IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

TracBeam, LLC,

Plaintiff,

Case No. 6:17-cv-426

Jury Trial Demanded

v.

Microsoft Corporation,

Defendant.

COMPLAINT FOR INFRINGEMENT

Plaintiff TracBeam, LLC files suit against Defendant Microsoft Corporation, alleging direct and indirect infringement of the following five patents: U.S. Patent Nos. 7,274,332; 7,298,327; 7,525,484; 7,764,231; and 9,060,341. The accused instrumentalities, identified due to their use by Microsoft in infringing and profiting from its infringement, are:

- Microsoft's location services, systems, and software for Windows Phone devices and for Windows Embedded and IoT (Internet of Things) devices;
- Azure Mobile Services and Device Management, Azure App Service, Azure Notification Hub, Bing Maps (including Bing Maps for Enterprise), Bing Spatial Data Services, Bing Ads, and WNS (Windows Push Notification Services); and
- Microsoft applications and services that consume, make use of, or enable location determination, tracking, routing, geofencing, location sharing, or geo-targeting of advertisements to or of mobile devices that run Microsoft developed operating systems as well as devices that run third party developed operating systems.

Plaintiff TracBeam and the Asserted Patents

1. Plaintiff TracBeam, LLC is an inventor-owned company that has been awarded numerous patents relating to fundamental innovations in wireless location technology for use in enterprise and consumer environments and applications. TracBeam is a limited liability company organized and existing under the laws of the State of Colorado. The company is owned and managed by lead inventor Dr. Dennis Dupray. TracBeam is the owner of each of the following patents.

2. U.S. Patent No. 7,274,332, entitled "Multiple Evaluators for Evaluation of a Plurality of Conditions," issued on September 25, 2007, with 95 claims. Microsoft has known of the '332 patent since at least September 2011, when it received a letter from TracBeam specifically identifying the '332 patent. A copy of the '332 patent is attached as <u>Exhibit 1</u>.

3. U.S. Patent No. 7,298,327, entitled "Geographic Location Using Multiple Location Estimators," issued on November 20, 2007, with 80 claims. Microsoft has known of the '327 patent since at least September 2011, when it received a letter from TracBeam specifically identifying the '327 patent. A copy of the '327 patent is attached as <u>Exhibit 2</u>.

4. U.S. Patent No. 7,525,484, entitled "Gateway and Hybrid Solutions for Wireless Location," issued on April 28, 2009, with 77 claims. Microsoft has known of the '484 patent since at least September 2011, when it received a letter from TracBeam specifically identifying the '484 patent. In addition, the application that led to the '484 patent's issuance was published on September 20, 2001 as US 2001/0022558 Al, and that published application was cited by at least the following Microsoft patents and applications, further evidencing Microsoft's knowledge of the inventions disclosed and claimed by the '484 patent: U.S. Patent Nos. 8,077,090; 9,271,120; 9,588,217; 9,612,121; and U.S. Patent Application US2013/0344892 A1. A copy of the '484 patent is attached as Exhibit 3.

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5. U.S. Patent No. 7,764,231, entitled "Wireless Location Using Multiple Mobile Station Location Techniques," issued on July 27, 2010, with 232 claims. Microsoft has known of the '231 patent since at least September 2011, when it received a letter from TracBeam specifically identifying the '231 patent. A copy of the '231 patent is attached as <u>Exhibit 4</u>.

6. U.S. Patent No. 9,060,341, entitled "System and Method for Hybriding Wireless Location Techniques," issued on June 16, 2015, with 32 claims, and with more than 1,000 references cited on the face of the patent, including the opinions expressed in the expert reports of Defendants in the prior litigations. The application that led to the issuance of the '341 patent was published on September 16, 2010, as US2010/0234045 A1, and that application was cited by Microsoft's U.S. Patent No. 9,020,869 (cited as one of just eight cited references) and U.S. Patent Application US2014/0040175 A1 (cited as just one of two cited references). Microsoft was either aware of the '341 patent when, or shortly after, it issued or was willfully blind to the issued patent's existence. A copy of the '341 patent is attached as <u>Exhibit 5</u>.

Defendant Microsoft and the Accused Instrumentalities

7. Defendant Microsoft Corporation is a Washington Corporation with a place of business in Redmond, Washington, and with numerous places of business relevant to this case located throughout the country and in the State of Texas, including in this District.

8. Microsoft has and continues to develop, manufacture, import, offer for sale, sell, use, and operate numerous consumer and enterprise products and services that determine, manage, and use the location of people, wireless devices, vehicles, and assets, using wireless signals and sensor data, including (1) Microsoft's location services, systems, and software for Windows Phone devices and for Windows Embedded and IoT devices, and the associated APIs, databases, and applications used to determine, collect, analyze, report, or consume location information of the device or of transmitters (such as satellites, cell towers, WiFi access points,

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and Bluetooth beacons), (2) Azure Mobile Services and Device Management, Azure App Service, Azure Notification Hub, Bing Maps (including Bing Maps for Enterprise), Bing Spatial Data Services, and WNS (Windows Push Notification Services); and (3) Microsoft applications and services that consume, make use of, or enable location determination, tracking, routing, geofencing, location sharing, or targeted advertising for devices running on both Microsoft developed and non-Microsoft developed operating systems.

Jurisdiction and Venue

9. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq*. The Court has original jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331 and 1338(a).

10. Venue is proper in this district pursuant to 28 U.S.C. §1400(b) because Microsoft has committed acts of infringement within the district and has a regular and established place of business within the district, including the Microsoft Store located at 2601 Preston Road, Frisco, Texas 75024. Furthermore, this district is more convenient to TracBeam and to several material third parties and is no less convenient to Microsoft than any other district Microsoft may strategically prefer over this one, given the location of party and third party witnesses and sources of proof. In addition, this Court has presided over matters involving the same patent family and the asserted '327, '484, and '231 patents in particular. *TracBeam, LLC v. T-Mobile US Inc., et al.*, case no. 6-14-cv-00678-RWS (E.D. Tex.); *TracBeam, LLC v. Apple Inc.*, case no. 6-14-cv-00680-RWS (E.D. Tex.).¹ Furthermore, as a result of the prior suits, this Court has

¹ In the prior suit Apple challenged venue but was unsuccessful, due largely to facts that will be identically present in this case or that are otherwise closely analogous to the facts present in this case. *See* dkt. 55 in 680 case (Memorandum and Order denying Motion To Transfer, entered 9/29/2015); *In re: Apple Inc.*, Appeal 2016-103, dkt. 18 (Order denying Petition for Writ of Mandamus, entered November 25, 2015) (nonprecedential). T-Mobile also challenged venue but withdrew its motion in advance of a scheduled oral argument before this Court. Dkt. 264 in

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substantial experience and institutional knowledge interpreting the asserted patents and their shared specifications and in evaluating and deciding issues that will arise in this case.

COUNT I Infringement of '332 patent

11. TracBeam incorporates by reference the allegations of the foregoing paragraphs of this Complaint and further alleges as follows.

On September 25, 2007, the United States Patent and Trademark Office issued
U.S. Patent No. 7,274,332, entitled "Multiple Evaluators for Evaluation of a Plurality of
Conditions." Ex. 1.

13. Plaintiff TracBeam is the owner of the '332 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

14. Each claim of the '332 patent is valid and enforceable and is patent-eligible. The claims recite novel and unconventional methods and systems for locating mobile units (and associated people, vehicles, and assets) and are drawn to technical solutions for solving technical problems in wirelessly locating, tracking, and evaluating the location of mobile units. This will be established by analysis of the '332 patent's claims, specification, and prosecution history, and by the Court's claim constructions; by comparing the '332 patent's claimed inventions to the teachings and solutions for wireless location and tracking identified in prior art and post art, including in the references considered during prosecution of the '332 patent filings; and by the admissions that will be obtained in this case from Microsoft's own witnesses and experts.

⁶⁷⁸ case at 1 ("T-Mobile hereby withdraws its Motion to Transfer Venue (Dkt. 45 and the corresponding briefing at Dkt. 82, 92, and 96)").

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15. Microsoft has directly infringed the '332 patent, and continues to do so, including by performing the method of claim 29 (as an example) in locating Windows Phone devices using satellite, WiFi, and cellular signals and location determining methods. Continuing with this example, Microsoft has performed and is performing each element of claim 29 itself when (a) Microsoft's employees and contractors are developing, testing, demonstrating, and using Windows Phone devices and Microsoft's location services (or location positioning services) and associated APIs (including the Geolocation WinRT and Geocoordinate .NET APIs) and databases (including Microsoft's location positioning databases containing signal data and locations for WiFi access points and cell towers); and (b) the Windows Phone devices of Microsoft's individual and enterprise customers and end-users are being located and tracked by Microsoft by the automatic operation of the Microsoft developed, controlled, and operated Microsoft location services, associated APIs and databases, and the transmissions made to and from the devices by Microsoft.²

16. Moreover, if Microsoft contends that, when the device being located or tracked is not in the physical possession of or owned by a Microsoft employee or contractor it is not Microsoft that is the direct infringer but instead its customers or end-users, or its application developers or device manufacturers, TracBeam will prove the following theories of direct and indirect infringement, which are pleaded, and will be pursued, in the alternative:

• <u>direction and control</u>: Microsoft physically (through its technology's design and operation and the communication between Microsoft's servers and the devices) and contractually (through the licensing terms of its agreements with application developers, device manufacturers, customers, and end-users of Windows Phone

² See SiRF Tech., Inc. v. ITC, 601 F.3d 1319, 1330-31 (Fed. Cir. 2010); TracBeam, L.L.C. v. Google, Inc., 2014 WL 12600834, at *2-3 (E.D. Tex. May 9, 2014); TQP Dev., LLC v. Intuit Inc., 2014 WL 2809841, at *11-15 (E.D. Tex. June 20, 2014) (J. Bryson sitting by designation).

devices and applications) directs and controls the operation of the Windows Phone devices and their operating systems, APIs, and hardware, and the Microsoft location services and databases when the device location (and location of cell towers and WiFi access points) is being requested, calculated, obtained, reported, transmitted, or displayed. Microsoft also conditions participation in the use of its Windows operating systems, location services, APIs, and databases by application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications, and the receipt of the benefits of such participation (including the obtaining of the device location) upon performance of the steps of claim 29. Microsoft establishes—through its design, development, testing, operation, and use of the Windows Phone operating systems, APIs, location services, and databases—the manner and timing in which the device location is requested, calculated, obtained, reported, transmitted, and displayed. Accordingly, to the extent any acts of Microsoft's customers, end-users, application developers, or device manufacturers are deemed to perform one or more elements of the method of claim 29, those acts are attributable to Microsoft and it is Microsoft that is responsible for the infringement of claim 29 and each of its elements. Akamai Techs., Inc. v. Limelight Networks, Inc., 797 F.3d 1020, 1022–23 (Fed. Cir. 2015).

<u>active inducement</u>: If it is the acts of Microsoft's customers, end-users, application developers, or device manufacturers—rather than (or in addition to) those of Microsoft itself—that are deemed to constitute direct infringement of claim 29, then those acts of direct infringement have been actively induced by Microsoft in violation of Section 271(b). As set forth above, Microsoft has had actual knowledge of the '332 patent since at least September 2011. Moreover, Microsoft has taken steps to

induce the infringement committed by its customers, end-users, application developers, and device manufacturers by encouraging, promoting, facilitating, enabling, and instructing those individuals and entities to use Windows Phone devices, Microsoft's location services and location service APIs and databases, and Microsoft's cloud-based services and solutions that interact with and make use of the location services and APIs and the location information they generate, including Azure Mobile Services, Azure App Service, Azure Notification Hub, Bing Maps (including Bing Maps for Enterprise), Bing Spatial Data Services, and WNS (Windows Push Notification Services). The inducing acts include the creation, publication, and provision of SDKs, developer tools and extensions, libraries, developer documentation, white papers, tutorials, presentations, videos, online and in-person training courses and certification programs, blogs, FAQs (and responses thereto), user guides and manuals, and device specifications and requirements, as well as the offering and sale of Windows Phone devices and location-aware applications, all of which are designed to and do encourage, instruct, and result in the performing of acts of location determination, tracking, evaluation and adjustment, and reporting that infringe at least claim 29 of the '332 patent.

17. Microsoft's infringement of the '332 patent has been and continues to be knowing, willful, and egregious, beginning at least as early as September 2011, the latest date by which Microsoft knew of the '332 patent and knew that its conduct constituted and resulted in infringement of the patent, without any basis for disputing infringement, validity, or enforceability of the patent.

18. TracBeam has been damaged by Microsoft's infringement of the '332 patent and is entitled to reasonable royalty damages and enhanced damages due to Microsoft's willful infringement.

COUNT II Infringement of '327 patent

19. TracBeam incorporates by reference the allegations of the foregoing paragraphs of this Complaint and further alleges as follows.

20. On November 20, 2007, the United States Patent and Trademark Office issuedU.S. Patent No. 7,298,327, entitled "Geographic Location Using Multiple Location Estimators."Ex. 2.

21. Plaintiff TracBeam is the owner of the '327 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

22. Each claim of the '327 patent is valid and enforceable and is patent-eligible. The claims recite novel and unconventional methods and systems for locating communication devices and are drawn to technical solutions for solving technical problems in wirelessly locating, tracking, and evaluating the location of communication devices. This will be established by analysis of the '327 patent's claims, specification, and prosecution history, and by the Court's claim constructions; by comparing the '327 patent's claimed inventions to the teachings and solutions for wireless location and tracking identified in prior art and post art, including in the references considered during prosecution of the '327 patent filings; and by the admissions that will be obtained in this case from Microsoft's own witnesses and experts.

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23. Microsoft has directly infringed the '327 patent, and continues to do so, including by performing the method of claim 1 (as an example) in locating Windows Phone devices using satellite, WiFi, and cellular signals and location determining methods. Continuing with this example, Microsoft has performed and is performing each element of claim 1 itself when (a) Microsoft's employees and contractors are developing, testing, demonstrating, and using Windows Phone devices and Microsoft's location services (or location positioning services) and associated APIs (including the Geolocation WinRT and Geocoordinate .NET APIs) and databases (including Microsoft's location positioning databases containing signal data and locations for WiFi access points and cell towers); and (b) the Windows Phone devices of Microsoft by the automatic operation of the Microsoft developed, controlled, and operated Microsoft location services, associated APIs and databases, and the transmissions made to and from the devices by Microsoft.

24. Moreover, if Microsoft contends that, when the device being located or tracked is not in the physical possession of or owned by a Microsoft employee or contractor it is not Microsoft that is the direct infringer but instead its customers or end-users, or its application developers or device manufacturers, TracBeam will prove the following theories of direct and indirect infringement, which are pleaded, and will be pursued, in the alternative:

• <u>direction and control</u>: Microsoft physically (through its technology's design and operation and the communication between Microsoft's servers and the devices) and contractually (through the licensing terms of its agreements with application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications) directs and controls the operation of the Windows Phone devices and their operating systems, APIs, and hardware, and the Microsoft location

services and databases when the device location (and location of cell towers and WiFi access points) is being requested, calculated, obtained, reported, transmitted, or displayed. Microsoft also conditions participation in the use of its Windows operating systems, location services, APIs, and databases by application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications, and the receipt of the benefits of such participation (including the obtaining of the device location) upon performance of the steps of claim 1. Microsoft establishes—through its design, development, testing, operation, and use of the Windows Phone operating systems, APIs, location services, and databases—the manner and timing in which the device location is requested, calculated, obtained, reported, transmitted, and displayed. Accordingly, to the extent any acts of Microsoft's customers, end-users, application developers, or device manufacturers are deemed to perform one or more elements of the method of claim 1, those acts are attributable to Microsoft and it is Microsoft that is responsible for the infringement of claim 1 and each of its elements. Akamai Techs., Inc. v. Limelight Networks, Inc., 797 F.3d 1020, 1022–23 (Fed. Cir. 2015).

• <u>active inducement</u>: If it is the acts of Microsoft's customers, end-users, application developers, or device manufacturers—rather than (or in addition to) those of Microsoft itself—that are deemed to constitute direct infringement of claim 1, then those acts of direct infringement have been actively induced by Microsoft in violation of Section 271(b). As set forth above, Microsoft has had actual knowledge of the '327 patent since at least September 2011. Moreover, Microsoft has taken steps to induce the infringement committed by its customers, end-users, application developers, and device manufacturers by encouraging, promoting, facilitating,

enabling, and instructing those individuals and entities to use Windows Phone devices, Microsoft's location services and location service APIs and databases, and Microsoft's cloud-based services and solutions that interact with and make use of the location services and APIs and the location information they generate, including Azure Mobile Services, Azure App Service, Azure Notification Hub, Bing Maps (including Bing Maps for Enterprise), Bing Spatial Data Services, and WNS (Windows Push Notification Services). The inducing acts include the creation, publication, and provision of SDKs, developer tools and extensions, libraries, developer documentation, white papers, tutorials, presentations, videos, online and in-person training courses and certification programs, blogs, FAQs (and responses thereto), user guides and manuals, and device specifications and requirements, as well as the offering and sale of Windows Phone devices and location-aware applications, all of which are designed to and do encourage, instruct, and result in the performing of acts of location determination, tracking, evaluation and adjustment, and reporting that infringe at least claim 1 of the '327 patent.

25. Microsoft's infringement of the '327 patent has been and continues to be knowing, willful, and egregious, beginning at least as early as September 2011, the latest date by which Microsoft knew of the '327 patent and knew that its conduct constituted and resulted in infringement of the patent, without any basis for disputing infringement, validity, or enforceability of the patent.

26. TracBeam has been damaged by Microsoft's infringement of the '327 patent and is entitled to reasonable royalty damages and enhanced damages due to Microsoft's willful infringement.

COUNT III Infringement of '484 patent

27. TracBeam incorporates by reference the allegations of the foregoing paragraphs of this Complaint and further alleges as follows.

28. On April 28, 2009, the United States Patent and Trademark Office issued U.S.Patent No. 7,525,484, entitled "Gateway and Hybrid Solutions for Wireless Location." Ex. 3.

29. Plaintiff TracBeam is the owner of the '484 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

30. Each claim of the '484 patent is valid and enforceable and is patent-eligible. The claims recite novel and unconventional methods and systems for requesting, obtaining, providing access to, determining, and evaluating location information for mobile stations and are drawn to technical solutions for solving technical problems in wirelessly locating, tracking, and evaluating such stations and their location information. This will be established by analysis of the '484 patent's claims, specification, and prosecution history, and by the Court's claim constructions; by comparing the '484 patent's claimed inventions to the teachings and solutions for wireless location and tracking identified in prior art and post art, including in the references considered during prosecution of the '484 patent and the other asserted patents and in Microsoft's own research, publications, and patent filings; and by the admissions that will be obtained in this case from Microsoft's own witnesses and experts.

31. Microsoft has directly infringed the '484 patent, and continues to do so, including by performing the method of claim 25 (as an example) in requesting the location of, and locating, Windows Phone devices using satellite, WiFi, and cellular signals and location determining methods in the manner set forth by the claim, and transmitting the resulting location information

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via network transmissions to Microsoft servers, including those running the Bing Spatial Data Service, and the servers of third party app and service providers. Continuing with this example, Microsoft has performed and is performing each element of claim 25 itself when (a) Microsoft's employees and contractors are developing, testing, demonstrating, and using Windows Phone devices and Microsoft's location services (or location positioning services) and associated APIs (including the Geolocation WinRT and Geocoordinate .NET APIs) and databases (including Microsoft's location positioning databases containing signal data and locations for WiFi access points and cell towers); and (b) the Windows Phone devices of Microsoft's individual and enterprise customers and end-users are being located and tracked by Microsoft by the automatic operation of the Microsoft developed, controlled, and operated Microsoft location services, associated APIs and databases, and the transmissions made to and from the devices by Microsoft.

32. Moreover, if Microsoft contends that, when the device's location is being requested or the device is being located or tracked, the device is not in the physical possession of or owned by a Microsoft employee or contractor it is not Microsoft that is the direct infringer but instead its customers or end-users, or its application developers or device manufacturers, TracBeam will prove the following theories of direct and indirect infringement, which are pleaded, and will be pursued, in the alternative:

• <u>direction and control</u>: Microsoft physically (through its technology's design and operation and the communication between Microsoft's servers and the devices) and contractually (through the licensing terms of its agreements with application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications) directs and controls the operation of the Windows Phone devices and their operating systems, APIs, and hardware, and the Microsoft location services and databases when the device location (and location of cell towers and WiFi

access points) is being requested, calculated, obtained, reported, transmitted, or displayed. Microsoft also conditions participation in the use of its Windows operating systems, location services, APIs, and databases by application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications, and the receipt of the benefits of such participation (including the obtaining of the device location) upon performance of the steps of claim 25. Microsoft establishes—through its design, development, testing, operation, and use of the Windows Phone operating systems, APIs, location services, and databases—the manner and timing in which the device location is requested, calculated, obtained, reported, transmitted, and displayed. Accordingly, to the extent any acts of Microsoft's customers, end-users, application developers, or device manufacturers are deemed to perform one or more elements of the method of claim 25, those acts are attributable to Microsoft and it is Microsoft that is responsible for the infringement of claim 25 and each of its elements. Akamai Techs., Inc. v. Limelight Networks, Inc., 797 F.3d 1020, 1022–23 (Fed. Cir. 2015).

• <u>active inducement</u>: If it is the acts of Microsoft's customers, end-users, application developers, or device manufacturers—rather than (or in addition to) those of Microsoft itself—that are deemed to constitute direct infringement of claim 25, then those acts of direct infringement have been actively induced by Microsoft in violation of Section 271(b). As set forth above, Microsoft has had actual knowledge of the '484 patent since at least September 2011. Moreover, Microsoft has taken steps to induce the infringement committed by its customers, end-users, application developers, and device manufacturers by encouraging, promoting, facilitating, enabling, and instructing those individuals and entities to use Windows Phone devices, Microsoft's location services and location service APIs and databases, and Microsoft's cloud-based services and solutions that interact with and make use of the location services and APIs and the location information they generate, including Azure Mobile Services, Azure App Service, Azure Notification Hub, Bing Maps (including Bing Maps for Enterprise), Bing Spatial Data Services, and WNS (Windows Push Notification Services). The inducing acts include the creation, publication, and provision of SDKs, developer tools and extensions, libraries, developer documentation, white papers, tutorials, presentations, videos, online and in-person training courses and certification programs, blogs, FAQs (and responses thereto), user guides and manuals, and device specifications and requirements, as well as the offering and sale of Windows Phone devices and location-aware applications, all of which are designed to and do encourage, instruct, and result in the performing of acts of location determination, tracking, evaluation and adjustment, and reporting that infringe at least claim 25 of the '484 patent.

33. Microsoft's infringement of the '484 patent has been and continues to be knowing, willful, and egregious, beginning at least as early as September 2011, the latest date by which Microsoft knew of the '484 patent and knew that its conduct constituted and resulted in infringement of the patent, without any basis for disputing infringement, validity, or enforceability of the patent.

34. TracBeam has been damaged by Microsoft's infringement of the '484 patent and is entitled to reasonable royalty damages and enhanced damages due to Microsoft's willful infringement.

COUNT IV Infringement of '231 patent

35. TracBeam incorporates by reference the allegations of the foregoing paragraphs of this Complaint and further alleges as follows.

36. On July 27, 2010, the United States Patent and Trademark Office issued U.S. Patent No. 7,764,231, entitled "Wireless Location Using Multiple Mobile Station Location Techniques." Ex. 4.

37. Plaintiff TracBeam is the owner of the '231 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

38. Each claim of the '231 patent is valid and enforceable and is patent-eligible. The claims recite novel and unconventional methods and systems for locating mobile stations and are drawn to technical solutions for solving technical problems in wirelessly locating, tracking, and evaluating such stations and their location information. This will be established by analysis of the '231 patent's claims, specification, and prosecution history, and by the Court's claim constructions; by comparing the '231 patent's claimed inventions to the teachings and solutions for wireless location and tracking identified in prior art and post art, including in the references considered during prosecution of the '231 patent and the other asserted patents and in Microsoft's own research, publications, and patent filings; and by the admissions that will be obtained in this case from Microsoft's own witnesses and experts.

39. Microsoft has directly infringed the '231 patent, and continues to do so, including by performing the method of claim 17 (as an example) in locating Windows Phone devices using satellite, WiFi, and cellular signals and location determining methods in the manner set forth by the claim, and transmitting the resulting location information via network transmissions to

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Microsoft servers, including those running the Bing Spatial Data Service, and the servers of third party app and service providers. Continuing with this example, Microsoft has performed and is performing each element of claim 17 itself when (a) Microsoft's employees and contractors are developing, testing, demonstrating, and using Windows Phone devices and Microsoft's location services (or location positioning services) and associated APIs (including the Geolocation WinRT and Geocoordinate .NET APIs) and databases (including Microsoft's location positioning databases containing signal data and locations for WiFi access points and cell towers); and (b) the Windows Phone devices of Microsoft's individual and enterprise customers and end-users are being located and tracked by Microsoft by the automatic operation of the Microsoft developed, controlled, and operated Microsoft location services, associated APIs and databases, and the transmissions made to and from the devices by Microsoft.

40. Moreover, if Microsoft contends that, when the device's location is being requested or the device is being located or tracked, the device is not in the physical possession of or owned by a Microsoft employee or contractor it is not Microsoft that is the direct infringer but instead its customers or end-users, or its application developers or device manufacturers, TracBeam will prove the following theories of direct and indirect infringement, which are pleaded, and will be pursued, in the alternative:

• <u>direction and control</u>: Microsoft physically (through its technology's design and operation and the communication between Microsoft's servers and the devices) and contractually (through the licensing terms of its agreements with application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications) directs and controls the operation of the Windows Phone devices and their operating systems, APIs, and hardware, and the Microsoft location services and databases when the device location (and location of cell towers and WiFi

access points) is being requested, calculated, obtained, reported, transmitted, or displayed. Microsoft also conditions participation in the use of its Windows operating systems, location services, APIs, and databases by application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications, and the receipt of the benefits of such participation (including the obtaining of the device location) upon performance of the steps of claim 17. Microsoft establishes—through its design, development, testing, operation, and use of the Windows Phone operating systems, APIs, location services, and databases—the manner and timing in which the device location is requested, calculated, obtained, reported, transmitted, and displayed. Accordingly, to the extent any acts of Microsoft's customers, end-users, application developers, or device manufacturers are deemed to perform one or more elements of the method of claim 17, those acts are attributable to Microsoft and it is Microsoft that is responsible for the infringement of claim 17 and each of its elements. Akamai Techs., Inc. v. Limelight Networks, Inc., 797 F.3d 1020, 1022–23 (Fed. Cir. 2015).

• <u>active inducement</u>: If it is the acts of Microsoft's customers, end-users, application developers, or device manufacturers—rather than (or in addition to) those of Microsoft itself—that are deemed to constitute direct infringement of claim 17, then those acts of direct infringement have been actively induced by Microsoft in violation of Section 271(b). As set forth above, Microsoft has had actual knowledge of the '231 patent since at least September 2011. Moreover, Microsoft has taken steps to induce the infringement committed by its customers, end-users, application developers, and device manufacturers by encouraging, promoting, facilitating, enabling, and instructing those individuals and entities to use Windows Phone devices, Microsoft's location services and location service APIs and databases, and Microsoft's cloud-based services and solutions that interact with and make use of the location services and APIs and the location information they generate, including Azure Mobile Services, Azure App Service, Azure Notification Hub, Bing Maps (including Bing Maps for Enterprise), Bing Spatial Data Services, and WNS (Windows Push Notification Services). The inducing acts include the creation, publication, and provision of SDKs, developer tools and extensions, libraries, developer documentation, white papers, tutorials, presentations, videos, online and in-person training courses and certification programs, blogs, FAQs (and responses thereto), user guides and manuals, and device specifications and requirements, as well as the offering and sale of Windows Phone devices and location-aware applications, all of which are designed to and do encourage, instruct, and result in the performing of acts of location determination, tracking, evaluation and adjustment, and reporting that infringe at least claim 17 of the '231 patent.

41. Microsoft's infringement of the '231 patent has been and continues to be knowing, willful, and egregious, beginning at least as early as September 2011, the latest date by which Microsoft knew of the '231 patent and knew that its conduct constituted and resulted in infringement of the patent, without any basis for disputing infringement, validity, or enforceability of the patent.

42. TracBeam has been damaged by Microsoft's infringement of the '231 patent and is entitled to reasonable royalty damages and enhanced damages due to Microsoft's willful infringement.

COUNT V Infringement of '341 patent

43. TracBeam incorporates by reference the allegations of the foregoing paragraphs of this Complaint and further alleges as follows.

44. On June 16, 2015, the United States Patent and Trademark Office issued U.S.Patent No. 9,060,341, entitled "System and Method for Hybriding Wireless LocationTechniques." Ex. 5.

45. Plaintiff TracBeam is the owner of the '341 patent with full rights to pursue recovery of royalties or damages for infringement of the patent, including full rights to recover past and future damages.

46. Each claim of the '341 patent is valid and enforceable and is patent-eligible. The claims recite novel and unconventional methods and systems for wirelessly locating terrestrial mobile units and are drawn to technical solutions for solving technical problems in wirelessly locating, tracking, and evaluating such units and their location information. This will be established by analysis of the '341 patent's claims, specification, and prosecution history, and by the Court's claim constructions; by comparing the '341 patent's claimed inventions to the teachings and solutions for wireless location and tracking identified in prior art and post art, including in the references considered during prosecution of the '341 patent and the other asserted patents and in Microsoft's own research, publications, and patent filings; and by the admissions that will be obtained in this case from Microsoft's own witnesses and experts.

47. Microsoft has directly infringed the '341 patent, and continues to do so, including by performing the method of claim 6 (as an example) in locating Windows Phone devices using satellite, WiFi, and cellular signals and location determining methods in the manner set forth by the claim, and transmitting the resulting location information via network transmissions to

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Microsoft servers, including those running the Bing Spatial Data Service, and the servers of third party app and service providers. Continuing with this example, Microsoft has performed and is performing each element of claim 6 itself when (a) Microsoft's employees and contractors are developing, testing, demonstrating, and using Windows Phone devices and Microsoft's location services (or location positioning services) and associated APIs (including the Geolocation WinRT and Geocoordinate .NET APIs) and databases (including Microsoft's location positioning databases containing signal data and locations for WiFi access points and cell towers); and (b) the Windows Phone devices of Microsoft's individual and enterprise customers and end-users are being located and tracked by Microsoft by the automatic operation of the Microsoft developed, controlled, and operated Microsoft location services, associated APIs and databases, and the transmissions made to and from the devices by Microsoft.

48. Moreover, if Microsoft contends that, when the device is being located or tracked, the device is not in the physical possession of or owned by a Microsoft employee or contractor it is not Microsoft that is the direct infringer but instead its customers or end-users, or its application developers or device manufacturers, TracBeam will prove the following theories of direct and indirect infringement, which are pleaded, and will be pursued, in the alternative:

• <u>direction and control</u>: Microsoft physically (through its technology's design and operation and the communication between Microsoft's servers and the devices) and contractually (through the licensing terms of its agreements with application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications) directs and controls the operation of the Windows Phone devices and their operating systems, APIs, and hardware, and the Microsoft location services and databases when the device location (and location of cell towers and WiFi access points) is being requested, calculated, obtained, reported, transmitted, or

displayed. Microsoft also conditions participation in the use of its Windows operating systems, location services, APIs, and databases by application developers, device manufacturers, customers, and end-users of Windows Phone devices and applications, and the receipt of the benefits of such participation (including the obtaining of the device location) upon performance of the steps of claim 6. Microsoft establishes—through its design, development, testing, operation, and use of the Windows Phone operating systems, APIs, location services, and databases—the manner and timing in which the device location is requested, calculated, obtained, reported, transmitted, and displayed. Accordingly, to the extent any acts of Microsoft's customers, end-users, application developers, or device manufacturers are deemed to perform one or more elements of the method of claim 6, those acts are attributable to Microsoft and it is Microsoft that is responsible for the infringement of claim 6 and each of its elements. *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022–23 (Fed. Cir. 2015).

• <u>active inducement</u>: If it is the acts of Microsoft's customers, end-users, application developers, or device manufacturers—rather than (or in addition to) those of Microsoft itself—that are deemed to constitute direct infringement of claim 6, then those acts of direct infringement have been actively induced by Microsoft in violation of Section 271(b). As set forth above, Microsoft has had actual knowledge or been willfully blind to the existence of the '341 patent since the date of the patent's issuance. Moreover, Microsoft has taken steps to induce the infringement committed by its customers, end-users, application developers, and device manufacturers by encouraging, promoting, facilitating, enabling, and instructing those individuals and entities to use Windows Phone devices, Microsoft's location services and location

service APIs and databases, and Microsoft's cloud-based services and solutions that interact with and make use of the location services and APIs and the location information they generate, including Azure Mobile Services, Azure App Service, Azure Notification Hub, Bing Maps (including Bing Maps for Enterprise), Bing Spatial Data Services, and WNS (Windows Push Notification Services). The inducing acts include the creation, publication, and provision of SDKs, developer tools and extensions, libraries, developer documentation, white papers, tutorials, presentations, videos, online and in-person training courses and certification programs, blogs, FAQs (and responses thereto), user guides and manuals, and device specifications and requirements, as well as the offering and sale of Windows Phone devices and location-aware applications, all of which are designed to and do encourage, instruct, and result in the performing of acts of location determination, tracking, evaluation and adjustment, and reporting that infringe at least claim 6 of the '341 patent.

49. Microsoft's infringement of the '341 patent has been and continues to be knowing, willful, and egregious, since the date the patent issued and Microsoft knew that its conduct constituted and resulted in infringement of the '341 patent, without any basis for disputing infringement, validity, or enforceability of the patent.

50. TracBeam has been damaged by Microsoft's infringement of the '341 patent and is entitled to reasonable royalty damages and enhanced damages due to Microsoft's willful infringement.

Demand for Jury Trial

Plaintiff TracBeam demands trial by jury on all claims and issues triable by jury.

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Relief requested

Plaintiff TracBeam respectfully requests the following relief from this Court:

A. A judgment in favor of TracBeam that (i) Microsoft has infringed U.S. Patent Nos. 7,274,332; 7,298,327; 7,525,484; 7,764,231; and 9,060,341, and (ii) the asserted patents are valid, enforceable, and patent-eligible;

B. A judgment and order requiring Microsoft to pay TracBeam compensatory damages, costs, expenses, and pre- and post-judgment interest for Microsoft's infringement of the asserted patents, as provided under 35 U.S.C. §284;

C. A judgment that Microsoft has willfully infringed the asserted patents and that TracBeam is entitled to enhanced damages as a result of such willful infringement;

D. A finding that this case is exceptional under 35 U.S.C. §285, at minimum due to Microsoft's willful infringement, and an award of TracBeam's reasonable attorney's fees and costs; and

E. Any and all other relief to which Plaintiff TracBeam may be entitled.

Date: July 24, 2017

Respectfully submitted,

D. Jeffrey Rambin

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