

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

WIRELESS COMMUNICATIONS
MOBILE LLC,

Plaintiff,

V.

VIVINT, Inc.

Defendant.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Wireless Communications Mobile LLC (“Plaintiff”), by and through its attorneys, for its Complaint for patent infringement against Vivint, Inc. (“Defendant” or “Vivint”) and demanding trial by jury, hereby alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendant's unauthorized use, sale, and offer to sell in the United States of products and/or systems that infringe Plaintiff's United States patent, as described herein.

2. Defendant manufactures, provides, uses, sells, offers for sale, imports, and/or distributes infringing products; and encourages others to use its products and services in an infringing manner.

3. Plaintiff seeks past and future damages and prejudgment and post-judgment interest for Defendant's infringement of U.S. Patent 9,125,079 (the "'079 patent").

II. PARTIES

4. Plaintiff Wireless Communications Mobile LLC is a limited liability company organized and existing under the laws of Delaware. Its principal place of business is 200 Continental Dr., Suite 401, Newark, DE 19713.

5. Upon information and belief, Defendant Vivint, Inc. is a corporation organized under the laws of the State of Utah with a principal place of business located at 4931 North 300 West, Provo, Utah 84604, and is a wholly-owned subsidiary of Vivint Group, Inc., a corporation organized under the laws of the State of Delaware.

6. On information and belief, Defendant has registered to do business in Texas, and Defendant's instrumentalities that are alleged herein to infringe were and continue to be used, imported, offered for sale, and/or sold in the Eastern District of Texas.

III. JURISDICTION AND VENUE

7. This is an action for patent infringement which arises under the patent laws of the United States, in particular, 35 U.S.C. §§ 271, 281, 283, 284, and 285.

8. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction, pursuant to due process and the Texas Long-Arm Statute, due at least to its business in this forum, including at least a portion of the infringement alleged herein.

10. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts within the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the

laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas; and, upon information and belief, Defendant has registered with the Texas Secretary of State to conduct business in Texas.

11. More specifically, Defendant, directly and/or through intermediaries, ships, distributes, uses, offers for sale, sells, and/or advertises products and services in the United States, the State of Texas, and the Eastern District of Texas including but not limited to the Accused Instrumentalities as detailed below. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits and has solicited customers in the State of Texas and in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use and have used the Defendants' products and services in the State of Texas and in the Eastern District of Texas. Upon information and belief, Defendant utilizes resellers including in Rusk, De Kalb, Clarksville, Reno, and Cooper, TX.

12. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b). On information and belief, Defendant has transacted business in this district, and has directly committed acts of patent infringement in this district.

IV. FACTUAL BACKGROUND

13. Plaintiff is the owner of the entire right, title, and interest of the '079 patent, including the right to recover for past infringement, covering wireless monitoring device technologies used in various wireless monitoring products, including the '079 patent.

14. The '079 patent, entitled "PROGRAMMABLE COMMUNICATOR," was filed on Aug. 8, 2014 and issued on Sep. 1, 2015.

15. The '079 patent is a continuation of application No. 14/175,171, filed on Feb. 7, 2014, now Pat. No. 8,872,624, which is a continuation of application No. 13/934,763, filed on Jul. 3, 2013, now Pat. No. 8,648,717, which is a continuation of application No. 13/801,773, filed on Mar. 13, 2013, now Pat. No. 8,542,111, which is a continuation of application No. 12/538,603, filed on Aug. 10, 2009, now Pat. No. 8,094,010, which is a continuation of application No. 11/329,212, filed on Jan. 10, 2006, now Pat. No. 7,583,197, which is a continuation of application No. 10/296,571, filed as application No. PCT/EPOI/05738 on May 18, 2001, now abandoned.

V. COUNTS OF PATENT INFRINGEMENT

16. Plaintiff alleges that Defendant has infringed and continues to infringe the '079 patent (the "Asserted Patent").

COUNT ONE INFRINGEMENT OF U.S. PATENT 9,125,079

17. Plaintiff incorporates by reference the allegations in all preceding paragraphs as if fully set forth herein.

18. The '079 Patent provides a technical solution, by disclosing a technical data monitoring device establishing a wireless communication link with a programmable interface of a programmable cellular telephone comprising "a new and improved communicating apparatus to address the communication needs of children and elderly persons and for programmable data tags for monitoring the status of associated technical equipment." '079 Patent, Col. 9, ll. 29-33.

Direct Infringement

19. On information and belief, Defendant, without authorization or license from Plaintiff, has been and is presently directly infringing the '079 Patent, either literally or equivalently, as infringement is defined by 35 U.S.C. § 271(a), including through making, using, (including for testing purposes), selling and offering for sale articles infringing one or more claims of the '079 Patent. Defendant is thus liable for direct infringement pursuant to 35 U.S.C. § 271(a). Exemplary infringing instrumentalities include the data monitoring devices described at <https://www.vivint.com/products> (collectively the "Vivint Accused Instrumentalities").

20. On information and belief, the Vivint Accused Instrumentalities are a non-limiting example that meets all limitations of claim 1 of the '079 Patent, either literally or equivalently.

21. Claim 1 of the '079 patent states:

A technical data monitoring device for use with a wireless data monitoring network, the technical data monitoring device comprising:

- (a) a wireless communications circuit, the technical data monitoring device configured to establish a wireless communication link with a programmable interface of a programmable cellular telephone,
- (b) the technical data monitoring device configured to send and/or receive wireless packet switched data transmissions,
- (c) the technical data monitoring device having an associated status condition,
- (d) the technical data monitoring device configured to generate data and send data over the wireless communication link for processing by the programmable cellular telephone periodically or in response to instructions received in a wireless packet switched message from the programmable cellular telephone,
- (e) wherein the data from the technical data monitoring device is (1) sent to be processed and displayed by the programmable cellular telephone and/or (2) sent to be processed and forwarded by the programmable cellular telephone to an Internet website via one or more General Packet Radio Service (GPRS), or other wireless packet switched data messages,

(f) wherein the technical data monitoring device is configured to form part of the wireless data monitoring network in communication with the programmable cellular telephone; and

(g) at least one technical device or system, the at least one technical device or system being at least one selected from the group consisting of a pressure sensor, a heat sensor, a mechanical displacement sensor, a speed sensor, a temperature sensor, a sound threshold sensor, a movement sensor, an electrical power sensor, an infra-red radiation detector, a proximity detection sensor, a heart rate sensor, a water sensor, a location processing module, a GPS Global Positioning Systems module, a sensor for detecting any physical characteristic of the human skin, and a health monitoring system of one or more sensors, a sports performance monitoring system of one or more sensors, a domestic appliance monitoring system of one or more sensors, and a home security monitoring system of one or more sensors,

(h) wherein the data sent by the technical data monitoring device represents at least one of pressure data, heat data, mechanical displacement data, speed data, temperature data, sound threshold data, movement data, electrical power data, infra-red radiation data, proximity detection data, heart rate data, body temperature data, health data, water detection data, location data, GPS data, sports performance data, domestic appliance data, and home security data.

22. Specifically, Defendant sells a technical data monitoring device for use with a wireless data monitoring network. *See e.g.*, <https://www.vivint.com/products> and <https://www.vivint.com/products/smart-hub> (“No more wandering the house flipping switches and punching keypads before bed. Vivint Smart Hub bundles all your smart home controls in one place, giving you control of lights, locks, garage doors, thermostats, and security systems from one spot.”) For example, Vivint technical data monitoring device such as Smart Hub, SkyControl and Go Control uses wireless network (such as Wi-Fi, Z-Wave, 345Mhz and/or dual band 802.11 b/g/n Wi-Fi/LTE cellular module) to monitor technical data and communicate with other wireless programmable devices. These devices have wireless communications circuits. *See id.* (“It takes a secure wireless network to create complete home security. And that’s why Smart Hub encrypts smart home signals—to protect your smart home devices and archived video recordings. Rest easy knowing your system, your home, and the people in it are safe.”) The

Vivint technical data monitoring devices use the wireless communications circuit to establish links to a programmable interface of a programmable cellular telephone, for example, a mobile app (“Vivint Smart Home App”) running on a smartphone.

23. According to claim 1(b) of the '079 Patent, the Vivint Accused Instrumentalities are configured to send and/or receive wireless packet switch data transmissions. The device is configured to send and/or receive wireless packet switched data (such as critical status information, alerts, event notification alarm and/or emergency features). The wireless networks (such as Wi-Fi, Z-Wave, 345Mhz and/or dual band 802.11 b/g/n Wi-Fi/LTE cellular module) send and/or receive data in the form of packet switched data transmission. *See*

https://www.assets.s3.amazonaws.com/global/vivint.com/Support/images/Vivint_SmartHubV2_GettingStartedGuide_ENU%20-%20revA.2.pdf, page 2; *see also* <https://www.vivint.com/products/smart-hub>.

24. According to claim 1(c) of the '079 Patent, the Vivint Accused Instrumentalities have many status conditions, including, for example: armed, not armed, alerts, event notification alarm and/or emergency features etc. *See id.*

25. According to claim 1(d) of the '079 Patent, the Vivint Accused Instrumentalities are configured to generate data and to send data over the wireless communication link for processing by the programmable cellular telephone. The device is also configured to generate data (alarm and notifications) associated with sensors (such as door/window sensor, motion sensor, glass break detector, smoke detector, CO detector, tilt sensor, water sensor and/or flood/freeze sensor) and send it over the wireless communication link for processing by the programmable cellular telephone. Vivint Smart Home App which when installed on the

programmable cellular telephone (such as smartphones) connects over wireless communication network with the panel to send and/or receive notifications and alerts. *See id.*

26. According to claim 1(e) of the '079 Patent, the sent data is either displayed by the programmable cellular telephone and/or sent to an Internet website via GPRS or other wireless packet switched protocols. The data (alarm and/or notifications) associated with the Vivint products is sent to the programmable cellular telephone and displays the data on cellular telephone via Vivint Smart Home App. *See* <https://www.vivint.com/products/app>.

27. According to claim 1(f) of the '079 Patent, the Vivint Accused Instrumentalities are configured as part of the wireless data monitoring network along with the programmable cellular telephone. *See id.*

28. According to claim 1(g) of the '079 Patent, the Vivint Accused Instrumentalities consist of many members of this group, including at least a home security monitoring system of one or more sensors (such as door/window sensor, motion sensor, glass break detector, smoke detector, CO detector, tilt sensor, water sensor and/or flood/freeze sensor). *See* <https://support.vivint.com/s/> (“Control your entire smart home from bed, the kitchen, or the garage with a convenient, secondary smart home hub. Vivint Glance Display mounts to a wall or rests on a coffee table and gives you access to cameras, thermostats, lights, smoke detectors and more.”)

29. According to claim 1(h) of the '079 Patent, the data sent by the technical data monitoring device represents at least home security data associated with large range of sensors which integrates with at least one of the sensors (such as door/window sensor, motion sensor, glass break detector, smoke detector, CO detector, tilt sensor, water sensor and/or flood/freeze sensor). *See id.*

Post-Suit Willful Infringement

30. Defendant has had actual knowledge of the '079 Patent at least as of service of this Complaint.

31. Notwithstanding this knowledge, Defendant continues to knowingly or with reckless disregard willfully infringe the '079 Patent. Defendant has thus had actual notice of infringement of the '079 Patent as of the filing of this complaint, and continue to act despite an objectively high likelihood that its actions constitute infringement of Plaintiff's valid patent rights, either literally or equivalently.

32. This objective risk was either known or so obvious that it should have been known to Defendant. Accordingly, Plaintiff seeks enhanced damages and reimbursement of its reasonable attorney fees pursuant to 35 U.S.C. §§ 284 and 285.

Indirect Infringement

33. Defendant is knowingly inducing their customers and/or end users to directly infringe the '079 Patent, with the specific intent to encourage such infringement, and knowing that the induced acts constitute patent infringement, either literally or equivalently.

34. Defendant's inducement includes, for example, providing data sheets, technical guides, demonstrations, software and hardware specifications, installation guides, and other forms of support that induce its customers and/or end users to directly infringe the '079 Patent. The Vivint Accused Instrumentalities are designed in such a way that when they are used for their intended purpose, the user infringes the '079 Patent, either literally or equivalently. Defendant knows and intends that customers that purchase the Vivint Accused Instrumentalities will use those products for their intended purpose. For example, Defendant's United States website: <https://www.vivint.com/products> instructs customers to use the Vivint Accused Instrumentalities in numerous infringing applications. In addition, Defendant specifically

intends that its customers, such as United States distributors, retailers and consumer product companies, will import, use, and sell infringing products in the United States in order to serve and develop the United States market for Defendant's infringing products.

35. As a result of Defendant's infringement, Plaintiff has suffered monetary damages, and is entitled to an award of damages adequate to compensate it for such infringement which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

VI. NOTICE

36. Plaintiff has complied with the notice requirement of 35 U.S.C. § 287 and does not distribute, sell, offer for sale, or make products embodying the Asserted Patent.

VII. JURY DEMAND

37. Plaintiff demands a trial by jury of all matters to which it is entitled to trial by jury, pursuant to FED. R. CIV. P. 38.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and seeks relief against Defendant as follows:

- A. That the Court determine that one or more claims of the Asserted Patent is infringed by Defendant, both literally and under the doctrine of equivalents;
- B. That the Court determine that one or more claims of the Asserted Patent is indirectly infringed by Defendant;
- C. That the Court award damages adequate to compensate Plaintiff for the patent infringement that has occurred, together with prejudgment and post-

judgment interest and costs, and an ongoing royalty for continued infringement;

- D. That the Court permanently enjoin Defendant pursuant to 35 U.S.C. § 283;
- E. A finding that this case is exceptional pursuant to 35 U.S.C. § 285;
- F. That the Court order Defendant to reimburse Plaintiff for its reasonable attorney fees pursuant to 35 U.S.C. § 285;
- G. That the Court determine that Defendant's infringements were willful;
- H. That the Court award enhanced damages against Defendant pursuant to 35 U.S.C. § 284; and
- I. That the Court award such other relief to Plaintiff as the Court deems just and proper.

Dated: April 25, 2019

Respectfully Submitted,

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