

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

APERTURE NET LLC,)
)
) *Plaintiff,*)
) C.A. No. 3:19-CV-02315-K
) v.)
))
)) DEMAND FOR JURY TRIAL
)
) BLACKBERRY CORPORATION, TCL)
) COMMUNICATION INC., AND TCT)
) MOBILE (US) INC.,)
))
))
)
) *Defendants.*)



Figure 1 – The Blackberry® KeyOne accused device.

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1. Aperture Net LLC (“Aperture” or “Plaintiff”), by and through its counsel, hereby brings this action for patent infringement against Blackberry Corporation (“Blackberry”), TCL Communication Inc. and TCT Mobile (US) Inc. (together with TCL Communication Inc., “TCL”) alleging infringement of the following validly issued patent (the “Patent-in-Suit”): U.S. Patent No. 6,711,204, titled “Channel Sounding for a Spread-Spectrum Signal” (the ’204 Patent), attached hereto as Exhibit A.

NATURE OF THE ACTION

2. This is an action for patent infringement arising under the United States Patent Act 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.

PARTIES

3. Plaintiff Aperture Net LLC is a company established in Texas with its principal place of business at 6205 Coit Rd., Ste 300 – 1016, Plano, TX 75024-5474.

4. On information and belief, Defendant Blackberry Corporation is a company incorporated in Delaware with a principle place of business in Texas and may be served by its registered agent Corporate Creations Network Inc. at 5444 Westheimer #1000, Houston, TX 77056.

5. On information and belief, Defendant TCL Communication Inc. is a company incorporated in Delaware and may be served through its registered agent Corporation Service Company at 251 Little Falls Drive, Wilmington, DE 19808.

6. On information and belief, Defendant TCT Mobile (US) Inc. is a company incorporated in Delaware and may be served through its registered agent Corporation Service Company at 251 Little Falls Drive, Wilmington, DE 19808.

JURISDICTION AND VENUE

7. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 et seq. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.

8. The Court has personal jurisdiction over the Defendants for the following reasons: (1) Defendants are present within or have minimum contacts within the State of Texas and the Northern District of Texas; (2) Defendants have purposefully availed themselves of the privileges of conducting business in the State of Texas and in this district; (3) Defendants have sought protection and benefit from the laws of the State of Texas; (4) Defendants regularly conduct business within the State of Texas and within this district, and Plaintiff's cause of action arises directly from Defendants' business contacts and other activities in the State of Texas and in this district; and (5) Defendant Blackberry has a regular and established business in Texas and has purposely availed itself of the privileges and benefits of the laws of the State of Texas.

9. Defendants, directly and/or through intermediaries, ship, distribute, use, offer for sale, sell, and/or advertise products and services in the United States, the State of Texas, and the Northern District of Texas including but not limited to the products which contain and utilize the infringing '204 Patent systems and methods as detailed below. Upon information and belief, Defendants have committed patent infringement in the State of Texas and in this district; Defendants solicit and have solicited customers in the State of Texas and in this district; and Defendants have paying customers who are residents of the State of Texas and this district and who each use and have used the Defendants' products and services in the State of Texas and in this district.

10. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. §§ 1400(b).

Defendant Blackberry has a regular and established place of business in this district, Defendants have transacted business in this district, and Defendants have directly and/or indirectly committed acts of patent infringement in this district.

PATENT-IN-SUIT

11. The Patent-in-Suit teaches systems and methods for improving a spread-spectrum code-division-multiple-access (“CDMA”) system, using a channel sounding signal from a base station to provide initial transmitter power levels for remote stations.

12. The invention disclosed in the Patent-in-Suit discloses inventive concepts that represent significant improvements in the art; are not mere routine or conventional uses of computer components; and were not well-understood at the time of filing. For instance, at the time of filing, CDMA systems suffered from poor power control. *See* Ex. A, '204 Patent, 1:21–2:5. Although various approaches existed to address power control issues, those approaches suffered from inconsistency, inefficiency, and excessive delays. *See* Ex. A, '204 Patent, 1:21–2:5. The patent-in-suit addressed these concerns by “permit[ting] a remote power station to have knowledge, a priori to transmitting, of a proper power level to initiate transmission.” *See* Ex. A, '204 Patent, 2:7–10. Further, the patent-in-suit teaches “to measure and initially correct or compensate for Doppler shift in carrier frequency caused by the motion of the remote station.” *See* Ex. A, '204 Patent, 2:11–13.

13. Additionally, one of ordinary skill in the art at the time of the patent’s filing would have understood that the inventions taught in the '204 Patent, which are rooted, for example, in improving remote power stations’ knowledge of proper power levels, cannot be performed with pen and paper or in the human mind.. Using a pen and paper would ignore the stated purpose of the '204 Patent and the problem it was specifically designed to address. Doing so would be a

practical impossibility running counter to the inventors' detailed description of the inventions and language of the claims. Additionally, because the '204 Patent addresses problems rooted in improving remote power stations' knowledge of proper power levels, the solutions it teaches are not merely drawn to longstanding human activities.

ACCUSED PRODUCTS

14. On information and belief, Defendant Blackberry currently licenses its Blackberry® trademark to Defendant TCL. Blackberry and TCL, either individually or collectively, have made and/or make; have used and/or use; have offered and/or offer for sale; have sold and/or sell in the U.S. products, systems, and/or services that have infringed the Patent-in-Suit, including, but not limited to the following Blackberry devices: Classic, DTEK50, DTEK60, Evolve, Evolve X, Key2, Key2 LE, KeyOne, Leap, Motion, Passport, Priv, Porsche Design P9983, and Z3 (the “Accused Products”).

COUNT I
(Infringement of U.S. Patent No. 6,711,204)

15. Plaintiff incorporates by reference the allegations of paragraphs 1-14, the same as if set forth herein.

16. The '204 Patent was filed on July 29, 2001, and legally issued by the United States Patent and Trademark Office (“USPTO”) on March 23, 2004. The '204 Patent is presumed valid and enforceable. *See* 35 U.S.C. § 282.

17. Without a license or permission from Plaintiff, Defendants have infringed and/or continue to infringe one or more claims of the '204 Patent—directly, contributorily, and/or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the patented '204

systems and methods, in violation of 35 U.S.C. § 271.

Direct Infringement

18. Upon information and belief, Defendants have directly infringed by, among other things, practicing and using all of the steps of the '204 Patent, for example, through internal testing, quality assurance, research and development, and troubleshooting. *See Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 775 (Fed. Cir. 1993); *see also* 35 U.S.C. § 271 (2006).

19. By way of example, Defendants have infringed one or more claims of the '204 Patent by practicing every element of the claimed inventions, including through the use of their hotspot-enabled Accused Products acting as base stations.

20. By way of another example, Defendants have infringed at least one or more claims of the '204 Patent, including but not limited to Claim 3, which Defendants control by placing every element of Plaintiff's patented inventions into service and receiving a benefit therefrom. *See Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1284 (Fed. Cir. 2011). Attached hereto as Exhibit B is an exemplary claim chart detailing representative infringement of Claim 3 of the Patent-in-Suit. Defendants have contractual relationships with wireless carriers that provide base stations. *See* Ex. C (noting that Blackberry has contracted with U.S. wireless carriers such as Verizon, Sprint, and AT&T); Ex. D. Base stations are accessed when the Accused Products put the Patent-in-Suit's inventions into service.

Contributory Infringement

21. On information and belief, Defendants have contributorily infringed Plaintiff's '204 Patent. Defendants had knowledge that third parties, such as their customers, would engage in an infringing use of the '204 Patent, whether through the use of the Accused Products in hotspot mode (*see, e.g.* ¶ 21) or by controlling wireless carriers' base stations by putting them into use (*see,*

e.g. ¶ 22) and benefitting from that use. (See, e.g., ¶¶ 13-14). End users have contractual relationships with wireless carriers that allow them to use the base stations, including voice and data plans. See, Ex. C; Ex. D.

BlackBerry KEY2 LE

Your device, our network. The BlackBerry® KEY2 LE is the slim and lightweight smartphone with a soft, textured back and up to 22 hours of battery [See More](#)

Figure 2 – Verizon advertises to customers: “[y]our device, our network,” available at <https://www.verizonwireless.com/unlocked-smartphones/blackberry-key2-le/?sku=sku3220111>

22. On information and belief, Defendants’ implementation of the accused functionality had no substantial non-infringing uses. See, e.g., *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009) (holding that the “substantial non-infringing use” element of a contributory infringement claim applies to an infringing feature or component, and that an “infringing feature” of a product does not escape liability simply because the product as a whole has other non-infringing uses). For example, an end user utilizing one of the Accused Products does not have the option of disabling the inventions claimed in the Patents-in-Suit.

23. Defendants had knowledge that third parties, such as their customers, would infringe for a variety of reasons, such as the following:

- a. By including in the Accused Products a component that can only infringe, the inference that infringement is intended is unavoidable and sufficient to satisfy the knowledge element of contributory infringement. See *Motiva Patents, LLC v. Sony Corp.*, 408 F. Supp. 3d 819 (E.D. Tex. 2019); see also *Ricoh Co. v. Quanta Computer Inc.*, 550 F.3d 1325, 1338 (Fed. Cir. 2008).

b. Inventors named on Blackberry's patents are named inventors on at least 84 patents involving spread spectrum technology, the same technology implicated in the Patent-in-Suit. *See* Ex. E. On information and belief, in conducting prior art searches and freedom to operate analyses, the Blackberry inventors became aware of the Patent-in-Suit. On information and belief, Defendant TCL learned of the Patent-in-Suit after performing similar prior art searches and through its close partnership with Defendant Blackberry. To the extent defendants argue they were not aware of the Patent-in-Suit, defendants were willfully blind, which is alone sufficient to impute knowledge.

Induced Infringement

24. On information and belief, Defendants have induced infringement on Plaintiff's '204 Patent. Defendants had knowledge that third parties, such as their customers, would engage in an infringing use of the '204 Patent. *See* ¶ 25.

25. Defendants induced such infringement by publication of instruction manuals for using their products in an infringing manner, as well as advertising infringing uses of the '204 patent. Blackberry's customers' subsequent usage of the Accused Products to communicate via CDMA networks placed every element of the various protected Claims of the '204 Patent into service, constituting control and therefore infringement. *See* <https://blackberrymobile.com/support/blackberry-keyone/user-guide> (where Blackberry provides user manuals instructing end-users to use the Accused Products, with such use necessarily infringing).

26. End users benefited from each element and controlled (the invention) by placing the system as a whole into service.

Willful Infringement

27. On information and belief, the infringement of the '204 Patent by Defendants has been willful, and Defendants had the requisite knowledge of the '204 Patent. *See* ¶ 25. Blackberry prosecuted (*see* ¶ 25(b)) at least 84 patents related to the claimed technology and litigated that technology (*see* Ex. F (identifying patents litigated by Blackberry, some of which relate to spread spectrum technology at issue in the instant suit)). With knowledge of the patent and the understanding of one of ordinary skill in the art, Defendants egregiously infringed the Patent-in-Suit.

Plaintiff Suffered Damages

28. Defendants' acts of infringement of the '204 Patent have caused damage to Plaintiff, and Plaintiff is entitled to recover from Defendants the damages sustained as a result of Defendants' wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271.

REQUEST FOR RELIEF

29. Plaintiff incorporates each of the allegations in the paragraphs above and respectfully asks the Court to:

- (a) enter a judgment that Defendants have directly infringed, contributorily infringed, and induced infringement of one or more claims of each of the '204 Patent;
- (b) enter a judgment awarding Plaintiff all damages adequate to compensate it for Defendants' infringement of, direct or contributory, or inducement to infringe, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendants' willful infringement of the '204 Patent;
- (d) enter a judgment requiring Defendants to pay the costs of this action, including all

disbursements, and attorneys' fees as provided by 35 U.S.C. § 285, together with
prejudgment interest; and

(e) award Plaintiff all other relief that the Court may deem just and proper.

Dated: January 24, 2020

Respectfully submitted,

/s/ Jay Johnson

Jay Johnson (TX SBN 24067322)
Kizzia Johnson PLLC
1910 Pacific Ave., Suite 13000
Dallas, TX 75201
(214) 451-0164
jay@kjpllc.com

Kirk. J. Anderson (CA SBN 289043)
(*Pro Hac Vice forthcoming*)
kanderson@budolaw.com
BUDO LAW, P.C.
5610 Ward Rd., Suite #300
Arvada, CO 80002
(720) 225-9440 (Phone)
(720) 225-9331 (Fax)

Attorney(s) for Aperture Net LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2020, I electronically filed the above documents with the Clerk of Court using CM/ECF which will send electronic notification of such filings to all registered counsel.

/s/ Jay Johnson

Jay Johnson