

1 Nathan Brown  
2 Brown Patent Law  
3 15100 N. 78<sup>th</sup> Way – Suite 203  
4 Scottsdale, Arizona 85260  
5 State Bar No. 033482  
6 nathan.brown@brownpatentlaw.com  
7 Telephone: (602) 529-3474

8 Together with:  
9 Howard L. Wernow (*Pro hac vice forthcoming*)  
10 Sand, Sebolt & Wernow Co., LPA  
11 Aegis Tower – Suite 1100  
12 4940 Munson Street NW  
13 Canton, Ohio 44718  
14 howard.wernow@sswip.com  
15 Telephone: (330) 244-1174

16 Attorneys for Plaintiff Tekvoke LLC

17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE DISTRICT OF ARIZONA**

19 **Tekvoke LLC, a Texas limited liability**  
20 **company,**

21 Plaintiff,

22 v.

23 **Nextiva, Inc., an Arizona corporation,**

24 Defendant.

Civil Action No.:

**TRIAL BY JURY DEMANDED**

COMPLAINT FOR INFRINGEMENT  
OF PATENT

25 Now comes Plaintiff, Tekvoke, LLC (“Plaintiff”), by and through undersigned  
26 counsel, and respectfully alleges, states, and prays as follows:  
27  
28

**NATURE OF THE ACTION**

1  
2 1. This is an action for patent infringement under the Patent Laws of the United  
3 States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin Defendant Nextiva,  
4 Inc. (hereinafter “Defendant”), from infringing and profiting, in an illegal and unauthorized  
5 manner, and without authorization and/or consent from Plaintiff from U.S. Patent No. 6,  
6 687,343 (“the ‘343 Patent” or the “Patent-in-Suit”), which is attached hereto as Exhibit A  
7 and incorporated herein by reference, and pursuant to 35 U.S.C. §271, and to recover  
8 damages, attorney’s fees, and costs.  
9  
10

**THE PARTIES**

11  
12 2. Plaintiff is a Texas limited liability company with its principal place of  
13 business at 15922 Eldorado Parkway – Suite 500-1703, Frisco, Texas 75035.  
14

15 3. Upon information and belief, Defendant is a corporation organized under the  
16 laws of Arizona, having a principal place of business at 880 East Chaparral Road, Suite  
17 300, Scottsdale, Arizona 85250. Upon information and belief, Defendant may be served  
18 with process c/o the Corporation Service Company, 8825 North 23<sup>rd</sup> Avenue, Suite 100,  
19 Phoenix, Arizona 85021.  
20

21 4. Plaintiff is further informed and believes, and on that basis alleges, that  
22 Defendant operates the website [www.nextiva.com](http://www.nextiva.com), which is in the business of providing  
23 internet-based communication devices. Defendant derives a portion of its revenue from  
24 sales and distribution via electronic transactions conducted on and using at least, but not  
25 limited to, its Internet website, and its incorporated and/or related systems (collectively,  
26 “Defendant’s Website”). Plaintiff is informed and believes, and on that basis alleges, that,  
27  
28

1 at all times relevant hereto, Defendant has done and continues to do business in this judicial  
2 district, including, but not limited to, providing products/services to customers located in  
3 this judicial district by way of Defendant's Website.  
4

5 **JURISDICTION AND VENUE**

6 5. This is an action for patent infringement in violation of the Patent Act of the  
7 United States, 35 U.S.C. §§1 *et seq.*  
8

9 6. The Court has subject matter jurisdiction over this action pursuant to 28  
10 U.S.C. §§1331 and 1338(a).

11 7. This Court has personal jurisdiction over Defendant by virtue of its  
12 systematic and continuous contacts with this jurisdiction and its residence in this District,  
13 as well as because of the injury to Plaintiff, and the cause of action Plaintiff has risen in  
14 this District, as alleged herein.  
15

16 8. Defendant is subject to this Court's specific and general personal jurisdiction  
17 pursuant to its substantial business in this forum, including: (i) at least a portion of the  
18 infringements alleged herein; (ii) regularly doing or soliciting business, engaging in other  
19 persistent courses of conduct, and/or deriving substantial revenue from goods and services  
20 provided to individuals in this judicial District; and (iii) being physically located in this  
21 District.  
22

23 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b)  
24 because Defendant resides in this District under the Supreme Court's opinion in *TC*  
25 *Heartland v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017) through its physical  
26 presence, and regular and established place of business in this District.  
27  
28

**FACTUAL ALLEGATIONS**

1  
2           10. On February 3, 2004, the United States Patent and Trademark Office  
3 (“USPTO”) duly and legally issued the ‘343 Patent, entitled “INTERNET  
4 COMMUNICATION CONTROL APPARATUS AND COMMUNICATION  
5 TERMINAL CALLING METHOD” after a full and fair examination. The ‘343 Patent is  
6 attached hereto as Exhibit A and incorporated herein as if fully rewritten.  
7

8  
9           11. Plaintiff is presently the owner of the ‘343 Patent, having received all right,  
10 title and interest in and to the ‘343 Patent from the previous assignee of record. Plaintiff  
11 possesses all rights of recovery under the ‘343 Patent, including the exclusive right to  
12 recover for past infringement.  
13

14           12. To the extent required, Plaintiff has complied with all marking requirements  
15 under 35 U.S.C. § 287.g  
16

17           13. An exemplary advantage of the ‘343 Patent over the prior art is to “provide  
18 an Internet communication control apparatus and communication terminal calling method  
19 that can easily perform individual calling process, without complicating or upsizing the  
20 apparatus, when connected telephones and facsimile apparatuses having incoming calls  
21 from multiple parties about the same time with an overlapping of time.” Ex. A at 2:13-18.  
22

23           14. The ‘343 Patent contains five claims, namely two independent claims and  
24 three dependent claims.  
25

26           15. Claim 1 of the ‘343 Patent states:

- 27           1. An Internet communication control apparatus selectively  
28           connected to a plurality of communication terminals and to a

1 computer network, said Internet communication control  
2 apparatus comprising:

3 a controller configured to transmit calling signals to said  
4 plurality of communication terminals, wherein a single  
5 calling signal having a first predetermined time period is  
6 transmitted to one communication terminal of said plurality  
7 of communication terminals when a single calling request  
8 is detected from the computer network, and wherein plural  
9 calling signals having a second predetermined time period  
10 are sequentially transmitted to plural communication  
11 terminals of said plurality of communication terminals  
when plural calling requests are detected from the computer  
network, said plural calling signals being transmitted one  
after another to the plural communication terminals. See  
Ex. A.

12 16. Defendant commercializes, inter alia, an apparatus having all the elements  
13 and components recited in at least one claim of the '343 Patent. More particularly,  
14 Defendant makes, uses, sells, offers for sale, or imports a system and/or device that  
15 encompasses that which is covered by Claim 1 of the '343 Patent.

17 **DEFENDANT'S PRODUCT(S)**

18 17. Defendant offers the "Nextiva Business Communication Enterprise Nextiva  
19 Voice" (the "Accused Instrumentality"), an Internet communication control apparatus  
20 selectively connected to a plurality of communication terminals and to a computer network.  
21 A non-limiting and exemplary claim chart comparing the Accused Instrumentality to Claim  
22 1 of the '343 Patent is attached hereto as Exhibit B and is incorporated herein as if fully  
23 rewritten.  
24

25  
26 18. As recited in Claim 1, the Accused Instrumentality is an Internet  
27 communication control apparatus (e.g., cloud-hosted PBX) selectively connected to a  
28

1 plurality of communication terminals (e.g., desk phones and mobile app installed smart  
2 devices) and to a computer network, said internet control apparatus. *See* Ex. B.

3  
4 19. As recited in Claim 1, the Accused Instrumentality utilizes a controller (e.g.,  
5 cloud-hosted PBX) configured to transmit calling signals to said plurality of  
6 communication terminals (e.g., desk phones and mobile app installed smart devices),  
7 wherein a single calling signal having a first predetermined time period (e.g., User Defined  
8 Connect Timeout) is transmitted to one communication terminal (e.g., user defined single  
9 agent) of said plurality of communication terminals (e.g., desk phones and mobile app  
10 installed smart devices) when a single calling request (e.g., User Call initiation) is detected  
11 from the computer network (e.g., Nextiva's cloud VoIP), and wherein plural calling signals  
12 having a second predetermined time period (e.g., User Defined Connect Timeout) are  
13 sequentially transmitted (e.g., sequential call forwarding) to plural communication  
14 terminals (e.g., multiple agents in the queue) of said plurality of communication terminals  
15 (e.g., desk phones and mobile app installed smart devices) when plural calling requests are  
16 detected from the computer network, said plural calling signals being transmitted one after  
17 another (e.g., sequential call forwarding) to the plural communication terminals (e.g.,  
18 multiple agents in the queue which can be desk phones and mobile app installed smart  
19 devices). *See* Ex. B.

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23  
24 20. As recited in Claim 1, the Accused Instrumentality utilizes a controller (e.g.,  
25 cloud-hosted PBX) which is provided with an advance call forwarding features wherein  
26 Nextiva hosted VoIP allows users to customize the number of calling agents (i.e. singular  
27 or plural calling terminals) as well as predetermined time period for calling signals (i.e.  
28

1 user controlled Connect timeout which indicates how long should an agent’s phone rings  
2 before choosing a new agent to receive the call). In case of multiple agents receiving call  
3 agents in the queue (i.e. plural calling signals to plurality of communication terminals)  
4 there exist a provision for sequential transmission of call to plurality of communication  
5 terminal (i.e. sequential call forwarding – selective, circular strategy.) *See* Ex. B.  
6

7 **INFRINGEMENT OF THE PATENT-IN-SUIT**  
8

9 21. Plaintiff realleges and incorporates by reference all of the allegations set forth  
10 in the preceding paragraphs.

11 22. In violation of 35 U.S.C. §271, Defendant is now, and has been directly  
12 infringing the ‘343 Patent.  
13

14 23. Defendant has had knowledge of infringement of the ‘343 Patent at least as  
15 of the service of the present Complaint.  
16

17 24. Defendant has directly infringed and continues to directly infringe at least  
18 one claim of the ‘343 Patent by using, at least through internal testing or otherwise, the  
19 Accused Instrumentality without authority in the United States, and will continue to do so  
20 unless enjoined by this Court. As a direct and proximate result of Defendant’s direct  
21 infringement of the ‘343 Patent, Plaintiff has been and continues to be damaged.  
22

23 25. By engaging in the conduct described herein, Defendant has injured Plaintiff  
24 and is thus liable for infringement of the ‘343 Patent, pursuant to 35 U.S.C. §271.  
25

26 26. Defendant has committed these acts of infringement without license or  
27 authorization.  
28





1 c. That Defendant, its officers, directors, agents, servants, employees, attorneys,  
2 affiliates, divisions, branches, parents, and those persons in active concert or participation  
3 with any of them, be permanently restrained and enjoined from directly infringing the '343  
4 Patent;

6 d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate  
7 Plaintiff for the Defendant's past infringement and any continuing or future infringement  
8 up until the date that Defendant is finally and permanently enjoined from further  
9 infringement, including compensatory damages;

11 e. An assessment of pre-judgment and post-judgment interest and costs against  
12 Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C.  
13 §284;

15 f. That Defendant be directed to pay enhanced damages, including Plaintiff's  
16 attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

18 g. That Plaintiff be granted such other and further relief as this Court may deem  
19 just and proper.

20 DATED this 23rd day of December, 2020.

21 s/Nathan Brown

22 Nathan Brown  
23 Attorney for Plaintiff Tekvoke LLC