

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

MAGNACROSS LLC,

Plaintiff,

v.

**CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS,**

Defendant.

CASE NO. 2:15-cv-844-JRG-RSP
(LEAD CASE) (CONSOLIDATED)
PATENT CASE

T-MOBILE USA, INC.

CASE NO. 2:15-cv-00854-JRG-RSP

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Magnacross LLC files this Second Amended Complaint for Patent Infringement against T-Mobile USA, Inc., and would respectfully show the Court as follows:

I. THE PARTIES

1. Plaintiff Magnacross LLC (“Magnacross” or “Plaintiff”) is a Texas limited liability company with its principal place of business in the Eastern District of Texas at 5900 South Lake Forest Drive, Suite 300, McKinney, Texas 75070.

2. On information and belief, Defendant T-Mobile USA, Inc. (“Defendant”), is a Delaware corporation with its principal place of business at 12920 SE 38th St., Bellevue, WA 98006.

II. JURISDICTION AND VENUE

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

4. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction, pursuant to due process and the Texas Long Arm Statute, due at least to its substantial business in this forum, including at least a portion of the infringements alleged herein.

5. Without limitation, on information and belief, within this state, Defendant has used the patented inventions thereby committing, and continuing to commit, acts of patent infringement alleged herein. In addition, on information and belief, Defendant has derived substantial revenues from its infringing acts occurring within the State of Texas and this District. Further, on information and belief, Defendant is subject to the Court's general jurisdiction, including from regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in the State of Texas and in this District. Further, on information and belief, Defendant is subject to the Court's personal jurisdiction at least due to its sale of products and/or services within the State of Texas and within this District. Defendant has committed such purposeful acts and/or transactions in the State of Texas and in this District such that it reasonably should know and expect that it could be haled into this Court as a consequence of such activity.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). On information and belief, Defendant has sufficient contacts with the State of Texas and this District such that this Court is a fair and reasonable venue for the litigation of this action. On information and belief, from and within this District Defendant has committed at least a portion of the infringements at issue in this case. In addition, on information and belief, Defendant has derived substantial revenues from its infringing acts and is subject to personal jurisdiction in this

District for at least the reasons identified above, including due at least to its sale of products and/or services within the State of Texas and from this District.

7. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

III. COUNT I
(PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 6,917,304)

8. Plaintiff incorporates the above paragraphs herein by reference.

9. On July 12, 2005, United States Patent No. 6,917,304 (“the ‘304 Patent”) was duly and legally issued by the United States Patent and Trademark Office. The ‘304 Patent is titled “Wireless Mutlplex [*sic*] Data Transmission System.” The PCT application leading to the ‘304 Patent was filed on April 3, 1998. A true and correct copy of the ‘304 Patent is attached hereto as Exhibit A and incorporated herein by reference.

10. Magnacross is the assignee of all right, title and interest in the ‘304 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ‘304 Patent. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the ‘304 Patent by Defendant.

11. **Direct Infringement.** Upon information and belief, Defendant has been and now is directly infringing at least claim 1 of the ‘304 patent in the State of Texas, in this District, and elsewhere in the United States, by actions comprising selling, offering for sale, and using mobile devices, such as smartphones, that have a video sensor for capturing video and an audio sensor for capturing audio, and LTE(4G) mobile services using LTE(4G) base stations for transmitting audio and video data transmissions from the mobile devices to the LTE(4G) base stations, which collectively perform the method of the wireless transmission of data through a communications

channel from at least two data sensors to a data processor with the method comprising the step of division of the channel into sub-channels and transmitting the data from the data sensors respectively through the sub-channels accordingly; characterized by a) the step of division of the communications channel being effected asymmetrically whereby the data carrying capacities of the sub-channels are unequal; and b) the data rate required for data transmission from the local sensors differing substantially between the two sensors; and c) allocating data from the local data sensors to respective ones or groups of sub-channels in accordance with the data carrying capacities of the sub-channels.

12. Upon information and belief, Defendant performs the steps of transmitting data from two sensors (microphone and camera) on a mobile device to an evolved NodeB (“eNB”) using Defendant’s LTE(4G) network. Defendant’s LTE network performs the step of division of said channel into sub-channels by dividing the network communications channel between a mobile device and an eNB into different Service Data Flows, which are subchannels. The data from the two sensors (microphone and camera) on a mobile device are of different Resource Types per the 3GPP Standardized QCI characteristic table 6.1.7. Information from the two sensors will be treated as a separate Service Data Flows with different priority and bandwidth allocations. A Service Data Flow (SDF) is setup for each different QCI.

13. Defendant’s LTE network performs the step of transmitting said data from said data sensors respectively through said sub-channels accordingly using mobile devices. Each Service Data Flow (SDF) is associated with only one QoS Class Identifier (QCI). The QCI for conversational voice is a separate QCI from the conversational video and therefore Defendant’s network, a packet based wireless network, transmits conversational voice data from the microphone over a separate SDF than the conversational video data from the camera sensor in

the same communications channel. Defendant's LTE network performs the step of division of said communications channel being effected asymmetrically whereby the data carrying capacities of said sub-channels are unequal and the data rate required for data transmission from said local sensors differing substantially between said at least two sensors. Because the QCI for conversational voice has a substantially lower transmission rate than the QCI for the conversational video, the communications channel is asymmetrically effected such that the SDF for the conversation voice transmission is substantially lower than the transmission rate for the SDF for the conversational video data transmission. Defendant's LTE network performs the step of allocating data from said local data sensors to respective ones or groups of said sub-channels in accordance with the data carrying capacities of said sub-channels. By dividing its channels into separate SDFs for each QCI, Defendant's LTE Network allocates the data from the microphone to the SDF for the QCI for conversational voice and allocates the data from the camera sensor to the SDF for the QCI for the conversational video.

14. At a minimum, Defendant has performed each of the method steps by performing testing and usage of its system using mobile chatting programs and apps. Defendant tested one or more of the video chat apps, which would infringe claim 1 of the '304 patent as describe above and in the infringement contentions, to insure that they would function over Defendant's LTE network. Defendant has also advertised how it allows video calling over its LTE network as opposed to only allowing video calls over Wi-Fi.

15. Defendant also conditions participation in the accused activity or receipt of a benefit upon performance of a step or steps of the patented method of claim 1 of the '304 patent and establishes the manner or timing of that performance. Defendant provides its customers with the smart phones used in the infringing method on Defendant's LTE network and discloses using

the camera for video chatting. In addition, if a customer brings his or her own smart phone, Defendant provides the customer a SIM card to allow the customer's device to operate on Defendant's network. The phones purchased from Defendant include pre-loaded apps such as Hangouts, which have a video chat feature.

16. Defendant also has the ability to stop or limit the activities accused of infringement. The Terms of Service of Defendant's Wireless Customer Agreement state that Defendant "we may change, limit, suspend or terminate your Service or this Agreement at any time, including if you engage in any of the prohibited uses described here.... Under certain limited circumstances, we may also block your device from working on our network." A use of Defendant's network explicitly not permitted is actions with a Device that "violates anyone's intellectual property rights." A customer accepts Defendant's terms and conditions by "activating, using or paying for the Service or a Device; or opening the Device box." A "Device" in Defendant's terms and conditions is "[a]ny equipment for which we provide Service, such as a phone, handset, tablet, or SIM card." Defendant has also demonstrated the ability to control the infringing activities on a device-by-device basis. For example, for Defendant's Video Calling, Defendant only allows video calls between particular phones on its network; and it intends to expand to more devices over time. The actions of Defendant's customers are therefore attributable to Defendant such that Defendant is the single actor chargeable with direct infringement and performance of each method step.

17. **Indirect Infringement.** Upon information and belief, Defendant has been and now is indirectly infringing by way of inducing infringement and contributing to the infringement of at least claim 1 of the '304 patent in the State of Texas, in this District, and elsewhere in the United States, by providing mobile devices, such as smartphones, that have a

video sensor for capturing video and an audio sensor for capturing audio, and LTE(4G) mobile services using LTE(4G) base stations for transmitting audio and video data transmissions from the mobile devices to the LTE(4G) base stations for use by Defendant's customers. Defendant is a direct and indirect infringer, and its customers using the accused instrumentalities are direct infringers. Upon information and belief, Defendant had actual knowledge of the '304 patent since at least June 1, 2015, when it was served with the original Complaint in this action, and has known of its infringement since at least that date.

18. On information and belief, since becoming aware of the '304 patent, Defendant is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the accused instrumentalities to its customers and by aiding and abetting its use in a manner known to infringe by Defendant. Defendant encourages customers to use the accused instrumentalities, and provides instructions, including manuals and/or user's guides, for conducting the directly infringing use and advertises the directly infringing use by customers despite knowing of the infringing use. On information and belief, Defendant knew or should have known that through its acts it was and is inducing infringement of the '304 patent since it became aware of the infringement at least as of the date of the service of the original Complaint.

19. On information and belief, since it became aware of the infringement at least as of the date of the service of the original Complaint, Defendant is and has been committing the act of contributory infringement by intending to provide the identified accused instrumentalities to its customers knowing that it is a material part of the invention, knowing that its use was made and adapted for infringement of the '304 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.

20. Plaintiff has been damaged as a result of Defendant's infringing conduct. Defendant is thus liable to Plaintiff for damages in an amount that adequately compensates Plaintiff for such Defendant's infringement of the '304 patent, *i.e.*, in an amount that by law cannot be less than would constitute a reasonable royalty for the use of the patented technology, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

21. On information and belief, Defendant will continue its infringement of one or more claims of the '304 patent unless enjoined by the Court. Each and all of the Defendant's infringing conduct thus causes Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

22. On information and belief, Defendant has had at least constructive notice of the '304 patent by operation of law, and there are no marking requirements that have not been complied with.

VI. JURY DEMAND

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of United States Patent No. 6,917,304 have been infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;

- c. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- d. That Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent No. 6,917,304; and
- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: February 5, 2016

Respectfully submitted,

/s/ David R. Bennett

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**ATTORNEY FOR PLAINTIFF
MAGNACROSS LLC**

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on all parties who have appeared in this case on February 5, 2016, via the Court's CM/ECF system.

/s/ David R. Bennett
David R. Bennett