

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

TERRESTRIAL COMMS LLC,

Plaintiff

v.

**NEC CORPORATION, AND NEC
CORPORATION OF AMERICA**

Defendant

Case No. 6:19-cv-00597-ADA

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Terrestrial Comms LLC (“Plaintiff” or “Terrestrial”) hereby asserts the following claims for patent infringement against Defendant NEC Corporation and NEC Corporation of America (collectively “Defendant” or “NEC”), and alleges, on information and belief, as follows:

THE PARTIES

1. Terrestrial is a limited liability company organized and existing under the laws of the Texas with its principal place of business at 17330 Preston Road, Suite 200D, Dallas, Texas 75252.
2. On information and belief, Defendant NEC Corp. is a Japanese corporation with its headquarters in 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan.
3. On information and belief, Defendant NEC Corporation of America is Nevada corporation with a principal place of business at 6555 North State Highway 161, Irving, Texas 75039.

JURISDICTION AND VENUE

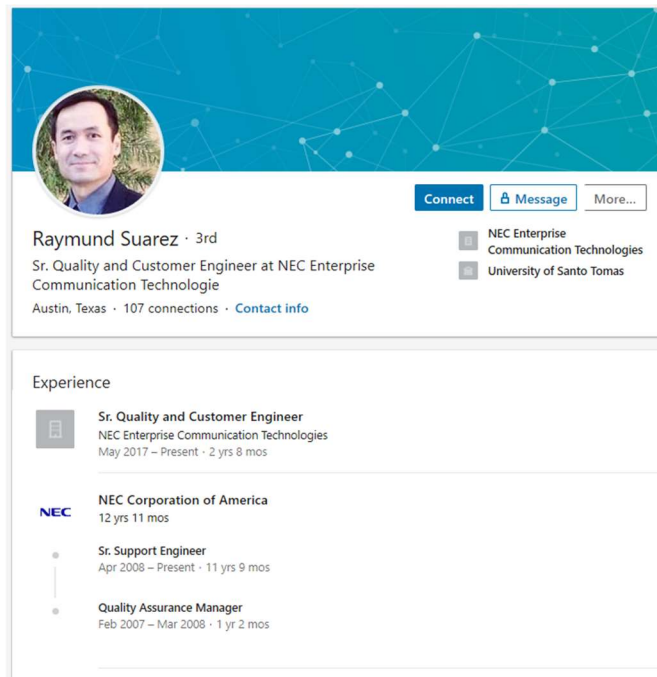
4. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant has committed acts of infringement in this judicial district.

6. On information and belief, the Court has personal jurisdiction over Defendant because Defendant has committed, and continues to commit, acts of infringement in the state of Texas, has conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas.

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

8. On information and belief, Defendant NEC Corporation of America has employees located in and maintains a regular and established business in this judicial district.



<https://www.linkedin.com/in/raymund-suarez-62217634/>

The screenshot shows the NEC careers website search results for the keyword "austin". The page header includes the NEC logo with the tagline "Orchestrating a brighter world", navigation links for "NEC Affiliates", "#LifeAtNEC", and "Quick Links", and a "View Profile" link. The search results section shows "Search results for 'austin'." with a search bar containing "austin" and a "Search Jobs" button. Below the search bar, there are filters for "Send me alerts every 7 days" and a "Create Alert" checkbox. The results section shows "Results 1 - 1 of 1" and a table with columns for Title, Company, Department, Location, and Date. The table contains one entry: "Sr. Project Mgr - PMP" at "NCA - NEC Corporation of America" in the "Information Technology" department, located in "Austin, TX, US, 78752", with a date of "Dec 16, 2019". The page footer includes "NEC Careers Home | View All Jobs | Equal Employment Opportunity Employer", social media icons for LinkedIn, Twitter, and YouTube, and a copyright notice: "Copyright © NEC Corporation of America 2018. All Rights Reserved."

https://careers.necam.com/job/Austin-Sr_-Project-Mgr-PMP-TX-78752/594079400/

9. Venue is proper in the Western District of Texas pursuant to 28 U.S.C. § 11400(b).

NEC

10. Upon information and belief, Defendant makes, uses, imports, sells, and/or offers for sale the NEC DSX80/DSX160 telephone systems, among other telephone systems, (collectively the “Accused Products”). The Accused Products are described by the NEC website and product information, which is exemplified by the following references:

- “NEC Additional Product Information” (“**Product Information**”), *available at* https://www.necam.com/specs/DSXSeries/DSXSeries_features.asp (last accessed October 10, 2019).
- “NEC DSX80/DSX160 Series” (“**DSX80/DSX160**”), *available at* https://www.necam.com/Unified_Messaging/doc.cfm?t=DSX80DSX160 (last accessed October 10, 2019).
- “NEC DSX Sophistication Simplified” (“**NEC DSC**”), *available at* http://www.bridgmancom.com/brochure_NEC_DSX.pdf (last accessed October 10, 2019).

- “Live Call Screening” (“Call Screening”), available at http://www.necdsx.com/docs/dita/dsx_v3_complete/intramail/live_call_screening_feature/live_call_screening_opr.html (last accessed October 10, 2019).

11. Upon information and belief, Defendant NEC encourages and supports the use of the Accused Products through its online support, advertising, and licensing relationships with resellers.

THE PATENT-IN SUIT

12. On May 14, 2002, United States Patent No. 6,389,293 (the “293 patent”), entitled “Method and Apparatus for Providing Call Screening on Cordless Telephone Equipment Using Three-Way Calling,” was duly and lawfully issued by the U.S. Patent and Trademark Office.

13. Terrestrial is the assignee and owner of the right, title and interest in and to the ’293 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,389,293

14. Terrestrial repeats and realleges the allegations of paragraphs 1 through 13 as if fully set forth herein.

15. Claim 2 of the ’293 Patent recites:

2. A method for screening an incoming telephone call received by a called party on a cordless telephone, comprising:
receiving an incoming telephone call from a calling party;
connecting the incoming telephone call to a voicemail service of the called party;
establishing a three-way connection between the calling party, the called party,
and the voicemail service;

muting the cordless telephone so that the called party may listen as the calling party leaves a message on the voicemail service without the calling party having knowledge that the called party is listening; and providing a two-way connection between the calling party and the called party upon interception of the incoming telephone call by the called party, wherein the receiving, connecting, establishing, and muting are executed without human intervention.

16. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant has infringed and continues to infringe the '293 Patent by making, using, importing, offering for sale, and/or selling the Accused Products.


17. As exemplified below, the Accused Products are a telephone system which provides phone services for small business users. It supports cordless phones and provides a Call Screening facility.

2. A method for screening an incoming telephone call received by a called party on a cordless telephone, comprising:

The NEC DSX80/DSX160 is a telephone system which provides phone services for small business users. It supports cordless phones and provides Call Screening facility.



DSX80/DSX160 Series



Why DSX80/DSX160 Series:

- ▶ Benefits
- ▶ Features

More than ever before, smaller businesses need telephone systems that are affordable.

DSX80/DSX160.



IntraMail Voice Mail Integration Features

- Answering Machine Emulation / Call Screening
- Auto Time and Date Stamp
- Automated Attendant
- Caller ID with Return Call

DSX80/DSX160.

Cordless Telephone

The DSX Cordless phone offers many standard features of the wired telephone including 4 fully programmable Feature Keys with LEDs, and an easy-to-read display with the advantage of mobility.



NEX DSC.

receiving an incoming telephone call from a calling party;

The incoming call from a caller is received at the user's cordless phone.

IntraMail . . .
 The ability to add voice mail is built into the system and only requires an IntraMail compact flash card to activate. IntraMail is a full-featured Voice Mail Auto Attendant system that will transfer incoming callers and record Voice Mail messages.

NEC DSC.

Live Call Screening

Automatic Live Call Screening

To turn Automatic Call Screening on or off:	
MENU + 36.	Enable or disable Automatic Call Screening.
ON	Turn Automatic Live Call Screening on.

Call Screening.

connecting the incoming telephone call to a voicemail service of the called party;

When Automatic Live Call Screening is ON, the incoming calls being received on the user's cordless phone are connected to voice mailbox for recording messages

(“connecting the incoming telephone call to a voicemail service”).

IntraMail . . .
The ability to add voice mail is built into the system and only requires an IntraMail compact flash card to activate. IntraMail is a full-featured Voice Mail Auto Attendant system that will transfer incoming callers and record Voice Mail messages.

NEC DSC.

To use Automatic Live Call Screening at a keyset:	
To continue listening to your caller's message as it is being recorded:	
	Do nothing.

Call Screening.

establishing a three-way connection between the calling party, the called party, and the voicemail service;

When the Automatic Live Call Screening is ON and the caller’s (“calling party”) message is being recorded in the voice mailbox, the user (“called party”) can listen to the message through the speaker making a three-way connection between the user, caller and the voice mailbox.

IntraMail . . .

The ability to add voice mail is built into the system and only requires an IntraMail compact flash card to activate. IntraMail is a full-featured Voice Mail Auto Attendant system that will transfer incoming callers and record Voice Mail messages.

NEC DSC.

To use Automatic Live Call Screening at a keyset:

- When Automatic Call Screening is on, you hear two beeps and your telephone automatically goes into the screen mode while your caller leaves a message.
- Call Screening is only available while your telephone is idle.

Call Screening.

*muting the cordless telephone so that the called party may listen as the calling party leaves a message on the voicemail service without the calling party having knowledge that the called party is listening;
and*

Automatic Live Call Screening feature allows the user to monitor incoming calls by listening to the messages as they are being recorded. However, the calling party does not have any idea that the user is listening to the message. The user listening to the message being left has to press a button in order to answer the call, i.e., the user cannot be heard directly without pressing the button or the voice of the user is not audible without pressing the button (“muting”). Hence, in this way the cordless telephone is muted so that the user can listen without the calling party knowing about it.

IntraMail . . .

The ability to add voice mail is built into the system and only requires an IntraMail compact flash card to activate. IntraMail is a full-featured Voice Mail Auto Attendant system that will transfer incoming callers and record Voice Mail messages.

NEC DSC.

To use Automatic Live Call Screening at a keyset:

- When Automatic Call Screening is on, you hear two beeps and your telephone automatically goes into the screen mode while your caller leaves a message.
- Call Screening is only available while your telephone is idle.

Call Screening.

providing a two-way connection between the calling party and the called party upon interception of the incoming telephone call by the called party,

The user may anytime can intercept and answer the call, i.e., a two-way connection is established between the user and the calling party since playing or recording of the voice message is stopped and the two parties are connected and conversation will continue as a normal telephone call. The user can answer the incoming call by pressing Answ button (“interception of the incoming call by the called party”) of the cordless phone.

Automatic Live Call Screening

To intercept the call (and stop recording the message):	
ANSW	This intercepts the call. <ul style="list-style-type: none"> Alternately press SPEAKER, V-MAIL, or lift the handset.

Call Screening.

● **Call Screening** - Listen to (screen) a voice mail message as it is being left in your mailbox. Choose the option to let the call go through to the mailbox or take that important call.

NEC DSC.

wherein the receiving, connecting, establishing, and muting are executed without human intervention.

The receiving of the incoming call, connecting it to the voice mailbox service, establishing the connection and muting during message listening, all are done by the phone itself without human intervention i.e. automatically by the phone when the Automatic Live Call Screening feature is turned ON.

IntraMail . . .

The ability to add voice mail is built into the system and only requires an IntraMail compact flash card to activate. IntraMail is a full-featured Voice Mail Auto Attendant system that will transfer incoming callers and record Voice Mail messages.

NEC DSC.

To use Automatic Live Call Screening at a keyset:

- When Automatic Call Screening is on, you hear two beeps and your telephone automatically goes into the screen mode while your caller leaves a message.
- Call Screening is only available while your telephone is idle.

To hear your caller's message as it is recorded in your mailbox (i.e., activate the Call Screening mode):

SCREEN	Your caller's voice broadcasts over your telephone speaker.
---------------	---

Call Screening.

18. Terrestrial is entitled to recover from Defendant the damages sustained by Terrestrial as a result of Defendant's infringement of the '293 Patent 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.

PRAYER FOR RELIEF

WHEREFORE, Terrestrial requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '293 Patent;

B. An award of damages to be paid by Defendant adequate to compensate Terrestrial for Defendant's past infringement of the '293 Patent 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 acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Terrestrial's reasonable attorneys' fees; and

D. An award to Terrestrial of such further relief at law or in equity as the Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: December 20, 2019

Respectfully Submitted

/s/ Raymond W. Mort, III

Raymond W. Mort, III
Texas State Bar No. 00791308
raymort@austinlaw.com

THE MORT LAW FIRM, PLLC
100 Congress Ave, Suite 2200
Austin, Texas 78701
Tel/Fax: (512) 865-7950

ATTORNEYS FOR PLAINTIFF