

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

**MARKING OBJECT VIRTUALIZATION
INTELLIGENCE, LLC,**

Plaintiff,

v.

SONUS NETWORKS, INC.

Defendant.

Civil Action No. 2:16-cv-01100-JRG

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Marking Object Virtualization Intelligence, LLC (“MOV Intelligence” or “Plaintiff”), by and through its attorneys, brings this action and makes the following allegations of patent infringement relating to U.S. Patent No. 7,124,114 (the, “114 patent” or “patent-in-suit”). Defendant Sonus Networks, Inc. (“Sonus Networks” or “Defendant”) infringes the patent-in-suit in violation of the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.*

INTRODUCTION

1. MOV Intelligence and its wholly-owned subsidiary, MOV Global Licensing LLC (“MOV Global Licensing”) pursues the reasonable royalties owed for Sonus Networks’ unauthorized use of patented groundbreaking technology both here in the United States and throughout Europe.

2. Rovi Corporation (“Rovi”) ¹ is a pioneer and leader in protecting computer technology, including digital rights management (“DRM”) and digital watermarking systems.

¹ On April 29, 2016, Rovi Corporation acquired TiVo, Inc. The combined company operates under the name TiVo, Inc.

Rovi assigned MOV Intelligence rights to over 233 patents including many of John O. Ryan's, the founder of Rovi predecessor Macrovision, groundbreaking patents.²

THE PARTIES

MARKING OBJECT VIRTUALIZATION INTELLIGENCE, LLC

3. Marking Object Virtualization Intelligence, LLC ("MOV Intelligence") is a Texas limited liability company with its principal place of business located at 903 East 18th Street, Suite 217, Plano, Texas 75074. MOV Intelligence is committed to advancing the current state of DRM and watermarking technologies.

4. MOV Intelligence Global Licensing, LLC ("MOV Global Licensing") is a wholly-owned subsidiary of MOV Intelligence and assists in the licensing of MOV Intelligence's patents in territories outside the United States with a focus on the European Union (and the United Kingdom).³ MOV Intelligence Global Licensing, LLC is a corporation organized under the laws of Delaware.

5. Rovi assigned the following patents to MOV Intelligence: U.S. Patent Nos. 7,299,209; 6,510,516; 6,802,006; 7,650,504; 6,813,640; 7,650,418; 7,200,230; 7,124,114; 6,381,367; 6,374,036; 6,360,000; 6,553,127; 6,701,062; 6,594,441; 7,764,790; 8,014,524; 6,931,536; and International Patent Nos. DE60047794; DE60148635.8; DE60211372.5; DE69901231.7-08; DK1047992; EP1047992; EP1303802; EP1332618; EP1444561; ES1047992; FR1047992; FR1303802; FR1332618; FR1444561; GB1047992; GB1303802; GB1332618; GB1444561; GR3040059; IE1047992; IE1444561; IT1047992; NL1047992; NL1444561; PT1047992; and SE1047992.

6. MOV Intelligence has the right to sublicense the following international patent assets held by Rovi: AT1020077; AT1198959; AT1080584; ATE232346; AT1020077;

² See U.S. Patent Nos. 6,381,367; 7,764,790; 6,701,062; 8,014,524; German Patent Nos. DE60001837 and DE60001837D1; Chinese Patent No. CN1186941C; Canadian Patent No. CA2379992C; European Patent No. EP1198959B1; and Japanese Patent No. JP4387627B2.

³ Wolfram Schrag, *EU-Patent steht auf der Kippe*, BR.COM NACHRICHTEN (August 2016).

AU729762; AU741281; AU753421; AU743639; AU714103; AU729762; AU2002351508;
AU765747; AU2000263715; BE1020077; BE1198959; BE1020077; BE1080584; BE900498;
BRPI 9812908-2; BR9709332.7; BRPI 9812908-2; CA2305254; CA2332546; CA2379992;
CA2305254; CA2332548; CA2557859; CA2252726; CA2462679; CA2315212; CA2416304;
CA2425115; CH1020077; CH1080584; CH900498; CH1020077; CH1047992;
CNZL98809610.2; CNZL99806376.2; CNZL00811179.0; CNZL98809610.2;
CNZL99806377.0; CNZL97194746.5; CNZL02820738.6; CNZL99802008.7;
CNZL00819775.X; CNZL200510089437; DE69807102.608; DE60001837.7; DE69908352.4-
08; DE69718907.4-08; DE69807102.608; DK1020077; DK1080584; DK1198959; DK1020077;
DK900498; EP1020077; EP1198959; EP1080584; EP900498; EP1020077; ES1020077;
ES1198959; ES1080584; ESES2191844; ES1020077; FI1020077; FI1080584; FI1020077;
FI900498; FR1020077; FR1198959; FR1080584; FR900498; FR1020077; GB1020077;
GB1198959; GB1080584; GB900498; GB1020077; GR3041381; GR3045620; GR3043304;
GR3041381; HK1028696; HKHK1035625; HK1028696; HK1035282; HK1018562;
HKHK1069234; HKHK1057115; HK1083653B; IE1020077; IE1198959; IE1020077;
IE1080584; IE900498; IL135498; IL139543; IL148002; IL135498; IL139544; IN201442;
IN220504; IN201442; IN207829; IT1020077; IT1080584; IT900498; IT1020077; JP4139560;
JP4263706; JP4387627; JP4551617; JP4139560; JP4263706; JP3542557; JP4627809;
JP4698925; JP4366037; JP4307069; KR374920; KR422997; KR761230; KR374920;
KR362801; KR478072; KR689648; KR539987; KR752067; KR728517; KR593239;
MX223464; MX231725; MX226464; MX223464; MX212991; MX214637; MX237690;
MX240845; MYMY-123159-A; MYMY-123159-A; NL1020077; NL1198959; NL1080584;
NL900498; NL1020077; NZ503280; NZ507789; NZ503280; NZ532122; PT1010077;
PT1198959; PT1080584; PT900498; PT1010077; RU2195084; RU2216121; RU2251821;
RU2195084; RU2208301; RU2258252; SE1020077; SE1198959; SE1080584; SE900498;
SE1020077; SG71485; SG76965; SG86547; SG76964; SG71485; TWNI117461; TWNI-

124303; TWNI-130428; TWNI1600674; TWNI-162661; TWNI-202640; TWNI117461; TWNI-130754; and TWNI-184111.

SONUS NETWORKS, INC.

7. On information and belief, Defendant Sonus Networks, Inc. (“Defendant”), is a Delaware corporation with its principal place of business at 4 Technology Park Drive, Westford, MA 01886. Sonus Networks may be served through its registered agent Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. On information and belief, Sonus Networks is registered to do business in the State of Texas, and has been since at least January 7, 2002.

JURISDICTION AND VENUE

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

9. Upon information and belief, this Court has personal jurisdiction over Sonus Networks in this action because Sonus Networks has committed acts within the Eastern District of Texas giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Sonus Networks would not offend traditional notions of fair play and substantial justice. Sonus Networks, directly and/or through subsidiaries or intermediaries (including distributors, retailers, and others), has committed and continues to commit acts of infringement in this District by, among other things, offering to sell and selling products and/or services that infringe the patent-in-suit. In addition, Defendant Sonus Networks is registered to do business in the State of Texas.

10. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(d) and 1400(b). Sonus Networks is registered to do business in Texas, and upon information and belief, has transacted business in the Eastern District of Texas and has committed acts of direct and indirect infringement in the Eastern District of Texas.

MOV INTELLIGENCE'S LANDMARK INVENTIONS

11. The groundbreaking inventions in DRM taught in the patent-in-suit were pioneered by Rovi. Rovi, established in 1983 under the name Macrovision, was a trailblazing technology company focused on inventing and bringing to market fundamental technologies designed to allow producers and distributors of film and music to widely distribute their products while simultaneously protecting their art from unauthorized copying.⁴ Macrovision's copy protection technology became so important to content creators that Congress specifically regulated the manufacture and sale of technology that was incompatible with Macrovision's copy protection technology. *See* 17 U.S.C. § 1201(k)(1) ("unless such recorder conforms to the automatic gain control copy control technology").⁵ Rovi broadened its focus to include copy protection and DRM for other media,⁶ including computer executables, firmware, operating system images, watermarking, and encryption.

12. MOV Intelligence's patent portfolio, which includes more than 233 issued patents worldwide, is a direct result of Rovi's substantial investment in research and development. The asserted MOV Intelligence patents are reflective of this history of innovation, embodying a number of firsts in the development of DRM and watermarking technologies.

⁴ Aljean Harmetz, *Cotton Club Cassettes Coded to Foil Pirates*, N.Y. TIMES (April 24, 1985).

⁵ *See also* David Nimmer, *Back from the Future: A Proleptic Review of the Digital Millennium Copyright Act*, 16 BERKELEY TECH. L.J. 855, 862 (2001) (The DMCA "contains a welter of corporation-specific features, relating to Macrovision Corp. The features in question relate to section 1201's controls on consumer analog devices.") (citations omitted).

⁶ *See* Michael Arnold et al., TECHNIQUES AND APPLICATIONS OF DIGITAL WATERMARKING AND CONTENT PROTECTION 203 (2002) (Describing Rovi's Cactus Data Shield product which by 2002 had been used in over 100 million compact discs. "This scheme [Rovi Cactus Data Shield] operates by inserting illegal data values instead of error-correcting codes."); *see also* Rovi *SafeDisc Copy Protection Overview*, MACROVISION CORPORATION DATASHEET at 2 (1999) ("SafeDisc incorporates a unique authentication technology that prevents the re-mastering of CD-ROM titles and deters attempts to make unauthorized copies. The SafeDisc authentication process ensures that consumers will only be able to play original discs. The user is forced to purchase a legitimate copy."); Kirby Kish, MACROSAFE SYSTEM: A SOLUTION FOR SECURE DIGITAL MEDIA DISTRIBUTION at 7 (January 2002) (showing the architecture of the MacroSafe system and use of a DRM Server and Key Escrow Server).

13. MOV Intelligence long-term financial success depends in part on its ability to establish, maintain, and protect its proprietary technology through patents. Defendant's infringement presents significant and ongoing damage to MOV Intelligence's business. Sonus Networks, in an effort to expand its product base and profit from the sale of patented technology, has chosen to incorporate MOV Intelligence's fundamental technology without a license or payment.

THE ASSERTED PATENT

U.S. PATENT NO. 7,124,114

14. U.S. Patent No. 7,124,114 (the "'114 patent'"), entitled "Method and Apparatus for Determining Digital A/V Content Distribution Terms Based on Detected Piracy Levels," was filed on November 9, 2000. MOV Intelligence is the owner by assignment of the '114 patent. A true and correct copy of the '114 patent is attached hereto as Exhibit C. The '114 patent claims specific methods and systems for distributing copyrighted material over a computer network. Specifically, the '114 patent teaches the providing of protected material to a prospective recipient according at least in part to information of unauthorized copying of other protected material previously provided to the prospective recipient; and providing or withholding a copy of the protected material to the prospective recipient in accordance with the terms. The '114 patent also discloses the use of a first set of program code which serves to ascertain terms for providing a protected material to a prospective recipient according at least in part to information of unauthorized copying of other protected material previously provided to the prospective recipient. The first set of program code also serves to provide or withhold a copy of the protected material to or from the prospective recipient in accordance with the terms.

15. The '114 patent family has been cited by over 39 issued United States patents and published patent applications as relevant prior art. Specifically, patents issued to the following companies have cited the '114 patent as relevant prior art:

- Google, Inc.
- NBCUniversal Media, Inc.

- Digimarc Corporation
- Hewlett-Packard Development Company, L.P.
- Aigo Research Institute of Image Computing Co., Ltd.
- AT&T Intellectual Property I, L.P.
- General Electric Company
- The Nielsen Company (US), LLC
- Sca Ipla Holdings, Inc.
- Thomson Licensing, Inc.
- Fujitsu Limited

16. The '114 patent claims a technical solution to a problem unique to the transmission of digital information over a network: preventing the unauthorized copying of digital content. The patent teaches the use of a server that manages access to content according to terms determined from information stored in a database of prior unauthorized copying attributed to that recipient.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,124,114

17. MOV Intelligence references and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

18. Sonus Networks designs, makes, uses, sells, and/or offers for sale in the United States products and/or services for managing the distribution of digital content and preventing unauthorized access to protected digital content.

19. Sonus Networks designs, makes, sells, offers to sell, imports, and/or uses the Sonus Session Border Controller Software Edition (SWe), Sonus SBC 1000, Sonus SBC 2000, Sonus SBC 5100, Sonus SBC 5210, Sonus SBC 7000, and Sonus SBC 9000 (collectively, the "Sonus Networks '114 Product(s)").

20. On information and belief, one or more Sonus Networks subsidiaries and/or affiliates use the Sonus Networks '114 Products in regular business operations.

21. On information and belief, one or more of the Sonus Networks '114 Products include content protection and content access technology.

22. On information and belief, one or more of the Sonus Networks '114 Products enable providing or withholding access to digital content in accordance with digital rights management protection terms.

23. On information and belief, the Sonus Networks '114 Products are available to businesses and individuals throughout the United States.

24. On information and belief, the Sonus Networks '114 Products are provided to businesses and individuals located in the Eastern District of Texas.

25. On information and belief, the Sonus Networks '114 Products enable the distribution of protected digital data.

26. On information and belief, the Sonus Networks '114 Products comprise systems and methods wherein the Sonus Networks '114 Products ascertain terms for providing protected data to a prospective requestor according at least in part to information of unauthorized copying of other protected material previously provided to said prospective requestor.

27. On information and belief, the Sonus Networks '114 Products comprise systems and methods that provide authorization to allow access or deny access to protected digital data based on ascertained terms.

28. On information and belief, Sonus Networks has directly infringed and continues to directly infringe the '114 patent by, among other things, making, using, offering for sale, and/or selling digital content protection technology, including but not limited to the Sonus Networks '114 Products, which include infringing digital rights management technologies. Such products and/or services include, by way of example and without limitation, the Sonus Session Border Controller Software Edition (SWe), Sonus SBC 1000, Sonus SBC 2000, Sonus SBC 5100, Sonus SBC 5210, Sonus SBC 7000, and Sonus SBC 9000.

29. By making, using, testing, offering for sale, and/or selling digital rights management and access control products and services, including but not limited to the Sonus Networks '114 Products, Sonus Networks has injured MOV Intelligence and is liable to MOV

Intelligence for directly infringing one or more claims of the ‘114 patent, including at least claims 1, 21, 41, and 52, pursuant to 35 U.S.C. § 271(a).

30. On information and belief, Sonus Networks also indirectly infringes the ‘114 patent by actively inducing infringement under 35 USC § 271(b).

31. On information and belief, Sonus Networks had knowledge of the ‘114 patent since at least service of MOV Intelligence’s Complaint on October 17, 2016 or shortly thereafter, and on information and belief, Sonus Networks knew of the ‘114 patent and knew of its infringement, including by way of this lawsuit. *See Marking Object Virtualization Intelligence, LLC v. Sonus Networks, Inc.*, Case No. 16-cv-01100, Dkt. No. 8 (E.D. Tex.).

32. On information and belief, Sonus Networks intended to induce patent infringement by third-party customers and users of the Sonus Networks ‘114 Products and had knowledge that the inducing acts would cause infringement or was willfully blind to the possibility that its inducing acts would cause infringement. Sonus Networks specifically intended and was aware that the normal and customary use of the accused products would infringe the ‘114 patent. Sonus Networks performed the acts that constitute induced infringement, and would induce actual infringement, with knowledge of the ‘114 patent and with the knowledge that the induced acts would constitute infringement. For example, Sonus Networks provides the Sonus Networks ‘114 Products that have the capability of operating in a manner that infringe one or more of the claims of the ‘114 patent, including at least claims 1, 21, 41, and 52, and Sonus Networks further provides documentation and training materials that cause customers and end users of the Sonus Networks ‘114 Products to utilize the products in a manner that directly infringe one or more claims of the ‘114 patent.⁷ By providing instruction

⁷ See e.g., *SBC 5110 and 5210 Session Border Controllers Hardware Version: SBC 5110 and SBC 5210 Firmware Version: 4.0*, FIPS 140-2 Non-Proprietary Security Policy (June 20, 2014); SONUS NETWORKS BORDER CONTROLLER 5X00 CLI REFERENCE GUIDE (2012); *Network Function Virtualization Primer*, SONUS NETWORKS WHITE PAPER (January 7, 2016); *Securing Real-Time Communications with SBCs*, SONUS NETWORKS WHITE PAPER (October 16, 2016); *Sonus SBC 1000 / SBC 2000 Series Configuration Guide*, SONUS NETWORKS GUIDE (2013);

and training to customers and end-users on how to use the Sonus Networks '114 Products in a manner that directly infringes one or more claims of the '114 patent, including at least claims 1, 21, 41, and 52, Sonus Networks specifically intended to induce infringement of the '114 patent. On information and belief, Sonus Networks engaged in such inducement to promote the sales of the Sonus Networks '114 Products, e.g., through Sonus Networks user manuals, product support, marketing materials, and training materials to actively induce the users of the accused products to infringe the '114 patent. Accordingly, Sonus Networks has induced and continues to induce users of the accused products to use the accused products in their ordinary and customary way to infringe the '114 patent, knowing that such use constitutes infringement of the '114 patent.

33. The '114 patent is well-known within the industry as demonstrated by the over 39 citations to the '114 patent family in issued patents and published patent applications assigned to technology companies and academic institutions (*e.g.*, Aigo Research Institute of Image Computing Co., Ltd. and General Electric Company). Several of Sonus Networks' competitors have paid considerable licensing fees for their use of the technology claimed by the '114 patent. In an effort to gain an advantage over Sonus Networks' competitors by utilizing the same licensed technology without paying reasonable royalties, Sonus Networks infringed the '114 patent in a manner best described as willful, wanton, malicious, in bad faith, deliberate, consciously wrongful, flagrant, or characteristic of a pirate.

34. To the extent applicable, the requirements of 35 U.S.C. § 287(a) have been met with respect to the '114 patent.

35. As a result of Sonus Networks' infringement of the '114 patent, MOV Intelligence has suffered monetary damages, and seeks recovery in an amount adequate to compensate for Sonus Networks' infringement, but in no event less than a reasonable royalty for the use made of the invention by Sonus Networks together with interest and costs as fixed by the Court.

Sonus SBC 1000 and SBC 2000 Web GUI and Easy Setup Wizard, SONUS YOUTUBE PRESENTATION (August 5, 2016), available at: <https://www.youtube.com/watch?v=SYrpCcdonzE>

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MOV Intelligence respectfully requests that this Court enter:

- A. A judgment in favor of Plaintiff MOV Intelligence that Sonus Networks has infringed, either literally and/or under the doctrine of equivalents, the '114 patent;
- B. An award of damages resulting from Sonus Networks' acts of infringement in accordance with 35 U.S.C. § 284;
- C. A judgment and order finding that Defendant's infringement was willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or characteristic of a pirate within the meaning of 35 U.S.C. § 284 and awarding to Plaintiff enhanced damages.
- D. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against Defendant.
- E. Any and all other relief to which MOV Intelligence may show itself to be entitled.

JURY TRIAL DEMANDED

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, MOV Intelligence requests a trial by jury of any issues so triable by right.

Dated: December 22, 2016

Respectfully submitted,

/s/ Dorian S. Berger
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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this December 22, 2016 with a copy of this document via the Court's CM/ECF System per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Dorian S. Berger
Dorian S. Berger