

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CyndaTek LLC

Plaintiff

v.

Blu Products, Inc.

Defendant

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, CyndaTek LLC (“CyndaTek” or “Plaintiff”), by and through its undersigned counsel, hereby respectfully submits this Complaint for Patent Infringement against Defendant Blu Products, Inc., as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop infringement by Defendant Blu Products, Inc. of United States Patent No. 7,181,237 (the “’237 patent”).

THE PARTIES

2. CyndaTek, CyndaTek LLC is a Texas LLC located in Lewisville, Texas.

3. On information and belief, Defendant, Blu Products, Inc. (“BLU”), is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Doral, Florida. On information and belief, BLU can be served via an officer, director, or managing agent, or via its registered agent, Bernard Egozi, at 2999 NE 191st St. #407, Aventura, Florida 33180.

JURISDICTION AND VENUE

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

5. The Court has specific and general personal jurisdiction personal jurisdiction over BLU, including pursuant to due process and the Florida Long Arm Statute, due at least to its incorporation in Florida, as well as its continuous and systematic business contacts in Florida, including related to operations conducted from its Doral, Florida headquarters and the infringements alleged herein.

6. Venue is proper for BLU in this District pursuant to 28 U.S.C. §§ 1391 and 1400. Without limitation, BLU has a regular and established places of business in this District, and at least some of its infringement of the ‘237 patent occurs in this District.

U.S. PATENT NO. 7,181,237

7. The ‘237 patent, entitled “Control of a Multi-Mode, Multi-Band Mobile Telephone via a Single Hardware and Software Man Machine Interface,” was issued by the U.S. Patent & Trademark Office on February 20, 2007.

8. CyndaTek is the assignee of the ‘237 patent, having all right, title and interest to the patent, including the right to enforce the patent, including to recover past, present and future damages for infringement thereof.

9. The claims in suit of the ‘237 patent (the “Claims”) relate generally to, *inter alia*, multi-mode, multi-band mobile telephone systems, including those controlled via a single hardware and software man machine interface. The claims of the ‘237 patent cover, *inter alia*, novel and inventive mobile telephone systems comprising: a mode manager for managing switching between a first mode utilizing a first air interface standard supported by a first protocol stack and

a second mode utilizing a second air interface standard supported by a second protocol stack, with said first and second protocol stacks being supported concurrently by chipsets, the mode manager including a router for routing information to one of the first protocol stack and the second protocol stack; a user interface for communicating information and commands between the first protocol stack and a user and between the second protocol stack and the user for controlling the mobile telephone; and a bridge for providing communication of information between the first protocol stack and the second protocol stack, wherein control of the mobile telephone is provided via a single man machine interface (“MMI”) that is substantially consistent across the first and second modes.

10. Different scopes of air interface functionality typically induce different behavior, and often require the use of different software in the MMI. Where such specific software is used for different standards or modes, specific hardware (*e.g.*, specific hard keys, displays, and the like) may be required. Alternately, there may be redundant MMI software, increasing the need for added general hardware (*e.g.*, memory, processors, and the like) and increasing complexity to the user. Moreover, such MMIs can occupy a substantial portion of the telephone's memory compared with other of the telephone's software modules. Thus, in order to provide a multiple mode mobile telephone capable using multiple standards, a substantial portion of the telephone's memory had to be dedicated to storage of software providing multiple MMIs.

11. The Claims provide novel and inventive systems, hardware, software and architectures comprising the above-noted mode manager comprising a router for routing information first and second protocol stacks supporting first and second modes utilizing first and second air interface standards, chipsets providing concurrent support, a user interface for communicating information and commands between protocol stacks and a user, and a bridge for providing communication of information between the first protocol stack and the second protocol stack, wherein control of the

mobile telephone is provided via a single MMI that is substantially consistent across the first and second modes, with such systems, hardware, software and architectures comprising systems for controlling multi-mode mobile telephones via a single hardware and software MMI

12. Claimed systems comprise a novel and inventive mode manager, which comprises a router and routing architecture for routing information to one of the first protocol stack and the second protocol stack. The mode manager is capable of, *inter alia*, providing for multimode (*e.g.*, dual mode) operation, including with capability between modes based on user-selection and/or automatic selection. For example, the user interface of the mobile telephone may provide a menu screen having options that allow a user to select the technology or network mode used by the telephone. Users may advantageously select the mode or to allow the system to automatically select a mode based on predetermined criteria and/or network status.

13. Claimed systems further comprise a novel and inventive bridge architecture for providing communication of information between the first protocol stack and the second protocol stack. Without limitation, the bridge enables routing of information and messages between protocol stacks via serial connection when the protocol stacks are running on different chipsets.

14. The novel and inventive architecture also facilitates reading and writing of data to respective cores and sending messages with associated structures between various layers (*e.g.*, the user interface to application layers). Further, application layers may convert between different protocol formats.

15. Claimed systems further comprise a novel and inventive MMI which communicates information and commands between the protocol stacks and a user. An application layer can reduce the functional interface between the protocol stacks to layers of the protocol stacks subsequent to the user interface, which, *inter alia*, allows control of the mobile telephone to be provided via a single MMI that is substantially consistent across the all modes. Including in this

manner, differences in technologies employed by the different air interface standards are made substantially transparent to mobile telephone users. Further, by providing for functionality of the different air interface standards at other levels of the respective protocol stacks, applications (*e.g.*, organizers, email clients, network browsers, and the like) may be more easily added to, removed from, or modified within the user interface without modification of the different protocol stacks so that the applications may support each air interface standard without special modification. This greatly reduces the complexity of the MMI, making the mobile telephone easier to use than would be a telephone employing different MMIs for each mode, or a telephone employing an MMI that is modified with redundant software for supporting both air interface standards.

16. The claimed inventions, including as a whole, are inventive and have multiple unconventional aspects. Conventional systems, which were known at the time of the invention, are represented by the primary references cited during prosecution of the '237 patent, which were U.S. Patent No. 6,785,556 to Souissi, U.S. Patent No. 6,934,558 to Sainton, and U.S. Patent No. 6,035,212 to Rostocker.

17. However, Souissi was directed to a modem, not a mobile phone. Further, none of Souissi, Sainton or Rostocker had the inventive features, alone or in combination, of (1) a mode manager comprising a router for routing information to one of a first protocol stack or second protocol stack; (2) a bridge for providing communication of information between the first protocol stack and the second protocol stack; (3) a mode manager for managing switching of the system between a first mode utilizing a first air interface standard supported by a first protocol stack and a second mode utilizing a second air interface standard supported by a second protocol stack wherein the first protocol stack and the second protocol stack are supported concurrently by at least one chipset of the mobile telephone; and/or (4) a user interface for communicating

information and commands between the first and second protocol stacks and a user for controlling the mobile telephone and an application layer for reducing functional interface between the first and second protocol stacks to layers of the first and second protocol stacks subsequent to the user interface, wherein control of the mobile telephone is provided via a single man machine interface that is substantially consistent across the first and second modes.

18. All of the aforementioned inventive features, alone and in combination, contrast with the conventional features of existing art, including those of the primary Souissi, Sainton and Rostocker references, and thus they evidence the unconventionality of the claimed elements, alone and in combination. All of the aforementioned inventive features, alone and in combination, constitute unconventional, inventive concepts that go well beyond any concepts present in conventional or prior art.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,181,237

19. .BLU has infringed and is now directly infringing the '237 patent, including at least claims 1 and 7, in violation of 35 U.S.C. § 271(a)-(b), *et seq.*, literally and/or equivalently, by and through at least its using, making, offering for sale, importing, and/or selling of mobile telephone systems comprising: a mode manager for managing switching between a first mode utilizing a first air interface standard, for example LTE and/or 3G, supported by a first protocol stack, for example the 3G and/or LTE protocol stack, and a second mode utilizing a second air interface standard, for example Wi-Fi, supported by a second protocol stack, for example the Wi-Fi protocol stack, with said first and second protocol stacks each being supported concurrently by a respective chipset, for example CPU's supporting cellular communications and Wi-Fi, respectively, the mode manager including a router for routing information to one of the first protocol stack and the second protocol stack; a user interface, namely the graphical user interface or the mobile telephone, for communicating information and commands, for example calling

and/or tethering-related commands, between the first protocol stack and a user and between the second protocol stack and the user for controlling the mobile telephone; and a bridge, for example an AXI interconnect, for providing communication of information between the first protocol stack and the second protocol stack, wherein control of the mobile telephone is provided via a single man machine interface, which is the user interface of the mobile telephone, that is substantially consistent across the first and second modes. Without limitation, such infringing mobile telephone systems comprise the Pure XR, Vivo 8 and/or Vivo X, as well as any other BLU mobile telephone systems which comprise or have within the last six years comprised the same described chipsets and functionalities.

20. On information and belief, BLU has been under constructive notice of the '237 patent by operation of the Patent Act. Additionally, or in the alternative, upon information and belief, since receiving actual notice of the '237 patent, which, at a minimum, is being provided with this Complaint, BLU has actively induced, and continues to induce infringement of the '237 Patent in this judicial district, the State of Florida, and elsewhere, by intentionally inducing direct infringement of the '237 Patent, including by aiding or abetting the direct infringement of its end users and/or customers who use the infringing mobile telephone systems described above. Upon information and belief, without limitation, such aiding and abetting comprises advertising, marketing, promoting, and/or providing said mobile telephone systems, and providing instructions for infringing uses by BLU's customers and/or end users.

21. On information and belief, BLU's post-notice knowledge that such requirements, advertising, marketing, promoting, offering for sale, and/or selling, inducing its customers and/or end users to infringe, including by purchasing and/or using the accused mobile telephone systems; and BLU's encouraging acts actually resulted in such infringement. Such induced infringement has occurred at least since BLU has become aware of the '237 patent, which, at a

minimum, is noted above, and is necessarily with the knowledge and awareness that such actions and use by users comprise infringement of the '237 patent.

22. Further, upon information and belief, without limitation, BLU's infringement of the asserted claims of the '237 patent is clear, unmistakable, and inexcusable, and, on information and belief, without limitation, BLU is at least aware of such infringement post-actual notice. Such infringement is necessarily willful and deliberate, and BLU's continuation of its infringing activities post-notice and post-suit is clearly and necessarily willful and deliberate. Without limitation, CyndaTek believes and contends that BLU's intentional continuance of its clear, unmistakable, and inexcusable infringement of the '237 patent post-notice is, at a minimum, willful, deliberate and/or consciously wrongful.

23. Including on account of the foregoing, CyndaTek contends such post-suit activities by BLU qualify this as an egregious case of misconduct beyond typical infringement, entitling CyndaTek to enhanced damages. Thus, including based on the foregoing, CyndaTek requests an award of enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284.

24. Each of BLU's aforesaid activities have been without authority and/or license from CyndaTek.

DAMAGES

25. By way of its infringing activities, BLU has caused and continues to cause CyndaTek to suffer damages, and CyndaTek is entitled to recover from BLU the damages sustained by CyndaTek as a result of BLU's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

26. BLU's infringement of CyndaTek's rights under the '237 patent will continue to damage CyndaTek, causing irreparable harm for which there is no adequate remedy at law, unless

enjoined by this Court.

27. CyndaTek also requests that the Court make a finding that this is an exceptional case entitling CyndaTek to recover its attorneys' fees and costs pursuant to 35 U.S.C. § 285.

JURY DEMAND

28. CyndaTek hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all issues so triable

PRAYER FOR RELIEF

CyndaTek respectfully requests that the Court find in their favor and against BLU, and that the Court grant CyndaTek the following relief:

- A. An adjudication that, including pursuant to 35 U.S.C. § 271, *et seq.*, one or more claims of the patents-in-suit has been infringed by BLU;
- B. An award to CyndaTek of damages pursuant to 35 U.S.C. § 284, *et seq.*, adequate to compensate CyndaTek for BLU's past infringement, together with pre-judgment and post-judgment interest, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringing acts including, but not limited to, those future acts not presented at trial;
- C. A grant of at least a permanent injunction pursuant to 35 U.S.C. § 283, enjoining BLU, and all persons, including its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation therewith, from making, using, offering to sell, or selling in the United States, or importing into the United States, any systems and/or devices that infringe any claim of the patents-in-suit, or contributing to, or inducing, the same by others, from further acts of infringement with respect to the claims of the '237 patent;
- D. That this Court declare that BLU's pre-suit and continuing post-suit infringement is, and

continues to be, willful and egregious, and, accordingly, award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;

- E. That this Court declare this to be an exceptional case and award CyndaTek reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- F. A judgment and order requiring BLU to pay CyndaTek its damages, costs, expenses, fees, including attorney's fees, and prejudgment and post-judgment interest for BLU's infringement of the patents-in-suit as provided under 35 U.S.C. §§ 284 and/or 285; and
- G. Any and all further relief for which CyndaTek may show itself justly entitled that this Court deems just and proper.

November 19, 2019

Respectfully submitted,

/s/ Howard L. Wernow

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