

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

**BARKAN WIRELESS ACCESS
TECHNOLOGIES, L.P.**

Plaintiff,

v.

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

Defendant.

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Civ. Action No. 2:16-cv-293

JURY DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Barkan Wireless Access Technologies, L.P. (“Barkan” or “Plaintiff”) files this First Amended Complaint for patent infringement against Cellco Partnership d/b/a/ Verizon Wireless (“Verizon” or “Defendant”) and states as follows:

THE PARTIES

1. Plaintiff Barkan Wireless Access Technologies, L.P. is a limited partnership organized under the laws of Texas with its principal place of business in Allen, Texas.

2. Defendant Verizon is a general partnership organized under the laws of Delaware, with a principal place of business in Basking Ridge, NJ. It can be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service because it engages in business in Texas but has not designated or maintained a resident agent for service of process in Texas as required by statute. It has a principal place of business at One Verizon Way; Basking Ridge, NJ 07920.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction as to these claims is conferred on this Court by 35 U.S.C. §§1331 and 1338(a).

4. Venue is proper within this District under 28 U.S.C. §§1391 and 1400(b). On information and belief, Verizon has committed acts of infringement in this District, has purposely transacted business in this District, has advertised and solicited business in this District, has committed acts of infringement in this District, and has established minimum contacts within this District.

5. This Court has personal jurisdiction over Verizon because, on information and belief, Verizon has conducted and does conduct business within this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District. On information and belief, Verizon generates millions of dollars of revenue in this District. On information and belief, at least thousands of residents within this District use Verizon’s telecommunications system.

FIRST CLAIM FOR PATENT INFRINGEMENT (‘306 PATENT)

6. Barkan incorporates by reference paragraphs 1-5 as if fully set forth herein.

7. On May 26, 2015, United States Patent No. 9,042,306 (“the ‘306 patent”) entitled “Wireless Internet System and Method” was duly and legally issued after full and fair examination. Barkan is the owner of all right, title, and interest in and to the ‘306 patent by assignment, with full right to bring suit to enforce the patent, including the right

to recover for past infringement damages and the right to recover future royalties, damages, and income. The '306 patent is attached hereto as Exhibit A.

8. The '306 patent is valid and enforceable.

9. Verizon offers for sale and sells the following mobile telephones that have the capability to connect to the Verizon broadband wireless network as well as providing a local area network (LAN) over which other devices may connect to the Verizon wireless network including, by way of example and without limitation: Apple iPhone 4S, Apple iPhone 5, Apple iPhone 5c, Apple iPhone 5s, Apple iPhone 6, Apple iPhone 6 Plus, Apple iPhone 6s, Plus Apple iPhone SE, BlackBerry Classic, BlackBerry Curve 9310, BlackBerry Priv, BlackBerry Q10, BlackBerry Z10, BlackBerry Z30, Casio G'zOne Commando, HTC 10, HTC Desire 526, HTC Desire 612, HTC Desire 626, HTC Droid DNA, HTC Droid Incredible, HTC Droid Incredible 2, HTC Droid Incredible 4G LTE, HTC Merge, HTC One M7, HTC One M8, HTC One M9, HTC One Max, HTC One Remix, HTC Rezound, HTC Rhyme, HTC ThunderBolt, HTC Windows Phone 8X, Kyocera Brigadier, Kyocera Hydro Elite, LG Enact, LG Enlighten, LG G Vista, LG G2, LG G3, LG G4, LG Intuition, LG K4, LG K8, LG Lancet, LG Lucid, LG Lucid 2, LG Lucid 3, LG Optimus, LG Revolution, LG Spectrum, LG Spectrum 2, LG Tribute, LG V10, Motorola Droid 2, Motorola Droid 3, Motorola Droid 4, Motorola Droid Bionic, Motorola Droid Maxx, Motorola Droid Maxx 2, Motorola Droid Mini, Motorola Droid Pro, Motorola Droid RAZR, Motorola Droid Turbo, Motorola Droid Turbo 2, Motorola Droid Ultra, Motorola Droid X, Motorola Droid X2, Nokia Lumia 922, Nokia Lumia 928, Nokia Lumia Icon, Palm Pixi, Palm Pre 2, Palm Pre Plus, Pantech Breakout, Pantech Marauder, Pantech Perception, Samsung ATIV, Samsung Continuum (Galaxy S),

Samsung Droid Charge, Samsung Fascinate, Samsung Galaxy J1, Samsung Galaxy J3, Samsung Galaxy Nexus, Samsung Galaxy Note 3, Samsung Galaxy Note 4, Samsung Galaxy Note Edge, Samsung Galaxy Note II, Samsung Galaxy Note5, Samsung Galaxy Prevail, Samsung Galaxy S 4, Samsung Galaxy S III, Samsung Galaxy S5, Samsung Galaxy S6, Sony Xperia, Sony Ericsson Xperia Play and all past, present and future cellular phones that offer connectivity to other devices to the Verizon network over a local area network provided by the device (the “Accused Phones”).

10. In addition to the Accused Phones, Verizon also offers for sale and sells the following tablet devices that have the capability to connect to the Verizon broadband wireless network as well as providing a local area network (LAN) over which other devices may connect to the Verizon wireless network: Apple iPad Air, Apple iPad Mini with Retina display, Samsung Galaxy Tab 4 8.0 and all past, present and future tablets that offer connectivity to other devices to the Verizon network over a local area network provided by the device (these and all similar mobile tablets referred to herein as the “Accused Tablets”). The Accused Phones and Accused Tablets are collectively referred to herein as the “Accused Devices.”

11. Whether or not a subscriber may utilize the mobile hotspot or tethering feature of an Accused Device is controlled by Verizon.

12. A subscriber who purchases one of the Accused Devices must subscribe to a Verizon data plan to use the device to connect to the internet over Verizon’s wireless network. In order for an Accused Device to be connected to Verizon’s wireless system, the device must have a SIM card provided by Verizon that contains information that is associated with a subscriber’s account and which enables the Accused Device to be used

on Verizon's wireless network. In fact, a SIM card can be purchased by or reprogrammed for a subscriber to enable a device not purchased through Verizon to be used on Verizon's wireless network (any such phone, tablet or other device utilizing a Verizon SIM card and providing a LAN for tethering or otherwise connecting other devices, is also included within the definition of "Accused Devices"). The SIM card is the key by which Verizon controls which devices may connect to the Verizon wireless network. Without Verizon's SIM card, the Accused Device is useless for its intended purpose of facilitating wireless communications over a wireless network, although certain features such as calculator or camera functionality may still be used. The code, data and/or other information stored on the SIM card that facilitate Verizon's control over which devices may be connected to the Verizon wireless communications network. The SIM card identifies the subscriber to Verizon's network and facilitates Verizon in billing the user for the services that the subscriber uses. In addition, in the event the subscriber's service or subscription is terminated, Verizon may de-activate the device via the use of the code, data and/or other information stored on the SIM card so that the device cannot connect to the Verizon telecommunications network.

13. At least as to the Accused Phones and the Accused Tablets, the data plan typically, without additional fees, only allows the device itself to connect to the Verizon wireless network. In order to connect other devices through the LAN provided by one of the Accused Phones or the Accused Tablets, historically, a subscriber has paid an additional fee or subscribed to a more expensive and a higher capacity data plan for the ability to "tether" additional devices through the Accused Phone or Accused Tablet over the LAN provided by same. More recently, "tethering" appears to be included in some

Verizon data plans. Even when an additional fee is not charged by Verizon for tethering and/or mobile hotspot service, the use of tethering and/or mobile hotspot service results in a higher amount of data downloaded by a subscriber which, in turn, results in higher fees to Verizon. Telecommunications services offered for sale and sold by Verizon in connection with the Accused Devices, including but not limited to the “Tethering” services, the “mobile hotspot” service, and the services sold in connection with data plans associated with the Accused Base Stations, are referred to herein as the “Accused Services.”

14. Barkan served its P.R. 3-1 and 3-2 disclosures on Verizon on August 16, 2016. Barkan served its First Amended P.R. 3-1 and 3-2 disclosures on Verizon on October 3, 2016. Barkan expressly incorporates by reference its P.R. 3-1 and 3-2 disclosures, including any corrections or supplements thereto.

15. Barkan filed its Original Complaint against Verizon on March 29, 2016. Barkan served Verizon with a summons and a copy of its Original Complaint on May 24, 2016. On information and belief, Verizon has been aware of the ‘306 patent since at least March 29, 2016.

16. Upon information and belief, Verizon has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the ‘306 patent in this judicial district and elsewhere in the United States, by advertising for sale, selling, making, using, and importing computing devices including, without limitation, the Accused Devices, and other computing devices that provide a network access point (i.e., “Hotspot”).

17. Upon information and belief, Verizon has also infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '306 patent in this judicial district and elsewhere in the United States, by advertising for sale, selling, making, using, and importing systems including, without limitation, systems that provide the Accused Services and other systems that support network access point capability.

18. Further and in the alternative, at least since the date that Verizon became aware of the '306 Patent, Verizon has been and is now actively inducing infringement of at least claim 1 of the '306 patent in violation of 35 U.S.C. § 271(b) by, with specific intent or willful blindness, actively aiding and abetting others to directly infringe the '306 patent, including without limitation by: (1) performing the steps of the method claims in connection with the Accused Devices and/or Accused Services; (2) using the Accused Devices; (3) combining the Accused Devices and/or Accused Services; and (4) combining the Accused Devices and/or Accused Services with other components, such as third-party hardware, software, or services, to make and use the claimed invention in the United States. Users of the Accused Devices and/or Accused Services, including Verizon's customers, directly infringe at least claims 1, 2, 4-10, and 14 of the '306 Patent when they use the Accused Devices in the ordinary, customary, and intended way, including the ways described in Verizon's instruction and training documentation, Verizon's advertising, and in the ways supported by the Verizon Wireless Network. Users of the Accused Services, including Verizon's customers, directly infringe at least claims 16-19, 21, 23-31, 34-37, 39, 41-53, 56, 58, 60-63, 65, 67, and 68 of the '306 Patent when they use the Accused Devices and/or Accused Services in the ordinary,

customary, and intended way, including the ways described in Verizon's instruction and training documentation, Verizon's advertising, and in the ways supported by the Verizon Wireless Network. Verizon's inducements include, without limitation and with specific intent to encourage the infringement, knowingly inducing customers to use the Accused Devices and/or Accused Systems within the United States in the ordinary, customary, and intended way by supplying the Accused Devices and/or Accused Services to consumers within the United States and instructing such customers (for example in instructional material that Verizon provides online or otherwise) how to use the Accused Devices and/or Accused Services in the ordinary, customary, and intended way, with specific intent to cause infringement or with willful blindness to the resulting infringement. Upon information and belief, Verizon specifically intended (and intend) that its actions will result in infringement of at least claim 1 of the '306 patent, or subjectively believed (and believes) that its actions will result in infringement of at least claim 1 of the '306 patent but took deliberate actions to avoid learning of those facts, as set forth above. Upon information and belief, Verizon knew of the '306 patent and knew of its infringement, including by way of this lawsuit and earlier as described above.

19. Further, at least since the date that Verizon became aware of the '306 Patent, Verizon's infringement has been and continues to be willful and deliberate, and caused and will continue to cause substantial damage to Barkan. Upon information and belief, Verizon deliberately infringed the '306 patent and acted recklessly and in disregard to the '306 patent by (1) by advertising for sale, selling, making, using, and importing computing devices including, without limitation, the Accused Devices, and other computing devices that provide a network access point (i.e., "Hotspot"); (2)

advertising for sale, selling, making, using, and importing systems including, without limitation, systems that provide the Accused Services and other systems that support network access point capability; and (3) inducing infringement as described above. Upon information and belief, the risks of infringement were known to Verizon and/or were so obvious under the circumstances that the infringement risks should have been known. Upon information and belief, Verizon has willfully infringed and/or continues to willfully infringe the '306 patent since at least the date that Verizon became aware of the '306 patent. In addition, this objectively-defined risk was known or should have been known to Verizon. Upon information and belief, Verizon has willfully infringed and/or continues to willfully infringe the '306 patent. Verizon's actions of being made aware of its infringement, not developing any non-infringement theories, not attempting any design change, and not ceasing its infringement constitute egregious behavior beyond typical infringement. Verizon has acted despite an objectively high likelihood that its actions constituted infringement of the '306 patent. Barkan reserves the right to amend to assert a claim of pre-filing willful infringement if the evidence obtained in discovery supports such assertion.

20. Verizon has been at no time, either expressly or impliedly, licensed under the '306 patent.

21. Barkan is in compliance with 35 U.S.C. § 287.

22. Verizon's acts of infringement have caused damage to Barkan. Barkan is entitled to recover from Verizon the damages sustained by Barkan as a result of the wrongful acts of Verizon in an amount subject to proof at trial.

SECOND CLAIM FOR PATENT INFRINGEMENT ('369 PATENT)

23. Barkan incorporates by reference paragraphs 1-22 as if fully set forth herein.

24. On October 13, 2013, United States Patent No. 8,559,369 (“the ‘369 patent”) entitled “Wireless Internet System and Method” was duly and legally issued after full and fair examination. Barkan is the owner of all right, title, and interest in and to the ‘369 patent by assignment, with full right to bring suit to enforce the patent, including the right to recover for past infringement damages and the right to recover future royalties, damages, and income. The ‘369 patent is attached hereto as Exhibit B. The ‘306 and ‘369 patents are collectively referred to as the Patents-in-Suit.

25. The ‘369 patent is valid and enforceable.

26. Barkan filed its Original Complaint against Verizon on March 29, 2016. Barkan served Verizon with a summons and a copy of its Original Complaint on May 24, 2016. On information and belief, Verizon has been aware of the ‘369 patent since at least March 29, 2016.

27. Upon information and belief, Verizon has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the ‘369 patent in this judicial district and elsewhere in the United States, by advertising for sale, selling, making, using, and importing computing devices including, without limitation, the Accused Devices, and other computing devices that provide a network access point (i.e., “Hotspot”).

28. Further and in the alternative, at least since the date that Verizon became aware of the ‘369 Patent, Verizon has been and is now actively inducing infringement of at least claim 1 of the ‘369 patent in violation of 35 U.S.C. § 271(b) by, with specific

intent or willful blindness, actively aiding and abetting others to directly infringe the '369 patent, including without limitation by: (1) using the Accused Devices; (2) combining the Accused Devices and/or Accused Services; and (3) combining the Accused Devices and/or Accused Services with other components, such as third-party hardware, software, or services, to make and use the claimed invention in the United States. Users of the Accused Devices, including Verizon's customers, directly infringe at least claims 1-5 and 7 of the '369 Patent when they use the Accused Devices in the ordinary, customary, and intended way, including the ways described in Verizon's instruction and training documentation, Verizon's advertising, and in the ways supported by the Verizon Wireless Network. Verizon's inducements include, without limitation and with specific intent to encourage the infringement, knowingly inducing customers to use the Accused Devices and/or Accused Systems within the United States in the ordinary, customary, and intended way by supplying the Accused Devices and/or Accused Services to consumers within the United States and instructing such customers (for example in instructional material that Verizon provides online or otherwise) how to use the Accused Devices and/or Accused Services in the ordinary, customary, and intended way, with specific intent to cause infringement or with willful blindness to the resulting infringement. Upon information and belief, Verizon specifically intended (and intend) that its actions will result in infringement of at least claim 1 of the '369 patent, or subjectively believed (and believes) that its actions will result in infringement of at least claim 1 of the '369 patent but took deliberate actions to avoid learning of those facts, as set forth above. Upon information and belief, Verizon knew of the '369 patent and knew of its infringement, including by way of this lawsuit and earlier as described above.

29. Further, at least since the date that Verizon became aware of the '369 Patent, Verizon's infringement has been and continues to be willful and deliberate, and caused and will continue to cause substantial damage to Barkan. Upon information and belief, Verizon deliberately infringed the '369 patent and acted recklessly and in disregard to the '369 patent by (1) by advertising for sale, selling, making, using, and importing computing devices including, without limitation, the Accused Devices, and other computing devices that provide a network access point (i.e., "Hotspot"); (2) advertising for sale, selling, making, using, and importing systems including, without limitation, systems that provide the Accused Services and other systems that support network access point capability; and (3) inducing infringement as described above. Upon information and belief, the risks of infringement were known to Verizon and/or were so obvious under the circumstances that the infringement risks should have been known. Upon information and belief, Verizon has willfully infringed and/or continues to willfully infringe the '369 patent since at least the date that Verizon became aware of the '369 patent. In addition, this objectively-defined risk was known or should have been known to Verizon. Upon information and belief, Verizon has willfully infringed and/or continues to willfully infringe the '369 patent. Verizon's actions of being made aware of its infringement, not developing any non-infringement theories, not attempting any design change, and not ceasing its infringement constitute egregious behavior beyond typical infringement. Verizon has acted despite an objectively high likelihood that its actions constituted infringement of the '369 patent. Barkan reserves the right to amend to assert a claim of pre-filing willful infringement if the evidence obtained in discovery supports such assertion.

30. Verizon has been at no time, either expressly or impliedly, licensed under the '369 patent.

31. Barkan is in compliance with 35 U.S.C. § 287.

32. Verizon's acts of infringement have caused damage to Barkan. Barkan is entitled to recover from Verizon the damages sustained by Barkan as a result of the wrongful acts of Verizon in an amount subject to proof at trial.

DEMAND FOR JURY TRIAL

Barkan hereby demands a jury for all issues so triable.

PRAYER

WHEREFORE, Barkan respectfully requests that the Court:

1. Enter judgment that Verizon has infringed the '306 and '369 patents;
2. Award Barkan compensatory damages for Verizon's infringement of the '306 and '369 patents, together with enhanced damages, costs, and pre-and post-judgment interest;
3. A judgment and order awarding enhanced damages, pursuant to 35 U.S.C. § 284, if Verizon's acts of infringement of the '306 and '369 patents are determined to be willful;
4. An award of all costs and reasonable attorney's fees against Verizon, pursuant to 35 U.S.C. §§ 284 and 285, based on its infringement of the '306 and '369 patents; and
5. Award any other relief deemed just and equitable.

DATED: January 30, 2017

Respectfully submitted,

/s/ Robert D. Katz

Robert D. Katz

Lead Attorney

State Bar No. 24057936

Email: rkatz@katzfirm.com

KATZ PLLC

6060 N. Central Expressway, Suite 560

Dallas, TX 75206

Phone: (214) 865-8000

Fax: (888) 231-5775

Stafford Davis

State Bar No. 24054605

Email: sdavis@stafforddavisfirm.com

THE STAFFORD DAVIS FIRM, PC

102 N. College Avenue, Thirteenth Floor

Tyler, TX 75702

Phone: (903) 593-7000

Fax: (903) 703-7369

ATTORNEYS FOR PLAINTIFF

BARKAN WIRELESS ACCESS

TECHNOLOGIES, L.P.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on the date above. Any other counsel of record will be served by electronic mail.

/s/ Robert D. Katz

Robert D. Katz