

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BRIGHT HOUSE NETWORKS, LLC,

Plaintiff,

vs.

MOBILE TELECOMMUNICATIONS  
TECHNOLOGIES, LLC,

Defendant.

Civil Action No.

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Bright House Networks, LLC (“BHN”) files this Complaint for Declaratory Judgment (“Complaint”) against Defendant Mobile Telecommunications Technologies, LLC (“MTel”). BHN seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that BHN does not infringe United States Patent Nos. 5,590,403 (the “403 Patent”), 5,915,210 (the “210 Patent”) and 5,659,891 (the “891 Patent”) (collectively, the “Patents-in-Suit”).

**PARTIES**

1. Plaintiff BHN is a Delaware limited liability company with its principal place of business at 5823 Widewaters Parkway, East Syracuse, New York 13057.

2. On information and belief, Defendant MTel is a Delaware limited liability company with a purported principal place of business at 1720 Lakepointe Drive, Suite 100, Lewisville, TX 75057. Upon further information and belief, MTel is the wholly-owned subsidiary of United Wireless Holdings, Inc., which is a Delaware corporation.

**BACKGROUND STATEMENT**

3. MTel is a patent assertion entity that, on information and belief, exists solely to monetize patents by filing suits against, among others, purchasers and users of 802.11 a, g, n,

and/or ac standard compliant products for the purpose of seeking licenses and settlements to which MTel should not be entitled.

4. MTel lodged such a lawsuit against BHN in the Eastern District of Texas on January 4, 2016. *See Mobile Telecommunications Technologies, LLC v. Bright House Networks, LLC*, No. 2:16-cv-00008 (E.D. Tex.) (the “Texas Action”). The First Amended Complaint filed in the Texas Action is attached hereto as Exhibit 1.

5. In the Texas Action, MTel alleges infringement based on BHN’s alleged manufacture, use, sale, and offer for sale of customer-premises equipment, such as cable modems, wireless routers, and modem/wireless router gateways, which support IEEE 802.11 a, g, n, or ac standards (what MTel calls the “Wi-Fi Enabled CPE”), public Wi-Fi services using wireless access points that support IEEE 802.11 a, g, n, or ac standards (what MTel refers to as “Wi-Fi Enabled Access Points”), microwave networks which employed certain subcarrier frequency structures and MIMO techniques (what MTel refers to as “MIMO Microwave Equipment”), and associated services and applications relying on Wi-Fi networks.

6. On March 18, 2016, BHN moved to dismiss the Texas Action for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2). *See BHN Motion to Dismiss in Texas Action*, Dkt. 20, attached hereto as Exhibit 2.

7. BHN brings this Declaratory Judgment action in the present jurisdiction because there is an actual justiciable controversy between it and MTel based on the allegations of infringement against BHN made in the Texas Action and because Delaware, unlike Texas, is the appropriate forum to determine issues of infringement with respect to BHN.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over BHN’s request for a declaratory judgment under 28 U.S.C. §§ 2201 and 2202. This action arises under the patent laws of the

United States, 35 U.S.C. §§ 100 *et seq.*, which are within the subject matter jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1338(a).

9. The Texas Action filed by MTel against BHN alleges infringement of the Patents-in-Suit by, among other things, the manufacture, use, sale, and offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and allegedly associated services and applications. Thus, the allegations made by MTel in the Texas Action rise to an actual and justiciable controversy between BHN and MTel as to the non-infringement of the Patents-in-Suit.

10. MTel's infringement allegations threaten actual and imminent injury to BHN that can be redressed by judicial relief and that injury is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Absent a declaration of non-infringement, MTel's continued wrongful assertions of infringement against BHN related to the alleged manufacture, use, sale, and offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services will cause BHN harm.

11. MTel is subject to general personal jurisdiction in this judicial district based upon its purposeful, systematic, and continuous contacts with Delaware, including its formation under the laws of Delaware, and maintaining a registered agent in this judicial district.

12. Venue is proper in this Court under 28 U.S.C. § 1391 because MTel resides in this judicial district and because MTel is subject to personal jurisdiction within this judicial district.

### **FACTUAL BACKGROUND**

13. BHN is the sixth largest cable operator in the U.S. and the second largest in Florida, with technologically advanced systems located in five states including Florida, Alabama, Indiana, Michigan and California. BHN serves approximately 2.5 million customers who

subscribe to one or more of its video, high-speed data, home security and automation and voice services.

14. Upon information and belief, MTel is a non-practicing entity organized for the specific purpose of pursuing infringement lawsuits and improperly shielding the real parties in interest from exposure and liability associated with the lawsuits, such as may result from an imposition of costs or attorneys' fees that may be obtained by the defendants in the lawsuits, and/or to hide prior actions of, or obligations that might be owed by, the real parties in interest. Upon further information and belief, MTel does not commercialize any products or services embodying the Patents-in-Suit.

15. MTel purports to be the owner of the '403 Patent. The '403 Patent is entitled "Method and System for Efficiently Providing Two Way Communication Between a Central Network and Mobile Unit" and issued on December 31, 1996. A copy of the '403 Patent is attached as Exhibit 3.

16. MTel purports to be the owner of the '210 Patent. The '210 Patent is entitled "Method and System for Providing Multicarrier Simulcast Transmission" and issued on June 22, 1999. A copy of the '210 Patent is attached as Exhibit 4.

17. MTel purports to be the owner of the '891 Patent. The '891 Patent is entitled "Multicarrier Techniques in Bandlimited Channels" and issued on August 19, 1997. A copy of the '891 Patent is attached as Exhibit 5.

18. On January 4, 2016, MTel commenced eight patent infringement suits against thirteen defendants in the Eastern District of Texas, including BHN, alleging infringement of one or more of the Patents-in-Suit. See *Mobile Telecommunications Technologies, LLC v. Bright House Networks, LLC*, No. 2:16-cv-00008 (E.D. Tex.), attached as Exhibit 6; *Mobile*

*Telecommunications Technologies, LLC v. Time Warner Cable Inc. et al.*, No. 2:16-cv-00007 (E.D. Tex.); *Mobile Telecommunications Technologies, LLC v. Charter Communications, Inc.*, No. 2:16-cv-00009 (E.D. Tex.); *Mobile Telecommunications Technologies, LLC v. Cox Communications, Inc.*, No. 2:16-cv-00010 (E.D. Tex.); *Mobile Telecommunications Technologies, LLC v. Aruba Networks, Inc. et al.*, No. 2:16-cv-00012 (E.D. Tex.); *Mobile Telecommunications Technologies, LLC v. Brocade Communications Systems, Inc.*, No. 2:16-cv-00013 (E.D. Tex.); *Mobile Telecommunications Technologies, LLC v. Juniper Networks, Inc.*, No. 2:16-cv-00014 (E.D. Tex.).

19. This recent round of litigation is the latest in a series of lawsuits that MTel has brought against, among others, telecommunications providers and mobile device manufacturers concerning one or more of the Patents-in-Suit. *Mobile Telecommunications Technologies, LLC v. Sprint Nextel Corporation*, No. 2:12-cv-00832 (E.D. Tex.) (filed Dec. 31, 2012); *Mobile Telecommunications Technologies, LLC v. Apple Inc.*, No. 2:13-cv-00258 (E.D. Tex.) (filed Apr. 2, 2013); *Mobile Telecommunications Technologies, LLC v. T-Mobile USA, Inc. et al.*, No. 2:13-cv-00886 (E.D. Tex.) (filed Oct. 30, 2013); *Mobile Telecommunications Technologies, LLC v. Leap Wireless International, Inc. et al.*, No. 2:13-cv-00885 (E.D. Tex.) (filed Oct. 30, 2013); *Mobile Telecommunications Technologies, LLC v. AT&T Mobility LLC et al.*, No. 2:14-cv-00897 (E.D. Tex.) (filed Sept. 15, 2014); and *Mobile Telecommunications Technologies, LLC v. Samsung Electronics Co. Ltd. et al.*, No. 2:15-cv-00183 (E.D. Tex.) (filed Feb. 9, 2015). Those cases also included allegations that the telecommunication providers and mobile device manufacturers' use, sale, offer for sale, manufacturer, and import of 802.11 a, g, n and/or ac compliant products and services infringed the Patents-in-Suit.

20. The Texas Action filed by MTel makes similar allegations, alleging infringement based upon BHN's alleged conduct related to making, using, offering to sell, selling, and use of 802.11 a, g, n, and ac Wi-Fi Enabled CPE and Wi-Fi Access Points, as well as microwave networks that use certain subcarrier frequency structures and MIMO techniques. *See generally* Texas Action, Exhibit 1.

### COUNT I

#### **Declaratory Judgment of Non-Infringement of the '403 Patent**

21. BHN incorporates the foregoing paragraphs by reference as though set forth fully herein.

22. No claim of the '403 Patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by BHN's alleged use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services.

23. BHN has never manufactured, used, imported, offered for sale and/or sold in the United States any products or services which infringe the '403 Patent. By way of example, the accused Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, and MIMO Microwave Equipment do not include a "plurality of transmitters" or "first" and "second" sets of "transmitters" or "base transmitters" as required by claims of the '403 Patent.

24. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality between MTel and BHN to warrant the issuance of a declaratory judgment that BHN's alleged use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services have not infringed, and do not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of the '403 Patent.

**COUNT II**

**Declaratory Judgment of Non-Infringement of the '210 Patent**

25. BHN incorporates the foregoing paragraphs by reference as though set forth fully herein.

26. No claim of the '210 Patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by BHN's alleged use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services.

27. BHN has never manufactured, used, imported, offered for sale and/or sold in the United States any products or services which infringe the '210 Patent. By way of example, the accused Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, and MIMO Microwave Equipment do not include "first" and "second" "transmitters" or "first" and "second" "means for transmitting" as required by claims of the '210 Patent. Likewise, the accused 802.11 a, g, n, and/or ac Wi-Fi Enabled CPE and Wi-Fi Enabled Access Points do not operate by transmitting "plurality of carrier signals" as recited in the claims of the '210 Patent.

28. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality between MTel and BHN to warrant the issuance of a declaratory judgment that BHN's alleged use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services have not infringed, and do not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of the '210 Patent.

**COUNT III**

**Declaratory Judgment of Non-Infringement of the '891 Patent**

29. BHN incorporates the foregoing paragraphs by reference as though set forth fully herein.

30. No claim of the '891 Patent has been or is infringed, either directly or indirectly, literally or under the doctrine of equivalents, by BHN's alleged use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services.

31. BHN has never manufactured, used, imported, offered for sale and/or sold in the United States any products or services which infringe the '891 Patent. By way of example, the accused Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points and MIMO Microwave Equipment do not operate by transmitting "paging carriers", "modulated carriers" or using a "plurality of transmitters" as recited in the claims of the '891 Patent. Further, the accused Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points and MIMO Microwave Equipment do not space carriers within a "mask-defined, bandlimited channel" in the manner required by the claims of the '891 Patent.

32. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality between MTel and BHN to warrant the issuance of a declaratory judgment that BHN's use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services have not infringed, and do not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of the '891 Patent.

### **PRAYERS FOR RELIEF**

WHEREFORE, BHN prays for:

- a. A declaration that BHN's alleged use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services have not infringed and are not infringing, either directly or indirectly, any claim of the '403, '210, and '891 Patents;

- b. An order that MTel and each of its officers, employees, agents, attorneys, and any persons in active concert or participation with them are restrained and enjoined from further prosecuting or instituting any action against BHN claiming that the '403, '210, and '891 Patents are infringed or from representing that BHN's use, sale, and/or offer for sale of Wi-Fi Enabled CPE, Wi-Fi Enabled Access Points, MIMO Microwave Equipment, and associated products and services infringe the '403, '210, and '891 Patents;
- c. To the extent that BHN is the prevailing party and it is determined that this is an exceptional case, a declaration that this case is exceptional and awarding BHN its expenses, disbursements, and reasonable attorney's fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;
- d. An award to BHN of its costs; and
- e. Such other relief as this Court or a jury may deem proper and just under the circumstances.

**JURY DEMAND**

BHN demands a trial by jury on all issues so triable.

Dated: April 19, 2016

Respectfully submitted,

**DUANE MORRIS LLP**

*/s/ Richard L. Renck*

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