

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
AKRON DIVISION**

ANUWAVE LLC,

Plaintiff,

v.

SPRINT CORPORATION

Defendant.

Civil Action No.

TRIAL BY JURY DEMANDED

COMPLAINT FOR INFRINGEMENT OF PATENT

COMES NOW, Plaintiff Anuwave LLC (“Anuwave” or Plaintiff), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin defendant Federal Equipment Company, (hereinafter “Defendant”), from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Anuwave, from U.S. Patent No. 8,295,862 (the “‘862 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. §271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Anuwave is a Texas entity with its principal place of business at 15922 Eldorado Parkway, Suite 500-1574, Frisco, TX 75035.

3. Upon information and belief, Defendant is a corporation organized under the laws of Delaware, having a principal place of business at 6200 Sprint Parkway, Overland Park, Kansas,

66251. Upon information and belief, Defendant may be served with process at Corporation Service Company, 50 West Broad Street, Suite 1330, Columbus, Ohio 43215.

4. Anuwave is further informed and believes, and on that basis alleges, that Defendant operates the website www.sprint.com, which is in the business of selling and providing communication services, amongst other services. Defendant derives a portion of its revenue from sales and distribution via electronic transactions conducted on and using at least, but not limited to, the Internet websites located at www.sprint.com and/or the functionality found through the “shop now,” “sign in” and “login” functions, and incorporated and/or related systems (collectively the “Sprint Website”). Anuwave is informed and believes, and on that basis alleges, that, at all times relevant hereto, Sprint has done and continues to do business in this judicial district, including, but not limited to, providing products/services to customers located in this judicial district by way of the Sprint Website.

5. Defendant operates a “brick and mortar” storefront in this judicial district located at 4470 Belden Village Street, Canton, Ohio 44718. Anuwave is informed and believes, and on that basis alleges, that Defendant derives a portion of its revenue from sales and distribution via transactions conducted at this storefront location.

JURISDICTION AND VENUE

6. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq.*

7. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

8. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction as well as because of the injury to Anuwave, and the cause of action Anuwave has risen, as alleged herein.

9. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Ohio Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware and in this judicial District.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Defendant resides in this District under the Supreme Court's opinion in *TC Heartland v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017) through its regular and established place of business in this District.

FACTUAL ALLEGATIONS

11. On October 23, 2012, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '862 patent, entitled "Method and system to enable communication through SMS communication channel" after a full and fair examination. (Exhibit A).

12. Anuwave is presently the owner of the patent, having received all right, title and interest in and to the '862 patent from the previous assignee of record. Anuwave possesses all rights of recovery under the '862 patent, including the exclusive right to recover for past infringement.

13. The '862 patent contains two independent claims and five dependent claims. Defendant commercializes, inter alia, methods that perform all the steps recited in at least one claim of the '862 patent.

14. The invention claimed in the '862 patent comprises a method for enabling communication through SMS that lists all services at a terminal station available with an SMS gateway according to meta information found at the terminal station.

15. The method allows a user to type in a desired parameter not listed at the terminal station using a network aware application. When the request is submitted to the SMS gateway, the gateway issues a response.

16. The technology embodied by the '862 patent improved mobile devices at the time of the invention by providing a network aware application on a mobile device that can communicate using SMS communication channels without resorting to other IP based communication channels in order to allow users to access to certain information over a telecommunication network.

DEFENDANT'S PRODUCTS

17. Defendant offers solutions, such as the "SMS Text Messaging Short Code 9999" solution (the "Accused Instrumentality"), that enable communication through an SMS channel as recited in the preamble of claim 7 of the '862 patent, whereby any of Defendant's customers can use an SMS-enabled mobile device to send text commands. For example, as shown in Defendant's website, the Accused Instrumentality enables users to send commands via SMS messages.¹

¹ <https://community.sprint.com/t5/Services-Network-Support/SOLUTION-SMS-Text-Messaging-Short-Code-9999-Commands/ta-p/982282>



My Sprint

Support

Shop

Activate

SOLUTION: SMS Text Messaging Short Code 9999 Commands

Below is a list of 9999 message commands as of 11/7/2017.

If you are experiencing any errors select Retry or Cancel, then restart your phone. If your problem persists [click here to reply to this post](#).

Details

- You can send a text message to short code address 9999 to manage your blocked and allowed address lists.
- When the you send a command to 9999, a confirmation text message is sent back indicating completion of the request.
 - Example: To block a phone number:
 - Compose message to short code address 9999 with messaging text **Block 5555551234** and send the message.
 - 9999 responds with: **SprintFreeMsg: Messages to and from "5555551234" are now blocked. You will still receive legal and account related messages.**
- Do not enter < and > characters as part of the command. They are included to show you where specific data should be entered.

18. As recited in the first step of claim 7, the Accused Instrumentality lists all services at a terminal station available with an SMS gateway according to meta information found at the terminal station. For example, as shown in Defendant's website (shown below), the accused instrumentality lists all services (e.g. the system will show all available SMS services and their corresponding SMS commands when a user sends "HELP" command; available services include: Block, Allow, List, Spam etc.) at a terminal station (e.g. a mobile phone) that are available with an SMS gateway (e.g. the accused instrumentality's SMS gateway/server) according to meta information available at the terminal station (e.g. the SMS gateway lists available services).²

² *Id.*

Help Commands

<u>Text the Following Command to 9999</u>	<u>Resulting Action</u>	<u>Response Text Sent Back to the Customer</u>
Help	Provides help message about how to use 9999 short code	<u>SprintFreeMsg: Text these commands to 9999 to manage message blocking: block, allow, list, spam, help. Text "help <command>" to learn about each command.</u>
Help block	Provides help message about how to use block command	SprintFreeMsg: For example, text "block 5551234567" to 9999 to block all messages to and from address 5551234567. Text "help address" for more address formats.
Help allow	Provides help message about how to use allow command	SprintFreeMsg: For example, text "allow 5551234567" to 9999 to allow all messages to and from address 5551234567. Text "help address" for more address formats.
Help address	Provides help message about address formats allowed with 9999	SprintFreeMsg: Address can be 10 digit, shortcode, email address or domain, full international number incl. 011. Spaces and format characters are not allowed.
Help list	Provides help message about using the list option with 9999	SprintFreeMsg: To see your blocked or allowed address list, text "list" to 9999.
Help spam	Provides help message about using the spam option with 9999	SprintFreeMsg: For example, text "spam 555551234567" to report spam from 5551234567. This will also block all messages from 5551234567.

<p><u>Help all</u></p>	<p>Provides help messages for all 9999 capabilities.</p>	<p><u>SprintFreeMsg: Text these commands to 9999 to manage message blocking: block, allow, list, spam, help. Text "help <command>" to learn about each command.</u></p> <p>SprintFreeMsg: For example, text "block 5551234567" to 9999 to block all messages to and from address 551234567. Text "help address" for more address formats.</p> <p>SprintFreeMsg: To see your blocked or allowed address list, text "list" to 9999.</p> <p>SprintFreeMsg: Address can be 10 digit, shortcode, email address or domain, full international number incl. 011. Spaces and format characters are not allowed.</p> <p>SprintFreeMsg: For example, text "spam 5551234567" to report spam from 5551234567. This will also block all messages from 5551234567.</p>
<p>help <invalid command></p>	<p>Provides help message about 9999 commands</p>	<p>SprintFreeMsg: Text these commands to 9999 to manage message blocking: block, allow, list, spam, help. Text "help <command>" to learn about each command.</p>

19. As recited in the second step of claim 7, the Accused Instrumentality includes, upon selecting a service, a network aware application configured to allow a user to type in a desired parameter. For example, as shown in Defendant’s website (shown below), the Accused Instrumentality is configured to, upon a user’s selection of a service (e.g. a user can select the option to Block/Allow/Spam by sending the corresponding command) the accused instrumentality implements a network aware application (e.g., the accused instrumentality) configured to allow a user to type in a desired parameter (e.g., the user can select the “Block/Allow/Spam” service by entering the corresponding “Block/Allow/Spam” command and can then enter short code/mdn/domain of their choosing (desired parameter) in order to request the desired information).

Block Commands

Text the Following Command to 9999	Resulting Action	Response Text Sent Back to the Customer
Block	Responds with an error message	SprintFreeMsg: Sorry, the sender must be at least 4 characters long. Please try again.
Block <1 to 3 chars>	Responds with an error message for addresses under 4 characters long	SprintFreeMsg: The sender you tried to block, "<1 to 3 chars>" must be at least 4 characters long. Please try again.
Block all	Blocks messaging to and from all addresses.	SprintFreeMsg: Messages to and from all addresses are now blocked. You will still receive legal and account related messages.
<u>Block <shortcode></u>	Blocks messages to and from the specified shortcode and removes it from the allow list	<u>SprintFreeMsg: Messages to and from "<shortcode>" are now blocked. You will still receive legal and account related messages.</u>
<u>Block <mdn></u>	Blocks messages to and from the specified MDN and removes it from the allow list	<u>SprintFreeMsg: Messages to and from "<mdn>" are now blocked. You will still receive legal and account related messages.</u>
<u>Block <user@domain></u>	Blocks messages to and from the specified email address and removes it from the allow list	<u>SprintFreeMsg: Messages to and from "<user@domain>" are now blocked. You will still receive legal and account related messages.</u>

<u>Block <domain></u>	Blocks messages to and from the specified domain and removes it from the allow list	<u>SprintFreeMsg: Messages to and from "<domain>" are now blocked. You will still receive legal and account related messages.</u>
Block email	Blocks message to and from email.	SprintFreeMsg: Messages to and from email are now blocked. You will still receive legal and account related messages.

Allow Commands

Text the Following Command to 9999	Resulting Action	Response Text Sent Back to the Customer
Allow	Responds with an error message.	SprintFreeMsg: The sender must be at least 4 characters long. Please try again.
Allow <1 to 3 chars>	Responds with an error message for addresses under 4 characters long	SprintFreeMsg: The sender you tried to allow, "<1 to 3 chars>" must be at least 4 characters long. Please try again.
<u>Allow <shortcode></u>	Adds shortcode to the allow list and removes it from the block list	<u>SprintFreeMsg: Messages to and from "<shortcode>" are now allowed. You will still receive legal and account related messages.</u>
<u>Allow <mdn></u>	Adds MDN to the allow list and removes it from the block list	<u>SprintFreeMsg: Messages to and from "<mdn>" are now allowed. You will still receive legal and account related messages.</u>

<u>Allow <user@domain></u>	Adds email address to the allow list and removes it from the block list	<u>SprintFreeMsg: Messages to and from "<user@domain>" are now allowed. You will still receive legal and account related messages.</u>
<u>Allow <domain></u>	Adds domain to the allow list and removes it from the block list	<u>SprintFreeMsg: Message to and from "<domain>" are now allowed.</u>
Allow email	Removes block on email	SprintFreeMsg: Messages to and from all email addresses are now allowed.
Allow all	Removes all items from the block list	SprintFreeMsg: Messages to and from all addresses are now allowed.

List Commands

Text the Following Command to 9999	Resulting Action	Response Text Sent Back to the Customer
Blocklist or Blist	If block list has entries: Makes the block list the active list and issues the list command	SprintFreeMsg: You have n blocked addresses: "XXXXX" "YYYYY" ...
	If block list does not have entries: Makes the block list the active list and responds with a message indicating the block list has no entries	SprintFreeMsg: You have no blocked addresses. All messages will be allowed.
Allowlist	If allow list has entries: Makes the allow list the active list and issues the list command	SprintFreeMsg: You have n allowed addresses: "XXXXX" "YYYYY" "ZZZZ". You will still receive legal and account-related notices.

Spam Commands		
Text the Following Command to 9999	Resulting Action	Response Text Sent Back to the Customer
<u>Spam <shortcode></u>	Provides shortcode to be investigated for spam and blocks shortcode	<u>SprintFreeMsg: Thanks for reporting spam sent by <shortcode>.</u> <u>SprintFreeMsg: Message to and from "<shortcode>" are now blocked. You will still receive legal and account related messages.</u>
<u>Spam <mdn></u>	Provides MDN to be investigated for spam and blocks MDN	<u>SprintFreeMsg: Thanks for reporting spam sent by <mdn>.</u> <u>SprintFreeMsg: Message to and from "<mdn>" are now blocked. You will still receive legal and account related messages.</u>
<u>Spam <user@domain></u>	Provides email address to be investigated for spam and blocks email address	<u>SprintFreeMsg: Thanks for reporting spam sent by <user@domain>.</u> <u>SprintFreeMsg: Message to and from "<user@domain>" are now blocked. You will still receive legal and account related messages.</u>
<u>Spam <domain></u>	Provides domain to be investigated for spam and blocks domain.	<u>SprintFreeMsg: Thanks for reporting spam sent by <domain>.</u> <u>SprintFreeMsg: Message to and from "<domain>" are now blocked. You will still receive legal and account related messages.</u>

Invalid Commands

Text the Following Command to 9999	Resulting Action	Response Text Sent Back to the Customer
<any commands not listed>	Responds with an error message	SprintFreeMsg: Sorry, we didn't understand "<invalid command>". Text "Help" to 9999 if you want to learn more about managing your messaging block list.

20. As recited in the third step of claim 7, the Accused Instrumentality submits a request to the SMS gateway (e.g., the user can select the “Block/Allow/Spam” service by entering the

corresponding “Block/Allow/Spam” command and can then enter short code/mdn/domain of their choosing (desired parameter) in order to request the desired information).³

21. Upon information and belief, the accused instrumentality utilizes Common Short Codes (CSCs) (e.g. a user must text to the short code, in order to utilize the accused instrumentality’s SMS gateway/server).

22. As recited in the fourth step of claim 7, the Accused Instrumentality implements an SMS gateway that responds to a user’s request with a response (e.g. upon the SMS gateway/servers’ receipt of a user’s request, the gateway responds to the user by sending the information the user requested; the requested information being displayed on the user’s mobile device). The user can select the “Block/Allow/Spam” service by entering the corresponding “Block/Allow/Spam” command and can then enter short code/mdn/domain of their choosing (desired parameter) in order to request the desired information.⁴

23. As recited in the fifth step of claim 7, the Accused Instrumentality includes a desired parameter the desired parameter (e.g., the short code/mdn/domain the user enters in combination with the “Block/Allow/Spam” service command) is not listed at the terminal station (e.g. the mobile device).⁵

24. The elements described in paragraphs 17-23 are covered by at least claim 7 of the ‘862 patent. Thus, Defendant’s use of the Accused Product is enabled by the method described in the ‘862 patent.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

INFRINGEMENT OF THE '862 PATENT

25. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 24.

26. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing the '862 patent.

27. Defendant has had knowledge of infringement of the '862 patent at least as of the service of the present complaint.

28. Defendant has directly infringed and continues to directly infringe at least claim 7 of the '862 patent by using, at least through internal testing, the Accused Instrumentality without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '862 patent, Anuwave has been and continues to be damaged.

29. By engaging in the conduct described herein, Defendant has injured Anuwave and is thus liable for infringement of the '862 patent, pursuant to 35 U.S.C. § 271.

30. Defendant has committed these acts of infringement without license or authorization.

31. As a result of Defendant's infringement of the '862 patent, Anuwave has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

32. Anuwave will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Anuwave is entitled to compensation for any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

DEMAND FOR JURY TRIAL

33. Anuwave demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Anuwave prays for the following relief:

a. That Defendant be adjudged to have directly infringed the Patent-In-Suit either literally or under the doctrine of equivalents;

b. An accounting of all infringing sales including, but not limited to, those sales not presented at trial;

c. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '862 patent;

d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Anuwave for the Defendant's past infringement and any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

e. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

f. That Defendant be directed to pay enhanced damages, including Anuwave's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

g. That Anuwave have such other and further relief as this Court may deem just and proper.

Dated: November 26, 2018

Respectfully Submitted,

SAND & SEBOLT, LPA

By: /s/Howard L. Wernow

Howard L. Wernow (Ohio Bar No. 0089019)

SAND & SEBOLT, LPA

Aegis Tower - Suite 1100

4940 Munson Street, N. W.

Canton, Ohio 44718

Phone: 330-244-1174

Fax: 330-244-1173

howardw@sandandsebolt.com

ATTORNEYS FOR PLAINTIFF

ANUWAVE LLC