis respectfully requests that this Court enter judgment in their favor and grant the following relief:

- A. Adjudge that the Defendants have directly infringed each of the Asserted Patents;

- B. Adjudge that Defendants have contributorily infringed, and/or induced the infringement of each of the '919 and '191 Patents;
- C. Adjudge that the Defendants' infringement of the '919 and '191 Patents was willful, and that Defendants' continued infringement of the Asserted Patents is willful;
- D. Award PanOptis damages in an amount adequate to compensate PanOptis for the Defendants' infringement of the Asserted Patents, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
- E. Award enhanced damages by reason of the Defendants' willful infringement of the '919 and '191 Patents, pursuant to 35 U.S.C. § 284;
- F. Award PanOptis pre-judgment and post-judgment interest to the full extent allowed under the law, as well as its costs (including all disbursements);
- G. Award PanOptis a post-judgment forward royalty;
- H. Enter declaratory judgment that Plaintiffs have complied with their obligations arising from their licensing declarations to ETSI, ETSI's IPR Policy, and any applicable laws during their negotiations with Defendants concerning a worldwide license under Plaintiffs' Essential Patents;
- I. Order an accounting for damages; and
- J. Award such other relief as the Court may deem appropriate and just under the circumstances.

DATED: January 17, 2016

Respectfully submitted,

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