

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

KONINKLIJKE KPN N.V.,	)	
	)	
Plaintiff,	)	C.A. No. 17-cv-87-LPS-CJB
	)	
v.	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
KYOCERA CORPORATION,	)	<b>FILED UNDER SEAL</b>
	)	
Defendant.	)	
	)	

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**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which Plaintiff Koninklijke KPN N.V. (hereafter “KPN” or “Plaintiff”) makes the following allegations against Kyocera Corporation:

**BACKGROUND**

1. KPN’s extensive research and development efforts have led to hundreds of issued patents in the United States and across the world. These patents have been licensed in turn by leading global telecommunications companies, including many of Kyocera Corporation’s mobile technology competitors.

2. KPN has made its patents available for license on an individual basis through bilateral negotiations and, at the licensor’s option, collectively through joint licensing or patent pool licensing arrangements.

3. Prior to filing suit in this action, and prior to the expiration of the patent at issue, Plaintiff provided Kyocera Corporation with notice of the patent at issue and engaged in negotiations with Kyocera Corporation to try to resolve this dispute.

4. Despite these efforts, Kyocera Corporation refused to license on mutually agreeable terms the patent described herein. Plaintiff therefore files this suit against Kyocera Corporation seeking the Court's protection of KPN's valuable intellectual property rights.

### **PARTIES**

5. Plaintiff Koninklijke KPN N.V. is a telecommunications (including fixed, mobile, television and internet) and ICT solution provider headquartered at Maanplein 55, NL-2516 CK, The Hague, The Netherlands.

6. On information and belief, Defendant Kyocera Corporation is a corporation organized under the laws of Japan, having a principal place of business at 6 Takeda Tobadonocho Fushimi-ku Kyoto Japan. Kyocera Corporation can be served with process pursuant to the Delaware Long Arm Statute, 10 Del. C. § 3104.

7. On information and belief, Kyocera Corporation also operates directly in the United States through its wholly-owned subsidiary Kyocera International, Inc., which it controls and which acts as its agent in the United States as an arm of Kyocera Corporation's centrally controlled and directed "Telecommunications Equipment Group." For example, in its 2015 Annual Report, Kyocera Corporation identified Kyocera International, Inc.,<sup>1</sup> as a wholly-owned "holding company" subsidiary and further stated that it was a part of Kyocera Corporation's "Telecommunications Equipment Group," through which "Kyocera develops, manufactures and sells mobile phones such as smartphones, feature phones mainly for telecommunications carriers in ... the U.S." In the same Report, Kyocera Corporation further stated that, through subsidiaries that include Kyocera International, Inc., "we supply mobile phones and smartphones primarily to

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<sup>1</sup> On information and belief, Kyocera America, Inc., and Kyocera Communications, Inc., were consolidated into Kyocera International, Inc., in or around July 2016. As such, to the extent KPN refers to acts taken by Kyocera International, Inc., it refers to acts taken by any of such entities.

telecommunications carriers in the Japanese and overseas markets,” including to “key supply destinations ... Sprint Corporation, Verizon Communications Inc., T-Mobile US, Inc. and AT&T Inc.” in the United States. Similarly, in its 2014 Annual Report, Kyocera Corporation stated that “Kyocera develops, manufactures and sells mobile phones such as smartphones and feature phones for ... the U.S.” and that “[o]ur key sales destinations are ... [the] Sprint Corporation in the U.S.,” as well as “Verizon Communications Inc. and T-Mobile US, Inc. in the United States.” In the same report, Kyocera Corporation further described how its Telecommunications Equipment Group “strives to differentiate itself in this business by releasing distinctive handsets” and how, through the efforts of this Group, including the efforts of Kyocera International, Inc. (operating at the time as Kyocera Communications, Inc.), “sales volumes expanded steadily in North America in fiscal 2014 compared with fiscal 2013.” Further, in this matter, Kyocera Corporation has conceded that “Kyocera Corporation and its subsidiaries [which include Kyocera International, Inc.,] *collectively* develop, manufacture and sell products in Japan and the U.S.” As such, on information and belief, Kyocera Corporation has instigated, directed, and authorized its agent, Kyocera International, Inc., to commit the various infringing acts identified herein.

#### **JURISDICTION AND VENUE**

8. This action arises under the patent laws of the United States, Title 35 of the United States Code.

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Kyocera Corporation because, directly or through an intermediary or agent, including Kyocera International, Inc., Kyocera Corporation

has committed acts within Delaware giving rise to this action and has established minimum contacts with Delaware such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

11. For example, on information and belief, Kyocera Corporation placed infringing products into the stream of commerce via an established distribution channel that included its agent Kyocera International, Inc., with the knowledge and expectation that such products would be sold in the State of Delaware, including in this District.

12. On information and belief, Kyocera Corporation also has derived substantial revenues from its infringing acts in the State of Delaware and this District, including from the sales of its infringing devices in the United States.

13. In addition, on information and belief, Kyocera Corporation knowingly induced infringement by others within the United States and this District by advertising, marketing, offering for sale, and selling devices containing infringing functionality to consumers, customers, manufacturers, distributors, resellers, partners, and end users, in the United States and by providing instructions, user manuals, advertising, and marketing materials which facilitate, direct, or encourage the use of infringing functionality with knowledge thereof.

14. Venue is proper under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400.

#### **THE ASSERTED PATENT**

15. This lawsuit asserts causes of action for infringement of United States Patent No. 6,212,662 (“’662 patent”).

16. The ’662 patent previously was the subject of litigation captioned *Koninklijke KPN N.V. v. Samsung Electronics Co., Ltd.*, Civil Action Nos. 2:14-cv-1165 and 2:15-cv-948

(E.D. Tex.). On September 21, 2016, the parties filed a “Joint Stipulation to Dismiss” that lawsuit.

17. On July 8, 2016, the United States Patent and Trademark Office, Patent Trial and Appeal Board (“PTAB”) largely declined to institute *inter partes* review of the ’662 patent—finding “no reasonable likelihood” that any of the invalidity contentions directed at claims 3 and 4 of the ’662 patent had merit.

18. Kyocera Corporation has been on notice of the ’662 patent, has been invited to take a license to the ’662 patent, and has declined to license the ’662 patent.

19. For example, no later than July 2005, KPN wrote to the Sanyo Group—informing it that its mobile phone products were infringing and needed to be licensed. On September 14, 2005, Hideo Hayashi, the General Manager of the Corporate Intellectual Property Center of Sanyo Electric Co., Ltd., responded—telling KPN that it was in the process of “analyzing the relationship between these products and your patents in detail,” but had not yet finished. Sanyo also told KPN that it was aware that KPN’s patents were available to be licensed through 3G Licensing Ltd.

20. Kyocera Corporation subsequently acquired Sanyo Electric Co., Ltd., in April 2008. Representatives of Sisvel Japan later met with representatives of each Kyocera Defendant in Japan in September 2009 to discuss licensing Kyocera Corporation’s LTE and cdma2000 mobile devices. During those meetings, Kyocera Corporation confirmed that Sanyo had forwarded KPN’s letter to Kyocera. Sisvel continued to meet and negotiate with Kyocera Corporation regarding it obtaining a license to its patent portfolio through February 2013. As part of these negotiations, Sisvel specifically told Kyocera Corporation, including representatives of Kyocera Communications, Inc., that it was authorized to license KPN’s cdma2000 patents.

21. Further, Kyocera Corporation received additional notice of the '662 patent and its infringement of it at least by November 2013 when Sipro Lab Telecom contacted Kyocera Corporation on behalf of entities, including KPN, to offer Kyocera a license to its W-CDMA Terminal Products Patent Pool, which included the '662 patent and other patents that had been recognized as essential to W-CDMA (also known as UMTS) telecommunication products and which Kyocera was told its W-CDMA telecommunication products therefore infringe.

22. In addition, Kyocera Corporation received additional notice of the '662 patent and its infringement of it at least by June 1, 2015, when Nick Webb, Managing Director of Sisvel UK Limited, sent a letter to Mr. Shinichirou Yamashita, General Manager of Kyocera Corporation's Equipment Intellectual Property Division Corporate Legal and Intellectual Property Group. In this letter, Mr. Webb informed Mr. Yamashita that he was contacting him on behalf of several entities, including KPN, to offer a license for Kyocera products implementing Long-Term Evolution radio platform ("LTE," also commonly referred to as "4G" or "4G LTE" or "LTE-Advanced") technology. Mr. Webb told Mr. Yamashita that these products infringed several patents—providing a link to a Patent List that was updated on June 3, 2015, to include the '662 patent.

23. On July 7, 2015, Mr. Webb sent a subsequent letter to Mr. Yamashita. In it, he noted that Mr. Yamashita had failed to respond to prior correspondence informing him that Kyocera products were infringing, stating:

We are concerned that Kyocera Corporation has failed to reply to Sisvel and seemingly continues to commercialize products that make use of the LTE patents, without taking a license to these patents. Please note that the LTE enabled products under the brands DIGNO S, TORQUE, URBANO and INFOBAR, remain unlicensed. Continuing to manufacture, import and/or sell such products without a license to the LTE patents will leave Kyocera Corporation with a growing liability.

Mr. Webb also specifically directed Mr. Yamashita to Sisvel’s Patent List, which included the ’662 patent, as identifying patents that Kyocera’s LTE products infringed.

24. Subsequently, and no later than January 25, 2016, Sisvel made available on its web site a “Patent Brochure,” which specifically identified the ’662 patent and stated that Claim 1 of the ’662 patent had been recognized as essential to 3GPP TS 36.212 v9.3.0, Section 5, 5.1, 5.1.1, 5.1.2, 5.1.3, Table 5.1.3-1, 5.1.3.2, 5.1.3.2.1, Figure 5.1.3-2, 5.1.3.2.3—a standard governing the transmission of data on LTE networks. [REDACTED]

[REDACTED]

Further, Kyocera Corporation has admitted its understanding that, “[i]f the ’662 patent [is] essential to LTE communications, then the patent necessarily would be infringed by a product’s use of LTE.” Kyocera Corporation also met with Sisvel representatives on February [REDACTED], 2016, to discuss licensing its LTE telecommunications products. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**COUNT 1**  
**INFRINGEMENT OF U.S. PATENT NO. 6,212,662**

26. Plaintiff repeats and incorporates by reference each preceding paragraph as if fully set forth herein and further state:

27. On April 3, 2001, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 6,212,662, which is entitled, “Method and Devices for the Transmission of Data With the Transmission Error Checking.” A true and correct copy of the ’662 patent is attached as Exhibit A.

28. KPN is the owner by assignment of the ’662 patent and holds all rights, title and interest to the ’662 patent, including the sole right to sue and recover for any and all infringements.

29. The devices claimed in the ’662 patent have proved to be of great importance to the field of error detection and correction.

30. For example, in 2011, Sisvel International, which manages the LTE/LTE-A patent pool, recognized claims 1-3 of the ’662 patent to be essential to §§ 5, 5.1, 5.1.1, 5.1.2, 5.1.3, 5.1.3.2, 5.1.3.2.1, and 5.1.3.2.3, including Figure 5.1.3-2, Tables 5.1.3-1 and 5.1.3-3, of the 3GPP TS 36.212 LTE communications standard. Shortly thereafter, the International Patent Evaluation Committee recognized claims 1-4 of the ’662 patent to be essential to §§ 1, 4.1, 4.2.2.2, 4.2.3, 4.2.3.2.1, 4.2.3.2.3, 4.2.3.2.3.1, and 4.2.3.2.3.2, including Figure 4 and Tables 1 and 2, of the 3GPP TS 25.212 standard for UMTS (W-CDMA) communications.

31. The ’662 patent also has been treated as essential by both Sisvel, which managed the cdma2000 patent pool, and Sipro Lab Telecom, which managed a pool of telecommunications patents essential to the W-CDMA 3GPP standard.



32. Consistent with this recognition of its importance to the field of error detection and correction, the '662 patent has been licensed extensively by many of Kyocera Corporation's mobile technology competitors.

33. The '662 patent also has been the subject of prior litigation, in which the Court construed terms expected to be at issue in this matter. Plaintiff relies on those constructions herein in support of their allegations.

34. Further, in the course of that prior litigation, Samsung Electronics Co., Ltd., et al., ("Samsung") filed a request for *inter partes* review—arguing claims 1-4 of the '662 patent were anticipated and obvious in light of multiple prior art references. After thorough consideration, the Patent Trial and Appeals Board ("PTAB") declined to institute *inter partes* review as to claims 3 and 4 of the '662 patent on any ground—concluding on the lengthy record before it that no "reasonable likelihood" existed that claims 3 and 4 were invalid. Regarding claims 1 and 2, the PTAB concluded that no "reasonable likelihood" existed that the claims were anticipated.

35. Samsung filed a Petition for Rehearing of the PTAB's decision. The PTAB subsequently issued another lengthy decision denying the request.

36. Kyocera Corporation directly infringed the '662 patent in violation 35 U.S.C. § 271(a) by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, without authorization, products that practice claims 1-4 of the '662 patent literally or under the doctrine of equivalents (hereafter "'662 Accused Products") prior to the expiration of the '662 patent. At a minimum, such '662 Accused Products include all Kyocera smartphones and other mobile telecommunication devices configured to send or receive data over an LTE, UMTS, or cdma2000 data network making use of or incorporating error checking technology as described in Ex. A. This includes products like the Kyocera DuraForce XD,

including at least model number E6790 (hereafter “DuraForce XD”), which, on information and belief, is configured to transmit data on LTE and UMTS data networks.

37. As detailed in paragraphs 38-42 below, on information and belief, the Kyocera DuraForce XD is an LTE and UMTS compatible device that meets every element of claims 1-4 of the '662 patent literally or under the doctrine of equivalents.<sup>2</sup> Further, on information and belief, the identified components and functionality of the Kyocera DuraForce XD are representative of the components and functionality present in all '662 Accused Products, including but not limited to each product identified in Plaintiff's First Amended Identification of Accused Products and Form of Damages served on August 17, 2017.

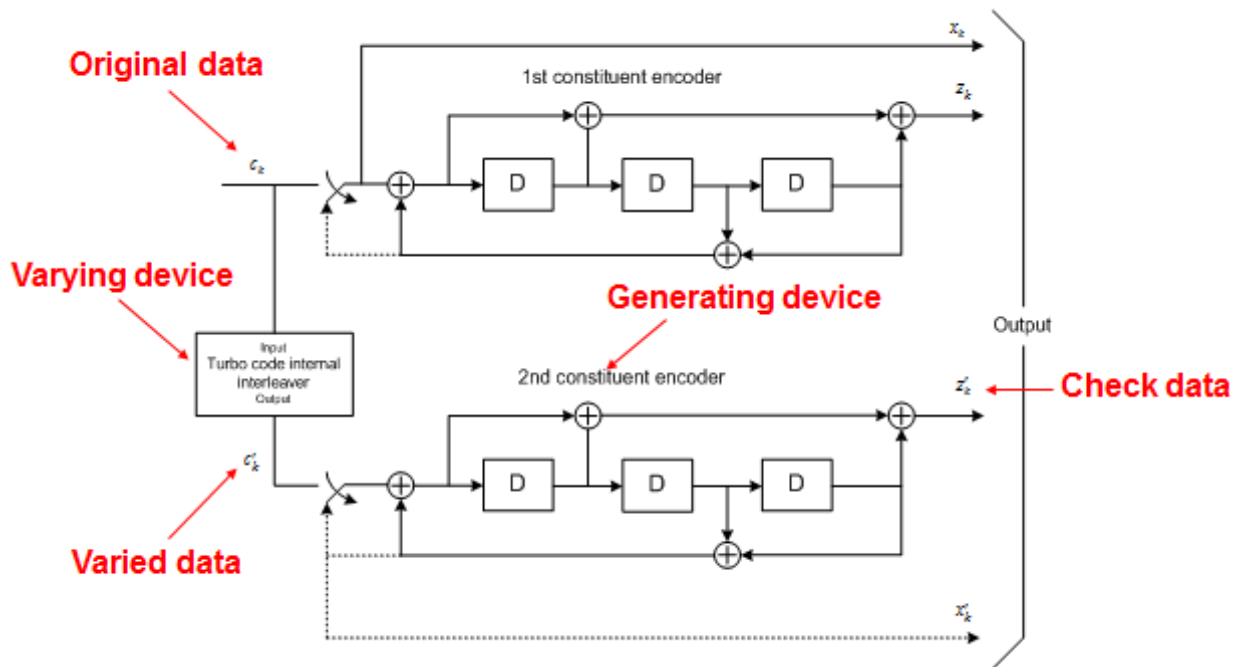
38. Claim 1 of the '662 patent is illustrative of the device claims of the '662 patent. It claims a device configured to generate supplementary data for use in checking for errors, including in transmitted data, from data provided in blocks comprised of plural bits received in a particular ordered sequence. The device includes at least one varying device configured to vary this original data, including through its incorporation of an interleaver or other permutating device configured to reorder at least some of the bits of the original data input to it without reordering any of the blocks of original data it receives, prior to supplying it that now varied data to at least one generating device. The device further includes at least one generating device configured to generate supplementary data (check data) from the data it receives from the at least one permutating device.

39. The Kyocera DuraForce XD is a device configured to operate on data provided in the form of blocks comprised of plural bits in a particular ordered sequence that can be used to generate data for error checking. The Kyocera DuraForce XD also is a device configured to use

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<sup>2</sup> This description is illustrative and not intended to be an exhaustive or limiting explanation of every manner in which each '662 Accused Product infringes the '662 patent.

such data to check for errors in such transmitted data. Further, the Kyocera DuraForce XD includes a varying device configured to vary the original data it receives, including through its incorporation of an interleaver configured to reorder the bit position of at least some of the bits of the original data provided to it without reordering any of the blocks of that original data, prior to supplying that now varied data to at least one generating device. Further, the Kyocera DuraForce XD includes at least one device configured to generate supplementary data for use in error checking (i.e., check data), including but not limited to through its use of one or more encoders. Below is a representative depiction of such infringing components and functions as utilized in the Kyocera DuraForce XD:



40. The Kyocera DuraForce XD also includes at least one varying device, including, for example, an interleaver, configured to change from time to time the manner in which it reorders at least some of the data bits it receives as disclosed in claim 2 of the '662 patent.

41. The Kyocera DuraForce XD also includes at least one varying device, including, for example, an interleaver, configured to change the manner in which it reorders at least some of the bits it receives based on the characteristics of at least some of the bits it receives as disclosed in claim 3 of the '662 patent.

42. The Kyocera DuraForce XD also includes at least one permutating device, including, for example, an interleaver, that includes or makes use of data storage in which subsequent re-orderings of the members of the given set are stored as disclosed in claim 4 of the '662 patent.

43. On information and belief, Kyocera Corporation therefore directly infringed each element of claims 1-4 of the '662 patent by selling and offering to sell in the United States, and by importing into the United States, without authorization, '662 Accused Products like the Kyocera DuraForce XD, including by directing and authorizing its wholly owned subsidiary and agent Kyocera International, Inc., to undertake such acts to sell and offer for sale in the United States, and import into the United States, without authorization '662 Accused Products like the Kyocera DuraForce XD as part of its consolidated and centrally controlled "Telecommunications Equipment Group."

44. On information and belief, at the behest of Kyocera Corporation and as a direct result of its instigation, control, and direction, Kyocera International, Inc., thus offered for sale and sold in the United States, and imported into the United States, without authorization, '662 Accused Products like the Kyocera DuraForce XD.

45. In addition, Kyocera Corporation has indirectly infringed the '662 patent in violation 35 U.S.C. § 271(b) by taking active steps to encourage and facilitate direct infringement by others, including OEMs, agent-subsiaries, affiliates, partners,

telecommunications service providers, manufacturers, importers, resellers, customers, and end users, in this District and elsewhere in the United States, through the dissemination of the '662 Accused Products and the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and technical information relating to such products prior to the expiration of the '662 patent with knowledge and the specific intent that its efforts would result in the direct infringement of the '662 patent.

46. For example, on information and belief, prior to the expiration of the '662 patent, Kyocera Corporation took active steps to encourage Kyocera International, Inc., to directly infringe each element of claims 1-4 of the '662 patent by selling and offering to sell in the United States, and by importing into the United States, without authorization, '662 Accused Products like the Kyocera DuraForce XD, including by transferring such products to Kyocera International, Inc., and directing and authorizing it to distribute those products in the United States.

47. Further, prior to the expiration of the '662 patent, Kyocera Corporation took active steps to encourage end users of the Kyocera DuraForce XD to use the product in the United States in a manner it knew would directly infringe each element of at least claim 1 of the '662 patent as described above in paragraphs 38-42, including by encouraging consumers and end users and prior to the expiration of the '662 patent to utilize the Kyocera DuraForce XD to transmit data over LTE data networks despite knowing of the '662 patent and the fact that such data transmissions will cause such consumers and end users to use the Kyocera DuraForce XD in a manner that infringes the '662 patent.

48. Such active steps include, for example, advertising and marketing the Kyocera DuraForce XD as a smartphone capable of transmitting data on an LTE data network and

instructing Kyocera DuraForce XD users in the written manuals Kyocera Corporation created and distributed prior to the expiration of the '662 patent how to utilize the Kyocera DuraForce XD to transmit data on LTE data networks despite its knowledge of the '662 patent and the fact that such data transmissions would cause Kyocera DuraForce XD users to directly infringe the '662 patent. *See, e.g.*, [https://www.kyoceramobile.com/duraforce-xd/DuraForce-XD-User-Guide-T-Mobile\\_en.pdf](https://www.kyoceramobile.com/duraforce-xd/DuraForce-XD-User-Guide-T-Mobile_en.pdf) (instructing users at pages 55-58 how to connect to an LTE network and transmit data over such networks) (copyrighted by Kyocera Corporation and directing users to contact the “Kyocera Communications Inc. Customer Care Center” with any questions). In short, Kyocera Corporation actively induced the direct infringement of the '662 patent by end users by, among other things, publishing Kyocera DuraForce XD manuals and promotional literature describing and instructing the configuration and operation by its customers of the Kyocera DuraForce XD in an infringing manner and by offering support and technical assistance to its customers that encourage use of the Kyocera DuraForce XD prior to the expiration of the '662 patent in ways that would directly infringe at least claim 1 of the '662 patent.

49. Further, Kyocera Corporation undertook the above identified active steps after receiving notice from KPN of the '662 patent and being told no later than July 7, 2015, that it had been recognized by others as essential to standards governing LTE communications—thus informing Kyocera Corporation that such sale, importation, and use of the Kyocera DuraForce XD would infringe the '662 patent.

50. In addition, Kyocera Corporation indirectly infringed the '662 patent in violation 35 U.S.C. § 271(c) by selling and offering to sell in the United States, and importing into the United States, without authorization and prior to the expiration of the '662 patent, the '662 Accused Products with knowledge that they were especially designed or adapted to operate in a

manner that infringes the '662 patent and despite the fact that the infringing technology or aspects of each '662 Accused Products are not a staple article of commerce suitable for substantial non-infringing use.

51. For example, on information and belief, Kyocera Corporation knew at least by July 7, 2015, that the functionality included in the '662 Accused Products that enabled each to be interoperable with standard LTE networks infringed the '662 patent. Further, on information and belief, Kyocera Corporation knew that the '662 Accused Products, including the Kyocera DuraForce XD, were designed to ensure that they would be interoperable with standard LTE data networks.

52. Further, on information and belief, the infringing aspects of the '662 Accused Products can be used only in a manner that infringes the '662 patent and have no substantial non-infringing uses. Again using the Kyocera DuraForce XD as an example, the product was especially designed to include the infringing combination of devices described above at paragraphs 38-42 specifically so that it can generate check data in accordance with the invention claimed in the '662 patent in order to allow it to be interoperable with standard LTE data networks. The infringing aspects of the Kyocera DuraForce XD otherwise have no meaningful use—let alone any meaningful non-infringing use.

53. In addition, Kyocera's infringement of the '662 patent was willful. At least by July 7, 2015, Kyocera Corporation had received notice of the '662 patent, as well as notice that the '662 patent had been recognized as essential to LTE telecommunications—demonstrating that use of the Kyocera DuraForce XD by end users to transmit data utilizing an LTE network in the United States would infringe the '662 patent. Further, even Kyocera Corporation admits that, by January 25, 2016, it knew that the '662 patent had been recognized as essential to both

LTE and UMTS telecommunications products and that a license to the patent was being offered to Kyocera Corporation on KPN's behalf. Nevertheless, without authorization, Kyocera Corporation deliberately continued to infringe the '662 patent in the manners described above, including, on information and belief, by selling and offering to sell in the United States, and importing into the United States, '662 Accused Products like the Kyocera DuraForce XD, in order to market and promote the sale of those products as LTE compatible devices.

54. The identified acts of infringement have caused damage to KPN, and KPN is entitled to recover from Kyocera Corporation the damages it has sustained as a result of Kyocera's wrongful acts in an amount subject to proof at trial.

**DEMAND FOR JURY TRIAL**

55. Plaintiff hereby demands a jury trial for all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

A. Declaring that Kyocera Corporation has infringed the '662 patent, contributed to infringement of the '662 patent, and induced infringement of the '662 patent;

B. Awarding damages to Plaintiff arising out of this infringement of the '662 patent, including enhanced damages pursuant to 35 U.S.C. § 284 and prejudgment and post-judgment interest, in an amount according to proof;

C. Awarding attorneys' fees to Plaintiff pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

D. Awarding such other costs and further relief as the Court may deem just and proper.



Dated: December 27, 2017

Respectfully submitted,

FARNAN LLP

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