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

RAPHAEL THOMPSON,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. 1:19-cv-00899(RGA)
	)	
TCT MOBILE, INC., and	)	
TCT MOBILE (US) INC.	)	**JURY TRIAL DEMANDED**
	)	
Defendants.	)	
	)	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement under 35 U.S.C. § 271, *et seq*., in which Plaintiff

Raphael Thompson ("Thompson"), makes the following allegations against Defendants TCT

Mobile, Inc. and TCT Mobile (US) Inc., (collectively "the TCT Mobile Entities" or

"Defendants"):

Parties

1.   Plaintiff Thompson is an individual residing in Sharpsburg, Georgia.

2.   Thompson is the inventor and owner of Patent Nos. 8,868,053 (the "'053 Patent")

and 9,473,629 (the "'629 Patent"), collectively referred to herein as the "Patents-in-Suit.

Thompson owns all rights to recover for all past, present, and future infringement, including past

damages with respect to the Patents-In-Suit. True and correct copies of the '053 Patent and '629

Patents are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

3.   On information and belief, Defendant TCT Mobile, Inc. is a Delaware corporation

with its principal place of business at 25 Edelman, Irvine, CA 92618. The registered agent of

TCT Mobile, Inc. is Corporate Service Company located at 251 Little Falls Drive, Wilmington,

Delaware 19808. On information and belief, TCT Mobile, Inc. is a fully owned subsidiary of TCL Communication, Inc.

4.   On information and belief, Defendant TCT Mobile (US), Inc. is a Delaware corporation with its principal place of business at 25 Edelman, Irvine, CA 92618. The registered agent of TCT Mobile, Inc. is Corporate Service Company located at 251 Little Falls Drive, Wilmington, Delaware 19808. On information and belief, TCT Mobile (US), Inc. is a fully owned subsidiary of TCL Communication, Inc.

5.   On information and belief, TCL Communication Technology Holdings Limited, which maintains its principal place of business at 15/F, TCL Tower, Gaoxin Nan Yi Road, Nanshan District, Shenzhen, People's Republic of China ("PRC"), fully owns, Defendant TCT Mobile, Inc. and Defendant TCT Mobile (US), Inc.

6.   TCL Communication Technology Holdings Limited owns and operates the website https://blackberrymobile.com/us/ to offer for sale BlackBerry branded mobile phones.

7.   The TCT Mobile Entities own and operate the website http://www.tctusa.com to offer for sale BlackBerry branded mobile phones and Alcatel Branded phones.

8.   TCT Mobile, Inc. makes, uses, sells, offers for sale, or imports in the United States, mobile devices under its brand "BlackBerry" in this district and around the United States, including the mobile devices accused of patent infringement herein.

9.   TCT Mobile (US), Inc. makes, uses, sells, offers for sale, or imports in the United States, mobile devices under its brand "BlackBerry" in this district and around the United States, including the mobile devices accused of patent infringement herein.

10.   TCT Mobile, Inc. makes, uses, sells, offers for sale, or imports in the United States, mobile devices under its brand "Alcatel" in this district and around the United States, including the mobile devices accused of patent infringement herein.

11.   TCT Mobile (US), Inc. makes, uses, sells, offers for sale, or imports in the United States, mobile devices under its brand "Alcatel" in this district and around the United States, including the mobile devices accused of patent infringement herein.

Nature of the Action

12.   This is a civil action for the infringement of the 053 Patent and 629 Patents.

Venue and Jurisdiction

13.   This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

14.   Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

15.   Defendant TCT Mobile, Inc. is a Delaware corporation and therefore resides in this District. TCT Mobile, Inc. maintains a regular and established place of business in this District, has transacted business in this District, and committed acts of patent infringement in this District.

16.   Defendant TCT Mobile (US), Inc. is a Delaware corporation and therefore resides in this District. TCT Mobile (US), Inc. maintains a regular and established place of business in this District, has transacted business in this District, and committed acts of patent infringement in this District.

17.   Each of the TCT Mobile Entities is subject to this Court's specific and general personal jurisdiction pursuant to due process, due at least to their substantial business in this forum, including (i) certain 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 District.

The Patents-in-Suit

18.   The '053 Patent lawfully issued on October 21, 2014, and claims priority to Provisional Application No. 60/913,263, filed on April 20, 2007. The '053 Patent is titled "Communication Delivery Filter for Mobile Device."

19.   The '053 Patent is valid and enforceable.

20.   The '629 Patent lawfully issued on October 18, 2016. It is a continuation the U.S. Patent Application That led to the '629 Patent. The '629 also claims priority to Provisional Application No. 60/913,263, filed on April 20, 2007. The '629 Patent is titled "Communication Delivery Filter for Mobile Device."

21.   The '629 Patent is valid and enforceable.

22.   Raphael Thompson is the sole inventor in each of the Patents-in-Suit.

23.   The Patents-in-Suit are directed to methods, systems, and devices for various embodiments of a Nighttime Mode for cellular phones. Nighttime Mode allows may allow users to use their phones during nighttime hours without receiving unwanted calls or messages. For example, the Patents-in-Suit describe a "communication reception notification inhibitor" that may be enabled or disabled to carry out the functionality described in the '053 Patent. When enabled, this functionality includes causing a mobile device to inhibit a communication reception notification that would be presented during normal processing. Moreover, the Patents-in-Suit

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describe the use of an exempt communication characteristic associated with a potential

communication originator.

24.   The claims of the Patents-in-Suit encompass novel and non-obvious technology

that was neither well-understood, routine nor conventional to a skilled artisan at the time of the

invention. Such novel technology includes, but is not limited to, the enabling/disabling of a

message reception notification inhibitor, the use of an exempt message characteristic, the

capability to circumvent default operations of a mobile device, and the combination thereof.

25.   The specification describes embodiments directed to the Nighttime Mode as

follows:

> For example, you may wish to only receive your spouse's cell phone call during
> the Nighttime mode. You select his/her number from the address book to be
> Nighttime mode exempt. During the following night with the Nighttime mode
> turned on, your phone will only operate normal for your spouse's call and for all
> other callers the phone remains silent 112. A cell phone user may select as many
> or as few numbers to be Nighttime mode exempt.

(Exhibit A at col. 3, lines 39-46; see also **Exhibit B** at col. 3, lines 46-54.)

26.   Prior to the time of invention, cell phones were designed to include several

capabilities including text messaging, mobile applications, voice calls, alarm clocks,

configurable ring tones, *etc*. Therefore, the trend at the time was to make the mobile devices a

tool for providing alerts and improving the flow of communication to other individuals.

27.   The Patents-in-Suit recognized the need to counteract this trend by providing

methods and systems to selectively filter communications, particularly during nighttime. The

Patents-in-Suit state, "Therefore, there has become a need for a method for a selectable

Nighttime Mode that would stop notification of all incoming calls and messages, with the

exception of those from a contact that have been predetermined as important (or Nighttime Mode

exempt). The present invention process provides a unique, smart, and novel solution to the problem discussed." (**Exhibit A** at col. 1, lines 45-51; see also **Exhibit B** at col. 1, lines 49-55.)

28.   Claim 1 of the '053 Patent states, *inter alia*, "message notifications for any messages received at the mobile device are by default inhibited" and claim 11 of the '629 Patent states *inter alia* "the mobile device as a default, inhibits the provision of the user-indicator for the communication initiation." These limitations (hereinafter the "Default Inhibitor Mode") are directed to an inventive concept, one that is not routine, conventional, or well-known.

29.   Prior to the time of invention, it was conventional practice to use a caller ID device or an office assistant to screen phone calls.   In these cases, message notifications/indications were necessary and critical prior to screening the phone call. Specifically, an individual or caller ID device must first be alerted of a message notification or indication before the call can be screened. As a result, in conventional practice, message notifications/indications were uninhibited as a default.

30.   The Default Inhibitor Mode arises solely in the field of computing. For example, a person, such as an office assistant cannot enter into a default mode of inhibiting message notifications or indications. An office assistant tasked with screening calls must always be able to receive a message notification or indication first before the message notification or indication can be inhibited.

31.   The primary purpose of a mobile device such as, for example, a cellular phone, is to issue message notifications/indications to alert a user. The concept of inhibiting message notifications/indications as a default contradicts the fundamental purpose of the mobile device.

32.   Years after the time of invention, the concept of Default Inhibitor Mode was still not well-known, routine, or conventional. However, this concept eventually became routine

practice by 2012, when the mobile device industry adopted the concept of the Default Inhibitor

Mode. This is demonstrated by the top two market leaders in mobile device technology, Apple,

Inc. and Google, Inc.

33.   Apple Inc. ("Apple"), one of the pioneers in designing and manufacturing mobile

devices, introduced its "Do No Disturb" feature into its cell phones in 2012. *See* **Exhibit I**. A

true and correct copy of an article titled "Do Not Disturb: The Most Exciting (And Underrated)

New Apple Feature" is attached hereto as **Exhibit I**. **Exhibit I** is an article dated 2012 that

explains that Apple's Do Not Disturb is "[t]he most exciting (and underrated) new iPhone feature

unveiled at Apple's Worldwide Developer Conference on Monday [in 2012]."

34.   "When [Apple's] Do Not Disturb is activated, a user's phone can still receive

incoming calls, messages and other notifications, but won't alert her until later, keeping the

iPhone's screen dark, its vibrations still and its tones silent." **Exhibit I**. Apple's Do Not Disturb

feature embodies the concept of the claimed Default Inhibitor Mode. As demonstrated in

Apple's introduction of the "Do Not Disturb" feature in 2012, the concept of inhibiting message

notifications/indications as a default, was inventive and non-conventional, as evidenced by the

fact that consumers believed that in 2012, it was "the most exciting" feature of the modern cell

phone as of 2012. **Exhibit I**.

35.   A true and correct copy of an article titled "What Did Apple Copy From Android

and Windows Phone in iOS 6?" is attached hereto as **Exhibit K**. This article, dated 2012, states,

"The iPhone's 'Phone' application has remained largely unchanged since 2007, so it's nice to see

some enhancements to this bit of core functionality. The 'Do Not Disturb' feature is designed to

let you get some sleep even if your night-owl friends are blowing up your spot at 3am." **Exhibit**

K. As demonstrated by **Exhibit K,** the concept of the Default Inhibitor Mode was not

conventional, routine, or well-known until years after the time of invention of the Patents-in-Suit.

36.   In addition to Apple, Google, Inc. developed the Android platform, which is

another example of mobile device software that was considered pioneering. The Android

platform introduced its "Do Not Disturb" feature in a product platform version called "Lollipop"

around 2012. A true and correct copy of an article titled "Android's Confusing "Do Not

Disturb" Settings, Explained" is attached hereto as **Exhibit K**.

37.   Android's "Do Not Disturb" feature as of 2012, is described as follows "When

Lollipop was released, Google changed things. When you turned the volume down all the way, it

stopped at 'vibrate only'–there was no 'silent' setting. But! A new set of options appeared just

below the volume slider: 'None,' 'Priority,' and 'All.' Those were the new Do Not Disturb

settings, and what a stir they caused." **Exhibit K.** Android's "Do Not Disturb feature" embodies

the Default Inhibitor Mode in the manner claimed in the Patents-in-Suit.

38.   As demonstrated in paragraphs 28 through 37, the Default Inhibitor Mode, as

claimed in the Patents-in-Suit, includes a specialized, non-generic algorithm using a combination

of hardware and software. Specifically, the Default Inhibitor Mode uses non-generic software

routines to perform unconventional processes of inhibiting message notifications/indications as a

default mode, contrary to the mobile device's intended purpose.

39.   As demonstrated in paragraphs 28 through 37, the Default Inhibitor Mode as

claimed in the Patents-in-Suit is an improvement in the computer's capabilities. The claims in

the Patents-in-Suit introduce a new, inventive default mode in the field of computing, one that

was not routine, conventional, or well known by the mobile device industry until 2012.

40.   As demonstrated in paragraphs 28 through 37, the Default Inhibitor Mode as claimed in the Patents-in-Suit is directed to an improvement in the computer technology itself and not directed to generic components performing conventional activities.

41.   When reading the claims of the Patents-in-Suit as a whole, they are directed to a new and improved user interface of the mobile device for entering a default mode of inhibiting message notifications or inhibiting the provision of a user-indicator for communication initiation, among other things.

42.   Prior to the time of invention, conventional user interfaces included one or more volume buttons to remove the playback of audio as part of a message notification. For example, in Android-based phones even after the time of invention, "When you turned the volume down all the way, it stopped at 'vibrate only'–there was no 'silent' setting." **Exhibit K.** Android-based phones were considered market leaders in mobile devices after the time of invention of the Patents-in-Suit.

43.   Prior to the time of invention, it was routine and conventional for a user interface that controlled the inhibition of message notifications to include nothing more than a volume button or a silent setting.

44.   The interfaces of the Patents-in-Suit that provide the Default Inhibitor Mode represent an improvements in the computer technology itself and not directed to generic components performing conventional activities. Prior to the time of invention, interfaces for controlling message notifications were unsophisticated. Pioneering and technologically advanced products like the iPhone and Android-based phones had simplistic volume buttons that lacked the claimed interface of the Patents-in-Suit. The claimed interfaces of the Patents-in-Suit introduce a new, inventive interface in the field of computing, one that was not appreciated by

the mobile device industry until 2012. The claimed interfaces of the Patents-in-Suit are non-abstract, concrete implementations of the concept of filtering messages.

45.   The fact that the technology claimed in the '053 Patent and the '629 Patent is not routine, generic or conventional is illustrated by the fact that years after the April 2007 priority date of these patents, other companies in the industry were creating nearly identical technology to that of the '053 Patent and '629 Patent, and representing to the U.S. Patent and Trademark Office that their "inventions" were, in fact, inventive and included inventive concepts that distinguished prior art solutions. They certainly would not have spent their time, money and effort attempting to patent technology that was merely conventional, routine or generic at the time.

46.   For example, BlackBerry Limited obtained U.S. Patent No. 8,553,502 titled "Electronic Device and Method Providing Improved Bedtime Mode of Operation" (the "'502 Patent"). A true and correct copy of the '502 Patent is attached hereto as **Exhibit C**. The '502 Patent claims a priority date of May 2008, which is after the time of invention of the Patents-in-Suit.

47.   According to the Abstract of the '502 Patent, "[t]he BEDTIME mode comprises a number of features that are conduce to sleep by performing operations that minimize distractions to a user, and all such operations are initiated by execution of the BEDTIME mode routine." (**Exhibit C** at 1, Abstract.) Moreover, the '502 Patent explains that it allows the user to configure a mobile device "to be non-distracting to a user during the times of bedtime or sleep" by "suspending one or more types of alerts." (**Exhibit C** at col. 7, lines 43-59.)

48.   By way of further example, Google Inc. filed a patent application in October 12, 2007 (after the time of invention of the Patents-in-Suit) that led to U.S. Patent No. 8,385,884 (the

"'884 Patent"). A true and correct copy of the '884 Patent is attached hereto as **Exhibit D**. The

'884 Patent describes a "do not disturb (DND) mode for telephonic devices, in which the DND

mode is automatically deactivated after a time increment has elapsed." (**Exhibit D** at Abstract.)

Specifically, a "user of a mobile device such as a cellular telephone may block intrusions for a

time period by providing a "do not disturb' command to his or her device." (**Exhibit D** at col. 1,

lines 21-22.) Moreover, the '884 Patent claims the activation and deactivation of the DND mode

as part of the invention.

      49.   Similarly, Microsoft Corporation filed a patent application in October 2008 (after

the time of invention of the Patents-in-Suit) that led to U.S. Patent No. 7,996,476 (the "'476

Patent"). A true and correct copy of the '476 Patent is attached hereto as **Exhibit E**. The '476 is

titled "Do Not Disturb Filter For Electronic Messages." The '476 Patent explains, "[i]n

particular, through the use of the DND filter presented herein, the interruptions caused by the

delivery of new electronic messages, such as e-mail messages, instant messages, and SMS

messages, can be eliminated while still allowing a user to read previously received messages and

to compose and send new messages." (**Exhibit E** at col. 1, lines 46-53.) Part of the claimed

invention of the 476 Patent requires "suppressing notification that an electronic message has

been received." (**Exhibit E** at col. 10, lines 59-62.)

      50.   During the prosecution of Microsoft's '476 Patent, Microsoft amended its claims

to say, *inter alia*, "providing a user interface through which a user can specify a time period

during which notification of the receipt of an electronic message should be suppressed," and

argued that this limitation is not disclosed in the prior art cited in the office action. **Exhibit L**.

A true and correct copy of the Office Action Response dated March 8, 2011 in the prosecution of

Microsoft's '476 Patent is attached hereto as **Exhibit L**. In response, the U.S. Patent and

Trademark Office (USPTO) conducted additional examination, evaluated Microsoft's arguments, and allowed the '476 Patent. The USPTO's examination of the '476 Patent confirmed that an interface for suppressing electronic message notifications is patentably distinct, inventive, and not well-known as of the priority date of the '476 Patent.

51.   Claim 12 of the '629 Patent is also directed to an improvement in the computer technology itself and not directed to generic components performing conventional activities. Specifically claim 12 combines the functionality of an address book of a cellular telephone with the mobile device's capability of inhibiting, as a default, the provision of the user-indicator for the communication initiation. This is not a conventional or generic arrangement of components. It is arrangement of components to achieve a technological solution to a technological problem specific to cellular telephones. Specifically, the address book is intended to store details about contacts. Prior to the time of invention, it was not conventional to use it for purposes of inhibiting the provision of a user-indicator for communication initiation as a mode of operation.

52.   Even after the time of invention, it was still not conventional or well-known to use an address book as part of a default mode to inhibit message notifications. For example, Apple inhibited all message notifications unless the caller makes "repeated calls in a short span" without using an address book. **Exhibit J**.

COUNT I
(Infringement of U.S. Patent No. 8,868,053 by the TCT Mobile Entities)

53.   Thompson herein incorporates the contents of the preceding paragraphs as if restated fully herein.

54.   Each of the TCT Mobile Entities makes, uses, sells, offers for sale, and/or imports mobile devices that include a "Do Not Disturb" (DND) mode. Use of the mobile devices

accused of infringement herein includes, but is not limited to considerable testing of the features

and functions of the mobile devices at issue herein, as well as operation of the devices in

conjunction with the creation of user manuals and other materials describing the features and

functions at issue, and the use of the mobile devices, including the features and functions at

issue, by employees of the TCT Mobile Entities.

55.   The following BlackBerry-branded mobile devices include the DND mode: the

Key^{one} series, the Key^2 series, which includes the Key^{2LE}, the Motion, and other mobile phones

that include the DND mode.

56.   The following Alcatel-branded phones include the DND mode: Avalon V, Alcatel

7, Alcatel ONYX, U5, U3, Pop 4, Pixi 3, One Touch, TCL, lx, and other mobile phones that

include the DND mode

57.   Mobile devices that include the DND mode are referred to herein as the "Accused

Instrumentalities." The Blackberry-branded phones and Alcatel-branded phones described in

paragraphs 55-56, are examples the Accused Instrumentalities. The Accused Instrumentalities

include any other mobile phones provided by the TCT Mobile Entities that include DND mode.

58.   The DND mode functionality operates the same or substantially the same in both

the Blackberry-branded phones and Alcatel-branded phones.

59.   The functionality, operation, and capabilities of the DND mode in the Accused

Instrumentalities is described in at least **Exhibit F**, **Exhibit G,** and **Exhibit H**.

60.   **Exhibit F** is true and correct copy of the Key^2 User Guide. **Exhibit F** provides

general information about the DND mode of the Accused Instrumentalities, particularly the Key^2

series phones.

61.   **Exhibit G** is true and correct copy of the website

https://forums.crackberry.com/blackberry-key2-f472/allowing-contact-bypass-muted-ring-

1154763/ as of May 6, 2019. **Exhibit G** provides general information about the DND mode of

the Accused Instrumentalities.

62.   **Exhibit H** is true and correct copy of the website https://utbblogs.com/customise-

notifications-not-disturb-mode/ as May 6, 2019. **Exhibit H** provides general information about

the DND mode of the Accused Instrumentalities.

63.   Each of the Accused Instrumentalities infringes at least Claim 1 of the 053 Patent

as follows [with claim language underlined]:

a.   To the extent the preamble is limiting, using the Accused Instrumentality

performs a method implemented within a mobile device for inhibiting the message notification

of a particular message received at the mobile device. The Accused Instrumentalities include a

DND mode which allows a user to inhibit the message notifications of a particular message (*e.g.*,

a phone call) received at the mobile device. This is summarized in the following excerpt on Page

22 of **Ex. F**:

You can use the Priority only mode to ignore calls from callers who aren't contacts. Your phone doesn't ring when you receive a call from someone who's not in your contact list, but your device still lets you know that you missed a call.

1.   Swipe down from the top of the screen once using two fingers, or twice using one finger.

2.   Tap 🚫 Do Not Disturb > Priority only.

3.   Tap MORE SETTINGS > Priority only allows > Calls > From contacts only.

Note: By default, Priority only mode lasts for one hour. To change how long it lasts, swipe down from the top of the screen once using two fingers, or twice using one finger. Tap 🚫 Do not disturb > Priority only. To increase how long the mode stays on, tap + , or tap Until you turn this off.

b.   Use of the Accused Instrumentalities performs the step of receiving at least one

exempt message characteristic, the at least one exempt message characteristic comprising

information that identifies one or more telephone numbers as exempt message characteristics, the

exempt message characteristics being received at the user interface of the mobile device wherein

the mobile device includes the storage of a plurality of telephone numbers and the step of

receiving information further comprises receiving a selection of one or more telephone numbers

from the plurality of telephone numbers already stored within the mobile device. The Accused

Instrumentalities include a user interface (*e.g.*, a touch screen), that receives user input in the

form of one or more selections of an exempt message characteristic (*e.g.*, a phone number, a user

associated with a phone number). Specifically, a user specifies a "star" to identify exempt phone

numbers. The user makes this selection among a plurality of contacts having associated stored in

the mobile device's memory. The following excerpt describes how a user navigates a user

interface to exempt starred contacts:

> Enable Do Not Disturb (ringer ALL the way down), then go to the Do Not Disturb
> Settings and under Priority Allows, add contacts. Your options will be anyone, contacts
> only, starred contacts only, none. In which case, you can star those contacts you want
> to allow to overide and choose the starred contacts only option.

(**Ex. G** at 1.)

       c. Use of the Accused Instrumentalities also performs the step of underlying enabling a message

reception notification inhibitor in response to detecting certain user actuations at the user

interface, the message reception notification inhibitor being implemented entirely within the

mobile device, to be active such that message notifications for any messages received at the

mobile device are by default inhibited. As shown below, the Accused Instrumentalities support a

DND mode that, by default, inhibits all phone calls from being received while the DND is

enabled.

Turn off all sounds and notifications

Do not disturb lets you quickly silence your device when you don't want to be interrupted, like in a cinema or during an important meeting. You can also choose to receive only certain notifications, like calls or alarms.

Turn on Do not disturb

1. Swipe down from the top of the screen once using two fingers, or twice using one finger.
2. Tap 🚫 **Do not disturb**.
3. Tap **Total silence**, **Alarms only**, or **Priority only**.
4. To change how long Do not disturb stays on, tap + or -, or tap **Until you turn this off**.
5. Tap **Done**.

Tip: You can quickly turn on Alarms only mode by pressing the **Volume down** key until the volume is all the way down, then pressing the key once more.

(**Exhibit F** at 22 (shown above).)

d.   Use of the Accused Instrumentalities performs the step of, <u>while the message reception notification inhibitor is enabled: receiving messages at the mobile device, the messages being directed to the mobile device and at least one such message comprising a voice call.</u> As shown above in element [c], the Accused Instrumentalities inhibit (*e.g.*, silence) all phone calls, by default, when in DND mode.

e.   Use of the Accused Instrumentalities performs the step of, while the message reception notification inhibitor is enabled, <u>the mobile device examining the received message to determine if the received message includes the exempt message characteristic; the mobile device bypassing the message reception notification inhibitor and applying normal processing of the received message only if the exempt message characteristic is identified in the received message; and as a default, inhibiting the message reception notification for the received message if the exempt message characteristic is absent and the message is a voice call and sending the voice call to voice mail.</u> As shown above, a user of an Accused Instrumentality specifies a "Priority Only" option as part of DND mode.   There, the user selects enabling the receipt of calls from starred contacts only. When DND is enabled, the mobile device bypasses the message reception

notification inhibitor for starred contacts, thereby allowing a user to receive phone calls from

starred contacts while in DND mode. In addition, when the called is not a starred contact, the

phone call is inhibited such that it is silenced and sent to voicemail. See **Ex. F** at p.43 (stating

"You can use priority only mode to receive the notification that are most important to you while

keeping everything else silent."). Moreover, when the Priority Interruptions is set to "Starred

contacts only," only calls from starred contacts will be bypassed.

The first menu item, *Priority Only Allows*, is where you can change
which types of notification are active when the Priority Only setting is
activated. Alarms are active as default and cannot be turned off, but
you can also choose whether Reminders or Event notifications are
active. There are options for both SMS and Calls notification (*Anyone,
Contacts Only, Starred Contacts* or *None*), and finally an option for
Repeat Calls. With this option, when someone calls twice within 15
minutes you can choose to activate the second call notification.

(**Exhibit H** at 2.)

       f.   Use of the Accused Instrumentalities also performs the step of <u>disabling the</u>

<u>message reception notification inhibitor, implemented entirely within the mobile device such that</u>

<u>normal processing of the received message is applied to all messages.</u> When DND mode is

disabled, the normal operation proceeds to allow all phone calls to be uninhibited.

       64.   To the extent that the foregoing analysis demonstrating infringement of at least

Claim 1 of the 053 Patent on an element-by-element basis does not meet any particular element

of Claim 1 of the 053 Patent literally, each of the Accused Instrumentalities infringes under the

Doctrine of Equivalents, as it performs substantially the same function in substantially the same

way to get substantially the same result as the claimed technology.

65.   In April, 2019, Plaintiff sent letters to each of the TCT Mobile Entities providing notice of the '053 Patent and the basis for its claims of infringement thereof. On information and belief, at least TCT Mobile, Inc., TCT Mobile (US) Inc., and TCT Mobile (US) Holdings, Inc., received these letters soon after they were mailed. At least the continuing efforts to make, use, sell and offer to sell each of the Accused Instrumentalities, combined with its provision of instruction materials and customer service related to the features and functions which give rise to infringement of the '053 Patent, demonstrate that TCT Mobile, Inc. andTCT Mobile (US) Inc. are each inducing further infringement of the '053 Patent on the part of the consumers who purchase and use each of the Accused Instrumentalities in a patent-infringing manner.

66.   At least TCT Mobile, Inc. and TCT Mobile (US) Inc. have induced infringement, and continue to induce infringement, of one or more claims of the '053 Patent under 35 U.S.C. § 271(b). With knowledge of the '053 Patent, since at least as early as April 2019, at least TCT Mobile, Inc. and TCT Mobile (US) Inc. have actively, knowingly, and intentionally induced, and continue to actively, knowingly, and intentionally induce, infringement of the '053 Patent by selling or otherwise supplying the Accused Instrumentalities and instructions which encourage customers to use the Accused Instrumentalities in a patent-infringing manner, with the knowledge and intent that third parties, such as its customers, will use it in the United States for the purpose of infringing the '053 Patent; and with the knowledge and intent to encourage and facilitate said infringement through the dissemination of the Accused Instrumentalities and/or the creation and dissemination of documentation and technical information related to the Accused Instrumentalities which encourage said infringement.

67.   As a result of the continuing infringement of the '053 Patent, Plaintiff has suffered damages, and is entitled, at a minimum, to recover a reasonable royalty from the TCT Mobile Entities to compensate for the infringement.

COUNT II
(Infringement of U.S. Patent No. 9,473,629 By the TCT Mobile Entities)

68.   Thompson herein incorporates the contents of the preceding paragraphs as if restated fully herein.

69.   Each of the TCT Mobile Entities makes, uses, sells, offers for sale, and/or imports mobile devices that include a "Do Not Disturb" (DND) mode. Use of the mobile devices accused of infringement herein includes, but is not limited to considerable testing of the features and functions of the mobile devices at issue herein, as well as operation of the devices in conjunction with the creation of user manuals and other materials describing the features and functions at issue, and the use of the mobile devices, including the features and functions at issue, by employees of the TCT Mobile Entities.

70.   The following BlackBerry-branded mobile devices include the DND mode: the Key^{one} series, the Key^2 series, which includes the Key^{2LE}, the Motion, and other mobile phones that include the DND mode.

71.   The following Alcatel-branded phones include the DND mode: Avalon V, Alcatel 7, Alcatel ONYX, U5, U3, Pop 4, Pixi 3, One Touch, TCL, lx, and other mobile phones that include the DND mode.

72.   Mobile devices that include the DND mode are referred to herein as the "Accused Instrumentalities." The Blackberry-branded phones and Alcatel-branded phones described in paragraphs 55-56, are examples the Accused Instrumentalities. The Accused Instrumentalities include any other mobile phones provided by the TCT Mobile Entities that include DND mode.

73.   The DND mode functionality operates the same or substantially the same in both the Blackberry-branded phones and Alcatel-branded phones.

74.   Each of the Accused Instrumentalities infringes at least Claim 11 of the '629 Patent as follows [with claim language underlined]:

a.   To the extent the preamble is limiting, each of the Accused Instrumentalities is a mobile device for processing received communications in one of a plurality of modes. As discussed below, the Accused Instrumentalities are cell phones that includes a Do not Disturb (DND) mode, which allows a user to inhibit the message notifications of a particular message (*e.g.*, a phone call) received at the mobile device. As discussed below, the TCT Mobile Entities each provides cell phones that permit a normal mode of operation and a DND mode of operation.

b.   The Accused Instrumentalities each include a module, operating entirely within the mobile device, configured to enable a first mode of operation that, in response to receiving a communication initiation at the mobile device, operates by applying normal processing of the communication initiation such that the mobile device provides a user-indicator of such communication initiation reception. Each of the Accused Instrumentalities include a module such as, for example, a phone application working in conjunction with the DND software program, which execute on the mobile device. This is shown in at least the following excerpts:

Turn off all sounds and notifications

Do not disturb lets you quickly silence your device when you don't want to be interrupted, like in a cinema or during an important meeting. You can also choose to receive only certain notifications, like calls or alarms.

Turn on Do not disturb

1. Swipe down from the top of the screen once using two fingers, or twice using one finger.
2. Tap 🔕 **Do not disturb**.
3. Tap **Total silence**, **Alarms only**, or **Priority only**.
4. To change how long Do not disturb stays on, tap + or -, or tap **Until you turn this off**.
5. Tap **Done**.

Tip: You can quickly turn on Alarms only mode by pressing the **Volume down** key until the volume is all the way down, then pressing the key once more.

(**Ex. F** at 43.)

The excerpt above describes the functionality of the phone application, which allows a user to prioritize some calls while inhibiting others. The excerpt below shows the functionality of the DND software that may be configured to filter in "starred contacts only" as part of the DND mode.

Enable Do Not Disturb (ringer ALL the way down), then go to the Do Not Disturb Settings and under Priority Allows, add contacts. Your options will be anyone, contacts only, starred contacts only, none. In which case, you can star those contacts you want to allow to overide and choose the starred contacts only option.

(**Ex. G** at 1.)

A module of each Accused Instrumentality enables a first mode of operation (*e.g.*, normal mode with DND mode disabled). Under the normal mode where DND is disabled, the module permits any user to call the phone, thereby producing a user-indicator of such communication initiation reception (*e.g.*, the playing of a ring tone upon receipt of any phone call).

    c.   In, the Accused Instrumentalities' module is <u>configured to enable a second mode</u> <u>of operation that, in response to receiving a communication initiation at the mobile device,</u> <u>operates such that the mobile device as a default, inhibits the provision of the user-indicator for</u>

the communication initiation unless the communication initiation includes at least one user

selectable exempt characteristic. The module of the Accused Instrumentalities enables a second

mode of operation (*e.g.*, DND mode enabled). A user may initiate communication to enable the

second mode by, for example, "tapping Do Not Disturb" or actuating the volume button.

Turn off all sounds and notifications

Do not disturb lets you quickly silence your device when you don't want to be interrupted, like in a cinema or during an important meeting. You can also choose to receive only certain notifications, like calls or alarms.

Turn on Do not disturb

1. Swipe down from the top of the screen once using two fingers, or twice using one finger.
2. Tap 🌙 **Do not disturb**.
3. Tap **Total silence**, **Alarms only**, or **Priority only**.
4. To change how long Do not disturb stays on, tap + or -, or tap **Until you turn this off**.
5. Tap **Done**.

Tip: You can quickly turn on Alarms only mode by pressing the **Volume down** key until the volume is all the way down, then pressing the key once more.

(**Ex. F** at 43.)

   d. The Accused Instrumentalities each include a user interface for detecting user

interactions and based on the user interactions, interacting with the mobile device to selectively

enable operation of the mobile device in the first mode in response to first user interactions and

second mode of operation in response to second user interactions and to enable the selection of

exempt characteristics. The Accused Instrumentalities include a user interface (*e.g.*, a touch

screen, a volume button). The user interface detects different interactions to enable the normal

mode of operation or to enable the DND mode. In addition, a user may interact with the user

interface (*e.g.*, touch screen) to enable the selection of exempt characteristics (*e.g.*, selecting to

"star" a contact).

   e. In the Accused Instrumentalities, the exempt characteristics comprise the

identification of a potential communication originator and is selected from a plurality of

originator identifications stored within the mobile device. As shown below, a user may select a

contact associated with a phone number to "star" the contact, where the contact is selected from

a plurality of contacts stored in the mobile device.

The first menu item, *Priority Only Allows*, is where you can change which types of notification are active when the Priority Only setting is activated. Alarms are active as default and cannot be turned off, but you can also choose whether Reminders or Event notifications are active. There are options for both SMS and Calls notification (*Anyone, Contacts Only, Starred Contacts* or *None*), and finally an option for Repeat Calls. With this option, when someone calls twice within 15 minutes you can choose to activate the second call notification.

(**Exhibit H** at 2.)

75.   Each of the Accused Instrumentalities further infringes at least Claim 12 of the

'629 Patent, which states, "The mobile device of claim 11, wherein the mobile device is a

cellular telephone including an address book with at least one entry in the address book including

an exempt characteristic."

76.   Each of the Accused Instrumentalities are cellular telephones.

77.   The excerpt below shows the functionality of the DND software that is configured

to filter in "starred contacts only" as part of the DND mode.

Enable Do Not Disturb (ringer ALL the way down), then go to the Do Not Disturb Settings and under Priority Allows, add contacts. Your options will be anyone, contacts only, starred contacts only, none. In which case, you can star those contacts you want to allow to overide and choose the starred contacts only option.

(**Ex. G** at 1.) In the Accused Instrumentalities, contacts are accessed by the cellular telephone's

address book. "Starring" a contact designates which caller is exempted from DND mode in the

"Priority" setting. The address book in the Accused Instrumentalities include the exempt

characteristic such as, for example, the started contact's telephone number.

78.   Each of the Accused Instrumentalities further infringes at least Claim 13 of the

'629 Patent, which states, "The mobile device of claim 11, wherein the mobile device is a

cellular telephone including a user interface to enable a user to identify potential communication

originators stored within the cellular telephone as exempt characteristics."

79.   As discussed above, the Accused Instrumentalities are cellular telephones that

provide an interface for "starring" contacts. By facilitating the "starring" of a contact, the user

interface enables a user to identify potential communication originators stored within the cellular

telephone as exempt characteristics.

80.   To the extent any aspect of Accused Instrumentalities does not meet an element of

Claims 11-13 of the '629 Patent literally, the Accused Instrumentalities each infringes under the

Doctrine of Equivalents as it performs substantially the same function in substantially the same

way to get substantially the same result as the claimed technology.

81.   In April, 2019, Plaintiff sent letters to each of the TCT Mobile Entities providing

notice of the '629 Patent and the basis for its claims of infringement thereof. At least TCT

Mobile, Inc., TCT Mobile (US) Inc., and TCT Mobile (US) Holdings, Inc., received these letters

soon after they were mailed. At least the continuing efforts to make, use, sell and offer to sell

each of the Accused Instrumentalities, combined with its provision of instruction materials and

customer service related to the features and functions which give rise to infringement of the '629

Patent, demonstrate that at least TCT Mobile, Inc. and TCT Mobile (US) Inc. are also inducing

further infringement of the '629 Patent on the part of the consumers who purchase and use each

of the Accused Instrumentalities.

82.   At least TCT Mobile, Inc. and TCT Mobile (US) Inc. have induced infringement, and continue to induce infringement, of one or more claims of the '629 Patent under 35 U.S.C. § 271(b). With knowledge of the '629 Patent since at least as early as April 2019, at least TCT Mobile, Inc. and TCT Mobile (US) Inc. have actively, knowingly, and intentionally induced, and continue to actively, knowingly, and intentionally induce, infringement of the '629 Patent by selling or otherwise supplying the Accused Instrumentalities and instructions which encourage customers to use the Accused Instrumentalities in a patent-infringing manner, with the knowledge and intent that third parties, such as its customers, will use it in the United States for the purpose of infringing the '629 Patent; and with the knowledge and intent to encourage and facilitate said infringement through the dissemination of the Accused Instrumentalities and/or the creation and dissemination of documentation and technical information related to the Accused Instrumentalities which encourage said infringement.

83.   As a result of the continuing infringement of the '629 Patent, Plaintiff has suffered damages, and is entitled, at a minimum, to recover a reasonable royalty from the TCT Mobile Entities to compensate for the infringement.

Prayer for Relief

Wherefore, Thompson respectfully requests that this Court enter judgment against the TCT Mobile Entities as follows:

a)   The Accused Instrumentalities as utilized by each of the TCT Mobile Entities infringes the '053 Patent, literally or, alternatively, under the Doctrine of Equivalents;

b)   The Accused Instrumentalities as utilized by each of the TCT Mobile Entities infringes the '629 Patent, literally or, alternatively, under the Doctrine of Equivalents;

c)   Thompson is entitled to its damages resulting from these infringements in the amount that is no lower than a reasonable royalty, together with prejudgment and post-judgment interest thereon;

d)   Thompson be awarded an accounting for any post-verdict infringement;

e)   The Court declares this case to be exceptional and award Thompson his reasonable fees, costs and expenses;

f)   The Court grant Thompson such other and additional relief as the Court determines to be just and proper.

Demand for Jury Trial

Thompson hereby demands a trial by jury on all claims and issues so triable.

September 3, 2019   BAYARD, P.A.

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