

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

WAVE LINX LLC,

Plaintiff,

v.

AVAYA INC.,

Defendant.

Civil Action No.:

TRIAL BY JURY DEMANDED

COMPLAINT FOR INFRINGEMENT OF PATENT

Now comes, Plaintiff, Wave Linx LLC (“Plaintiff” or “Wave Linx”), by and through undersigned counsel, 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 Avaya Inc. (hereinafter “Defendant”), from infringing and profiting, in an illegal and unauthorized manner, and without authorization and/or consent from Plaintiff from U.S. Patent No. 8,843,549 (“the ‘549 Patent” or the “Patent-in-Suit”), which is attached hereto as Exhibit A and incorporated herein by reference, and pursuant to 35 U.S.C. §271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff is a Texas limited liability company with its principal place of business at 2108 Dallas Parkway, Suite 214, #1010, Plano, TX 75093.

3. Upon information and belief, Defendant is a corporation organized under the laws of Delaware, having a principal place of business at 4655 Great American Parkway, Santa Clara, CA 95054. Upon information and belief, Defendant may be served with process c/o one of the following: (i) The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street,

Wilmington, Delaware 19801 and/or (ii) Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

4. Plaintiff is further informed and believes, and on that basis alleges, that Defendant operates the website www.avaya.com, which is in the business of 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, its Internet website located at www.avaya.com, and its incorporated and/or related systems (collectively the “Avaya Website”). Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Defendant 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 Avaya Website.

JURISDICTION AND VENUE

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

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

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

8. Defendant is subject to this Court’s specific and general personal jurisdiction pursuant to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; (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; and (iii) being incorporated in this District.

9. 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 incorporation, and regular and established place of business in this District.

FACTUAL ALLEGATIONS

10. On October 23, 2012, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ‘549 Patent, entitled “Streaming Method for Transmitting Telephone System Notifications to Internet Terminal Devices in Real Time” after a full and fair examination. The ‘549 Patent is attached hereto as Exhibit A and incorporated herein as if fully rewritten.

11. Plaintiff is presently the owner of the ‘549 Patent, having received all right, title and interest in and to the ‘549 Patent from the previous assignee of record. Plaintiff possesses all rights of recovery under the ‘549 Patent, including the exclusive right to recover for past infringement.

12. The invention claimed in the ‘549 Patent comprises a method for an application involving real-time notification of a client by a telephone switching system.

13. The ‘549 Patent contains two independent claims and eight dependent claims.

14. Claim 1 of the ‘549 Patent states:

“1. A method for an application involving real-time notification of a client by a telephone switching system, comprising:

a) opening a connection between the client and a server;

b) transmitting notification messages from the telephone switching system to the server using a networking protocol;

c) transforming the notification messages at the server into a programming language code and using said networking protocol for sending the programming language code to the client, wherein the programming language code is executable by the client's browser;

d) using an HTTP streaming mechanism for transmission of the notification from the server to the browser through the open connection, whereby the connection between the client and the server remains open in the intervening period between the transmission of individual notification messages; and

e) executing the programming language codes by the browser whereby the respective notification messages are displayed or outputted at the client.” *See* Exhibit A.

15. Defendant commercializes, inter alia, methods that perform all the steps recited in at least one claim of the ‘549 Patent. More particularly, Defendant commercializes, inter alia, methods that perform all the steps recited in Claim 1 of the ‘549 Patent. Specifically, Defendant makes, uses, sells, offers for sale, or imports a method that encompasses that which is covered by Claim 1 of the ‘549 Patent.

16. Dependent Claim 4 of the ‘549 patent states: “The method according to claim 1, further comprising: using the HTTP protocol for the client-server connection.” *See* Exhibit A.

17. Defendant commercializes, inter alia, methods that perform all the steps recited in Claim 4 of the ‘549 Patent. Specifically, Defendant makes, uses, sells, offers for sale, or imports a method that encompasses that which is covered by Claim 4 of the ‘549 Patent.

DEFENDANT’S PRODUCTS

18. During the enforceability period of the ‘549 patent, Defendant offered solutions, such as the “Avaya Equinox Meetings Online” system (the “Accused Instrumentality”), that enables a method for an application involving real-time notification of a client by a telephone switching system. For example, the Accused Instrumentality performs the method of an

application involving real-time notification of a client by a telephone switching system. A non-limiting and exemplary claim chart comparing the Accused Instrumentality to Claim 1 of the '549 Patent is attached hereto as Exhibit B and is incorporated herein as if fully rewritten.

19. As recited in Claim 1, the Accused Instrumentality, on information and belief, the accused instrumentality practices a method for an application (e.g., Avaya Equinox Online Meetings client application) involving real-time notification (e.g., entry/exit tone of a participant in a meeting or visual notification of a participant entry/exit) of a client (e.g., a user who is utilizing web browser interface/app interface of Avaya Equinox Online meetings) by a telephone switching system (e.g., dial-in telephone). *See* Exhibit B.

20. As recited in one step of Claim 1, the Accused Instrumentality practices opening a connection (e.g., joining/starting a meeting) between the client (e.g., a user who is utilizing web browser interface/app interface of Avaya Equinox Online meetings) and a server (e.g., Avaya Equinox Online Meetings server). *See* Exhibit B.

21. As recited in another step of Claim 1, the Accused Instrumentality practices transmitting notification messages (e.g., entry/exit tone of a participant in a meeting or visual notification of a participant entry/exit) from the telephone switching system (e.g., a participant who is joining or leaving the meeting using dial-in telephone) to the server (e.g., Avaya Equinox Online Meetings server) using a networking protocol (e.g., IP network). *See* Exhibit B.

22. As recited in another step of Claim 1, the Accused Instrumentality practices transforming the notification messages (e.g., entry/exit tone of a participant in a meeting or visual notification of a participant entry/exit) at the server (e.g., Avaya Equinox Online Meetings server) into a programming language code (e.g., markup language code such as HTML code) and using said networking protocol (e.g., IP) for sending the programming language code (e.g., markup

language code such as HTML code) to the client (e.g., a user who is utilizing web browser interface/app interface of Avaya Equinox Online Meetings), wherein the programming language code is executable by the client's browser (e.g., web browser of the user such as Google Chrome executes the code pertaining to a participant's entry or exit that is executed so that the Avaya application can play a tone or display a visual notification). *See Exhibit B.*

23. As recited in another step of Claim 1, the Accused Instrumentality practices using an HTTP streaming (e.g., meeting session streaming to a user's web browser) mechanism for transmission of the notification (e.g., entry/exit tone of a participant in a meeting or visual notification) from the server (e.g., Avaya Equinox Online Meetings server) to the browser (e.g., web browser of the user such as Google Chrome) through the open connection (e.g., ongoing meeting session), whereby the connection between the client (e.g., a user who is utilizing web browser interface/app interface of Avaya Equinox Online Meetings) and the server (e.g., Avaya Equinox Online Meetings server) remains open in the intervening period between the transmission of individual notification messages. *See Exhibit B.*

24. As recited in another step of Claim 1, the Accused Instrumentality practices executing the programming language codes (e.g., markup language code such as HTML code) by the browser (e.g., web browser of the user such as Google Chrome) whereby the respective notification messages are displayed or outputted (e.g., played sound or visual notification) at the client (e.g., the user who is utilizing web browser interface/app interface of Avaya Equinox Online Meetings). *See Exhibit B.*

25. The elements described in paragraphs 19-24 are covered by at least Claim 1 of the '549 Patent. Thus, Defendant's use of the Accused Instrumentality is enabled by the method described in the '549 Patent.

26. As to Claim 4, the Accused Instrumentality practices the method using the HTTP protocol for the client-server connection. *See* Exhibit B.

27. The elements described in paragraphs 19-24, and 26 are covered by at least Claim 4 of the '549 Patent. Thus, Defendant's use of the Accused Instrumentality is enabled by the method described in the '549 Patent.

INFRINGEMENT OF THE '549 PATENT

28. Plaintiff realleges and incorporates by reference all of the allegations set forth in Paragraphs 1 to 27.

29. In violation of 35 U.S.C. § 271, Defendant has directly infringed the '549 Patent.

30. Defendant has had knowledge of infringement of the '549 Patent at least as of the service of the present Complaint.

31. Defendant has directly infringed at least one claim of the '549 Patent by using, at least through internal testing or otherwise, 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 '549 Patent, Plaintiff has been and continues to be damaged.

32. By engaging in the conduct described herein, Defendant has injured Plaintiff and is thus liable for infringement of the '549 Patent, pursuant to 35 U.S.C. § 271.

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

34. As a result of Defendant's infringement of the '549 Patent, Plaintiff 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.

35. Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the claim charts that it provides with this Complaint. The claim chart depicted in Exhibit B is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rule of Civil Procedure and does not represent Plaintiff's preliminary or final infringement contentions or preliminary or final claim construction positions.

DEMAND FOR JURY TRIAL

36. Plaintiff demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. That Defendant be adjudged to have directly infringed the '549 Patent either literally or under the doctrine of equivalents;
- b. An accounting of all infringing sales and damages including, but not limited to, those sales and damages 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 '549 Patent;
- d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Plaintiff for the Defendant's past 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 Plaintiff's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

g. That Plaintiff be granted such other and further relief as this Court may deem just and proper.

Dated: March 29, 2019

Respectfully submitted,

/s/ Timothy Devlin

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