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

IRON OAK TECHNOLOGIES, LLC, *Plaintiff*, v. HUAWEI DEVICE USA, INC., HUAWEI DEVICE CO. LTD. and HUAWEI DEVICE (DONGGUAN) CO., LTD. *Defendants*.	CASE NO. 2:17-cv-744-JRG **JURY**

AMENDED COMPLAINT

For its amended complaint against defendants Huawei Device USA, Inc., Huawei Device Co. Ltd. and Huawei Device (Dongguan) Co., Ltd. ("Iron Oak") alleges:

PARTIES

1. Plaintiff Iron Oak is a limited liability company organized under the laws of the State of Texas and has its principal place of business at 3605 Scranton Drive, Richland Hills, Texas, 76118. Iron Oak is a technology development company wholly-owned by prolific inventors William (Bill) C. Kennedy III of Dallas and Kenneth R. Westerlage of Ft. Worth. Mr. Kennedy and/or Mr. Westerlage are named inventors on each of the 22 patents owned by Iron Oak.

2. Defendant Huawei Device USA, Inc. is a Texas corporation having a regular and established principal place of business at 5700 Tennyson Parkway, Suite 500, Plano, Texas 75024. Huawei Device USA, Inc. may be served through its designated agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

3. Huawei Device Co. Ltd. is a Chinese corporation having a principal place of business at Bantian, Longgang District, Shenzen, 518129 China. Huawei Device Co. Ltd. is in the business of, inter alia, manufacturing and selling electronic goods, including smartphones and smart watches in the United States. Huawei China may be served at its principal place of business.

4. Defendant Huawei Device (Dongguan) Co., Ltd. is a Chinese corporation, and maintains its principal place of business at Songshan Lake Science and Technology Industrial Zone, Dongguan, Guangdong, China, 523808. Huawei Dongguan may be served at its principal place of business.

NATURE OF ACTION, JURISDICTION AND VENUE

5. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 1 et seq.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (Federal Question) and § 1338 (Patent, Trademark and Unfair Competition).

7. Venue is proper in this district against defendant Huawei Device USA, Inc., under 28 U.S.C. § 1391(c)(2) and 1400(b) at least because defendant Huawei Device USA, Inc., resides in this district, and has committed acts of infringement in this district and has a regular and established place of business in this district at 5700 Tennyson Parkway, Suite 500, Plano, Texas 75024..

8. Venue is proper in this district against defendant Huawei Device Co. Ltd. under 28 U.S.C. § 1391(c)(2) and/or (3), and 1400(b) at least because defendant Huawei Device Co. Ltd. has committed acts of infringement in this district is subject to personal jurisdiction based on its acts in this district.

9. Venue is proper in this district against defendant Huawei Device (Dongguan) Co., Ltd. under 28 U.S.C. § 1391(c)(2) and/or (3), and 1400(b) at least because defendant Huawei Device (Dongguan) Co., has committed acts of infringement in this district is subject to personal jurisdiction based on its acts in this district.

FACTS COMMON TO ALL COUNTS

10. Iron Oak is the owner through assignment of U.S. Patent No. 5,699,275 issued December 16, 1997 ("the '275 Patent"), which is valid and enforceable. The '275 Patent is directed to a system and method for remote patching of operating code located in a mobile unit. A true and correct copy of the '275 patent is attached as Exhibit A.

11. Iron Oak is the owner through assignment of U.S. Patent No. 5,966,658 issued October 12, 1999 (the '658 Patent"), which is valid and enforceable. The '658 Patent is directed to the automated selection of a communication path. A true and correct copy of the '658 patent is attached as Exhibit B.

COUNT I

Infringement of the ’275 Patent

12. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

13. Defendants committed acts of direct patent infringement of the ’275 Patent at least during the period November 13, 2011 through April 12, 2015, by making, using, selling, offering to sell, and importing products and systems, including but not limited to the products and systems described in Exhibit F (“accused products”), for at least the reasons described therein.

14. On information and belief, one or more of the Defendants gained knowledge of the ’275 patent in late 2013 during as part of an offer to license the ’275 patent. The allegations in this paragraph are believed to have evidentiary support, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

15. On information and belief, defendant Huawei Device USA, Inc. received the letter and claim charts attached hereto as Exhibit G on or about May 31, 2014, by overnight delivery. The allegations in this paragraph are believed to have evidentiary support, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

16. Thus, one or more of the Defendants had knowledge of the ’275 at least as early as December May 31, 2014, as shown at least by Exhibit G. The allegations in this paragraph are believed to have evidentiary support, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

17. In addition to directly infringing the ’275 Patent through making, using, selling, offering to sell, and importing the accused products, Defendants induced others to directly infringe the ’275 Patent by using the claimed invention, and reselling the claimed invention.

18. Defendant provided instructions and/or assistance to its customers concerning the functionality and how to implement the claimed invention, knowing that these instructions and assistance would be passed on to the ultimate user of the accused products. See Exhibit F. Thus, having knowledge of the claimed inventions, Defendant provided assistance and instruction to another specifically knowing that following such assistance and/or instructions would infringe the claimed inventions. Defendants sold the accused products to customers in the United States with the expectation and intent that such customers would use and/or resell the accused products thereby directly infringing the ’275 Patent. As such, Defendant induced infringement of the ’275 Patent in violation of 35 U.S.C. § 271(b). The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

19. In addition to directly infringing the ’275 Patent through making, using, selling, offering to sell, and importing the accused products, Defendants contributed to the direct infringement of others.

20. By offering to sell and selling one or more of the accused products identified in Exhibit F, Defendants offered to sell and sold a component of the system patented in the ’275 Patent, such as in claim 1. Specifically, but without limitation, during the relevant period Defendants offered to sell and sold, along with the accused products, a component of software specifically configured to merge an operating code update or patch into existing operation code on the accused product to create updated operating code.

21. The component of software identified above is not presently known to Iron Oak by name or other indicia, but the ability of the accused products to wirelessly receive an operating code update and to update the existing operating code, as well the literature provided by Defendants concerning receiving updates and updating operating code prove the existence of the software component.

22. The identified software component was a material part of the claimed invention at least insofar as all system claims require that the accused products be configured to merge the update or patch with the existing operating code to create patched operating code.

23. Defendant had knowledge of the '275 Patent at least as early as May 31, 2014. See Exhibit G. After that date, Defendants continued to, in association with the accused products, provide the software component, and/or continued to provide instructions and assistance to others concerning how to update or patch operating code on the accused products. Thus, based on Defendants' knowledge of the claims of the '275 Patent, and based on Defendant's knowledge of particularized allegations of infringement, Defendants knew that the software component was especially made or adapted for use in infringing the '275 Patent. The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

24. Iron Oak alleges that there is no market for the software component by itself. Iron Oak alleges that there is no market for the software component other than as part of the accused product for updating operating code as set forth the '275 Patent. On information and belief, Iron Oak alleges that the software component is not a staple article or commodity of commerce suitable for non-infringing uses. The allegations in this paragraph are believed to have evidentiary

support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery. Through at least these acts alleged above, Defendant has contributed to the direct infringement of the '275 Patent by users of its accused products in violation of 35 U.S.C. 271(c).

25. Defendant had knowledge of the '275 patent prior to the filing of the Original Complaint in this action, as shown at least by Exhibit G. The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

26. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

27. Defendant's infringement of the '275 patent was willful. Despite knowing of the '275 Patent, Defendant engaged in acts that directly and indirectly infringe the '275 Patent.

28. Iron Oak has been damaged as a result of Defendant's infringing conduct. Defendant is, thus, liable to Iron Oak in an amount that adequately compensates it for which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

COUNT II

Infringement of the '658 Patent

29. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

30. Defendant have committed acts of direct patent infringement of the '658 Patent from at least November 13, 2011 through September 26, 2016, by making, using, selling, offering to sell, and importing products, including but not limited to the products described in Exhibit F ("accused products"), for at least the reasons described therein.

31. On information and belief, one or more of the Defendants gained knowledge of the '658 patent in late 2013 during as part of an offer to license the '658 patent. The allegations in this paragraph are believed to have evidentiary support, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

32. On information and belief, defendant Huawei Device USA, Inc. received the letter and claim charts attached hereto as Exhibit G on or about May 31, 2014, by overnight delivery. The allegations in this paragraph are believed to have evidentiary support, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

33. Thus, one or more of the Defendants had knowledge of the '658 patent at least as early as December May 31, 2014, as shown at least by Exhibit G. The allegations in this paragraph are believed to have evidentiary support, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

34. In addition to directly infringing the '658 Patent through making, using, selling, offering to sell, and importing the accused products, Defendants induced others to directly

infringe the '658 Patent by using the claimed invention, and reselling the claimed invention. Defendants provided instructions and/or assistance to its customers concerning the functionality and how to implement the claimed invention, knowing that these instructions and assistance would be passed on to the ultimate user of the accused products. See Exhibit F. Thus, having knowledge of the claimed inventions, Defendant provided assistance and instruction to another specifically knowing that following such assistance and/or instructions would infringe the claimed inventions. Defendants sold the accused products to customers in the United States with the expectation and intent that such customers would use and/or resell the accused products thereby directly infringing the '658 Patent. As such, Defendants induced infringement of the '658 Patent in violation of 35 U.S.C. 271(b). The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

35. Defendants had knowledge of the '658 patent prior to the filing of the Original Complaint in this action, as shown at least by Exhibit G.

36. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

37. Defendants' infringement of the '658 patent was willful. Despite knowing of the '658 Patent, Defendant engaged in acts that infringe the '658 Patent.

38. Iron Oak has been damaged as a result of Defendant's infringing conduct. Defendant is, thus, liable to Iron Oak in an amount that adequately compensates it for, which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

PRAYER

WHEREFORE, Iron Oak requests judgment against Defendants as follows:

1. An award of damages, increased as deemed appropriate by the court, under 35 U.S.C. § 284;

2. An award of attorneys' fees under 35 U.S.C. § 285;

3. An award of prejudgment interest and costs of the action; and

4. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

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

April 25, 2018.

Respectfully submitted,

/s/ Al Deaver

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Certificate of Service

I certify that on April 25, 2018, a true and correct copy of the foregoing document with attachments was served on counsel of record via the Court's ECF system .

/s/ Al Deaver
Albert B. Deaver, Jr.