

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DATAQUILL LIMITED,

Plaintiff,

v.

SIMPLY, INC.; and VERYKOOL USA,
INC.,

Defendants.

Case No.

COMPLAINT FOR PATENT
INFRINGEMENT AND JURY
TRIAL DEMANDED

COMPLAINT

This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, against Defendants Simply, Inc., and veryKool USA, Inc. (collectively “Simply” or the “Simply Defendants”) that relates to U.S. patent 6,058,304 (the “Patent-in-Suit”) owned by DataQuill Limited (“DataQuill”).

PARTIES

1. Plaintiff DataQuill Limited is a limited company organized under the laws of the British Virgin Islands.

2. Defendant Simply, Inc. is a Maryland Corporation with its principal place of business at 2001 NW 84th Avenue, Miami, Florida. Defendant Verykool USA, Inc., is a Maryland Corporation, and a wholly-owned subsidiary of Simply,

Inc. On information and belief, Verykool USA, Inc.'s principal place of business is 2001 NW 84th Avenue, Miami, Florida.

3. Verykool USA, Inc.'s parent has changed its name at least twice during the relevant period. Prior to June 8, 2018, Verykool USA, Inc. was a wholly-owned subsidiary of Infsonics Corporation, a Maryland Corporation. On June 8, 2018, Infsonics Corporation changed its name to Cool Holdings, Inc., and remained a Maryland Corporation. Effective October 14, 2020, Cool Holdings, Inc., again changed its name to Simply, Inc., and remained a Maryland Corporation.

4. In its 2015 Annual Report filed with the Securities and Exchange Commission ("SEC") (hereinafter "2015 Report"), Infsonics stated that since March 31, 2012, its "business has been centered on our *verykool*® product line." Infsonics further stated, "We are a provider of wireless handsets (which may be referred to herein as 'phones', 'cell phones', 'mobile phones', 'feature phones' and 'smartphones'), tablets and accessories to carriers and distributors in Latin America and the United States. We define, source and sell our proprietary line of products under the *verykool*® brand, with the goal to provide the market with products that are unique, handsomely designed, feature rich and provide exceptional "value" for the consumer. Our *verykool*® products include a wide range of GSM feature phones and Android-based smartphones."

5. In its 2015 Report, Infosonics stated its “strategy includes” “[e]xpansion of our on-line retails sales channel in the United States.” It also stated, “[i]n the United States, our customers include distributors who primarily supply regional carriers.”

6. In its 2015 Report, Infosonics stated its principal executive office was located at 3636 Nobel Drive, Suite 325, San Diego, California 92122.

7. In its 2015 Report, Infosonics stated its “distribution center is located in Miami, Florida.” Infosonics stated its distribution center’s “[a]ggregate [s]quare [f]ootage” was “14,384” and the lease ran from “Apr[il] 2015 to May 2020.”

8. In its 2015 Report, Infosonics stated its “net sales by geographical area for the year[] ended December 31, 2015” was \$11,853,000 to “U.S.-based distributors selling to Latin America” and \$4,511,000 to the “United States”.

9. In its 2017 Annual Report filed with the SEC (“2017 Report”), Infosonics again stated its “distribution center is located in Miami, Florida” and its distribution center’s “[a]ggregate [s]quare [f]ootage” was “14,384” and the lease ran from “Apr[il] 2015 to May 2020.”

10. In its 2017 Report, Infosonics stated its “sales to Miami-based distributors selling to Latin America” in 2017 increased by “\$1.8 million, or 33%”. In its 2017 Report, Infosonics also stated that for the “Year Ended December 31, 2016 Compared With Year Ended December 31, 2015” its “[s]ales to Miami-based

distributors selling to Latin America declined by \$4.9 million. Sales to U.S. customers declined by \$3.2 million, or 72%, reflecting the Company's decision to exit the U.S. market as of September 30, 2016."

11. In its 2018 Annual Report filed with the SEC ("2018 Report"), Cool Holdings, Inc. reported its headquarters was 48 NW 25th Street, Suite 108, Miami, Florida 33127.

12. In its 2018 Report, Cool Holdings stated its "Cooltech Distribution center [is] located in Miami, Florida" and its distribution center's "[a]ggregate [s]quare [f]ootage" was "14,384" and the lease ran from "Apr[il] 2015 to May 2020."

13. In its 2018 Report, Cool Holdings, Inc., stated it had "completed the closure of the verykool business segment that had been the legacy business of InfoSonics prior to the Merger. By December 31, 2018, the verykool product inventory was substantially liquidated, the trade name was sold, remaining assets consisted primarily of accounts receivable, and remaining liabilities consisted primarily of estimated warranty obligations and a \$250,000 note payable to a vendor that was repaid in March 2019."

14. In its 2020 Annual Report filed with the SEC ("2020 Report"), Simply, Inc. reported its headquarters was 2001 NW 84th Avenue, Miami, Florida 33122.

15. In its 2020 Report, Simply, Inc. stated, "Our corporate headquarters office and our distribution center are located in a single facility in Miami, Florida."

It also stated the “Headquarters and Distribution Warehouse[’s]” “[a]ggregate [s]quare [f]ootage” was “14,384” and the lease ran from “June 2020 to May 2023.”

16. In its 2020 Report, Simply, Inc. stated that “verykool USA, Inc. (Maryland Corporation)” was among the “Subsidiaries of Simply, Inc.”

17. For the relevant time periods of this action, the Simply Defendants made, used, imported, offered for sale and sold wireless mobile devices under the brand name Verykool in the United States.

JURISDICTION AND VENUE

18. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, et seq., and more particularly 35 U.S.C. § 271.

19. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

20. This Court has personal jurisdiction over each Simply Defendant pursuant to due process because each defendant has a regular and established place of business in the Southern District of Florida at 2001 NW 84th Avenue, Miami, Florida 33122. Simply has conducted substantial business in this District, including: (i) having solicited business in the State of Florida, transacted business within the State of Florida and attempted to derive financial benefit from residents of the State of Florida in this District, including benefits directly related to the instant patent

infringement causes of action set forth herein; (ii) having placed its products and services into the stream of commerce throughout the United States and having been actively engaged in transacting business in Florida and in this District, and (iii) having committed the complained of tortious acts in Florida and in this District.

21. Simply directly and/or through subsidiaries and agents (including distributors, retailers, and others), made, imported, shipped, distributed, offered for sale, sold, used, and advertised (including having offered products and services through its website as well as other retailers) its products and/or services in the United States, the State of Florida and, more particularly, within the Southern District of Florida.

22. Simply directly and/or through its subsidiaries and agents (including distributors, retailers, and others), has purposefully and voluntarily placed one or more of its infringing products and/or services, as described below, into the stream of commerce with the expectation that they will be purchased and used by consumers in the Southern District of Florida. These infringing products and/or services have been purchased and used by consumers in the Southern District of Florida. Simply has committed acts of patent infringement within the State of Florida and, more particularly, within the Southern District of Florida.

23. Venue is proper in this District under §1400 (b), which provides that “Any civil action for patent infringement may be brought in the judicial district

where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” Venue is proper as to Defendant Simply, Inc. because it has committed acts of infringement and has a regular and established place of business in the Southern District of Florida at 2001 NW 84th Avenue, Miami, Florida 33122. Venue is proper as to Defendant Verykool USA, Inc. because it has committed acts of infringement and has a regular and established place of business in the Southern District of Florida at 2001 NW 84th Avenue, Miami, Florida 33122.

BACKGROUND FACTS REGARDING THE DATAQUILL PATENT

24. DataQuill is the owner of record and assignee of U.S. Patent No. 6,058,304 (“the ’304 Patent”) (the “Patent-in-Suit”).

25. DataQuill has sought to protect its invention through a licensing program (which has on several occasions required litigation). Many of the largest high-tech companies, including HTC, Nokia, Motorola, LG, Samsung, Palm, and Hewlett-Packard, have purchased a license to DataQuill’s patent portfolio. To date, DataQuill has obtained over \$125 million in licensing revenue.

26. The value of DataQuill’s asserted patent is further demonstrated by DataQuill’s repeated success against validity challenges. The Patent-in-Suit has been through a reexamination at the United States Patent and Trademark Office where

hundreds of references have been considered. In 2020, the Patent Trial and Appeal Board denied institution of an *inter partes* reexamination of the Patent-in-Suit.

27. In 2021, the United States Patent and Trademark Office ordered a second reexamination of the Patent-in-Suit that is currently pending for claims that are not presently asserted in this complaint.

28. In prior litigations, the Patent-in-Suit withstood heavy scrutiny, including motions for summary judgment of anticipation, obviousness, inequitable conduct, lack of enablement, and lack of an adequate written description—all of which were resolved in DataQuill’s favor. Most recently, a jury returned a verdict finding certain claims of the ’304 Patent valid and infringed in a case against ZTE. The jury determined that DataQuill had been damaged in the amount of \$31,500,000.

THE PATENT-IN-SUIT AND CLAIMS-IN-SUIT

29. DataQuill has the exclusive right to sue and the exclusive right to recover damages for infringement of the Patent-in-Suit during all relevant time periods.

30. On May 2, 2000, the ’304 Patent entitled “Data Entry Systems” was duly and legally issued by the USPTO. On April 13, 2010, the USPTO issued an Ex Parte Reexamination Certificate for the ’304 Patent.

SIMPLY’S INFRINGING PRODUCTS

31. During the damages period, Simply made, used, offered for sale, sold,

and imported into the United States smartphones under the brand name Verykool that enable users to browse and download items such as apps, games, ringtones, music, videos, books, and magazines. On information and belief, these devices include but are not limited to the following models: s400, s353, T742, s450, s505, s351, s352, s401, SL5000 Quantum, s354, s5510 Juno, s5511 Juno Quattro, s3501 Lynx, s4002 Leo, s4010 Gazelle, s5015 Spark II, s6001 Cyprus, s5014 Atlas, s4510 Lune, SL4500 Fusion, s5012 Orbit, s5518 Maverick, s3504 Mystic II, s5017 Dorado, T7440 Kolorpad II, s15009 Jet, s5017 Dorado, s5518 Maverick, SL5550 Maverick LTE, SL4502 Fusion II, s5001 Lotus, s5020 Giant, s5025 Helix, SL6010 Cyprus LTE, SL5011 Spark LTE, s5030 Helix II, s5530 Maverick II, s6005 Cyprus II, s4007 Leo IV, Kolorpad LTE TL8010, s5525 Maverick III, s5524 Maverick III Jr., s6004 Cyprus Jr., SL5050 Phantom, SL5200 Eclipse, s4008 Leo V, s5019 Wave, s5021 Wave Pro, SL5560 Maverick Pro, s4513 Luna II, s5007 Lotus Plus, s5027 Bolt Pro, s5028 Bolt, s5035 Spear, s5034 Spear Jr., s5526 Alpha, s4009 Crystal, T7445, SL5565 Rocket, s5528 Cosmo, s5527 Alpha Pro, s6005X Cyprus Pro, s5025 Orion Pro, s5029 Bolt Pro, SL5029 Bolt Pro LTE, s5031 Bolt Turbo, s5200 Orion, s5036 Apollo, s5037 Apollo Quattro, and s5072 Royale Quattro. The devices are a subset of, and collectively referred to as, “Accused Verykool Smartphones.”

32. In addition to the specific models listed above, the “Accused Verykool Smartphones” are all Verykool Smartphones that incorporated a touch-sensitive

screen and the Android operating system that were offered for sale or sold in the United States between the period that is six years before the filing date of this complaint and the expiration of the Patent-in-Suit.

33. Simply directly infringed claims of the Patent-in-Suit under 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing Accused Verykool Smartphones in this District and elsewhere in the United States that include the systems claimed in the Patent-in-Suit and/or by using the methods claimed in the Patent-in-Suit, including, for example, Simply's use of said methods during set-up, testing, and demonstration of Accused Verykool Smartphones.

34. Simply induced the direct infringement of method claims of the Patent-in-Suit pursuant to U.S.C. § 271(b) at least by one or more of making, using, offering for sale, selling and/or importing Accused Verykool Smartphones in this District and elsewhere in the United States that were designed and intended to use and/or practice the methods and processes covered by the Patent-in-Suit. Further, Simply induced infringement by, for example, providing user guides and other support materials and services to its users and by advertising features that are used, and benefits that are achieved through use of the Patent-in-Suit.

35. Despite Simply's awareness of the Patent-in-Suit, Simply continued these acts of inducement with specific intent to cause and encourage direct

infringement of the Patent-in-Suit with willful blindness that such activities occurred and constitute direct infringement of the Patent-in-Suit.

**SIMPLY’S KNOWLEDGE OF THE PATENT-IN-SUIT,
HOW SIMPLY INFRINGED THEM, AND HOW SIMPLY CONTINUED
INFRINGEMENT DESPITE THAT KNOWLEDGE**

36. At least as early as April 25, 2014, DataQuill, through counsel, provided notice to Simply through a letter regarding the ’304 Patent addressed to Infasonics’ CEO at 3636 Nobel Drive, Suite 325, San Diego, California 92122.

37. Simply did not enter into a license agreement with DataQuill following the April 2014 letter.

38. Despite knowledge of the Patent-in-Suit and knowledge of the manner in which the Patent-in-Suit was infringed, Simply continued to infringe, and induce the infringement of, the Patent-in-Suit.

COUNT I: INFRINGEMENT OF PAT. 6,058,304

39. DataQuill reasserts and realleges paragraphs 1 through 38 of this Complaint as though set forth fully here.

40. Simply directly infringed the ’304 Patent in the State of Florida, in this judicial district, and elsewhere within the United States by making, using, offering for sale, selling, and/or importing Accused Verykool Smartphones that infringe one or more claims of the ’304 Patent.

41. Accused Verykool Smartphones sold by Simply infringed claim 101 of

the '304 Patent, for example as explained in the following paragraphs (42-55).

42. The Accused Verykool Smartphones are data entry devices for use in a data entry system.

43. Each Accused Verykool Smartphone contains at least one reading sensor. "Reading sensor" has been repeatedly construed by several courts to cover a touchscreen. Each Accused Verykool Smartphone has a touchscreen. The touchscreen is a reading sensor responsive to commands and/or sensed commands and data. The touchscreen produces input signals.

44. For example, the touchscreen of each Accused Verykool Smartphone is responsive to commands and/or sensed commands and data that enable a user to navigate and download Google Play Products from Google Play.

45. The Accused Verykool Smartphones contain a controller coupled to the reading sensor to receive and process input signals from the touchscreen, e.g., circuitry coupled to the touchscreen including the touchscreen controller and processor. This circuitry responds to commands, sensed commands, and data to control the Accused Verykool Smartphones and to select items.

46. The Accused Verykool Smartphones' controller is coupled to a communications interface to selectively control transmission over said communications interface of command and or data signals as determined by said input signals processed by the controller.

47. For example, Accused Verykool Smartphones' contain a communications interface (e.g., the GSM/GPRS/UMTS/HSDPA/HSUPA/HSPA+/DC-HSDPA/EDGE/CDMA/EV-DO/3G/4G/LTE/FDD-LTE/TD-LTE circuitry). The communications interface is coupled to the controller. The communications interface provides for transmission of commands and/or data signals as determined by input signals processed by the controller in several ways including: commands and/or data signals are transmitted over the communications interface when a user navigates Google Play and selects to view additional information about an item or to rate or review an item or when a user chooses to download an item from Google Play.

48. The Accused Verykool Smartphones contain a communications interface (e.g., the GSM/GPRS/UMTS/HSDPA/HSUPA/HSPA+/DC-HSDPA/EDGE/CDMA/EV-DO/3G/4G/LTE/FDD-LTE/TD-LTE circuitry) that directly connects the Accused Verykool Smartphones to a wireless telecommunications network. This connection is made over a wireless telecommunications network via an antenna.

49. The Accused Verykool Smartphones contain a touchscreen display coupled to a controller to display commands and/or information under control of the input signals processed by the controller. For instance, the Google Play store displays buttons under the control of input signals the Accused Verykool

Smartphones' controller processes. The Accused Verykool Smartphones' reading sensors, controllers, and displays comprise a unitary assembly. The Accused Verykool Smartphones are sold as complete, integrated units. The Accused Verykool Smartphones' touchscreens comprise a reading sensor and a display. The controller is located within the Accused Verykool Smartphones.

50. The Accused Verykool Smartphones contain a communications interface (e.g., the GSM/GPRS/UMTS/HSDPA/HSUPA/HSPA+/DC-HSDPA/EDGE/CDMA/EVDO/3G/4G/LTE/FDD-LTE/TD-LTE circuitry) that is a cellular telephone network interface. The cellular telephone network interface directly connects the Accused Verykool Smartphone to a wireless telecommunications network that is a cellular telephone network.

51. Each Accused Verykool Smartphones is a data entry device integral with a cellular telephone. The Accused Verykool Smartphones comprise both a data entry device and a cellular telephone.

52. The controller is configured to respond to a user update command by downloading information required for updating information previously stored in the Accused Verykool Smartphones. For example, a user can choose to update a user selectable application by tapping the "UPDATE" button. The existing application was previously stored on the Accused Verykool Smartphones, and the "UPDATE" button initiates a download of information to update that application. Additionally,

when a user accesses Google Play by tapping the Google Play icon, information required for updating applications (e.g., whether an update is available, app permission information) is downloaded from a remote processing center (e.g., one or more of the servers that operate Google Play). An update may be available if the user previously downloaded and stored said app.

53. The Accused Verykool Smartphones comprise a touchscreen, which is a carrier. “Carrier” has been construed by multiple courts to mean “a medium that carries one or more data and/or command codes.” The touchscreen is a medium associated with displaying a plurality of data and/or command codes. The data and/or command codes are displayed on the screen as buttons, links, or icons. The touchscreen is associated with displaying a plurality of user selectable items, such as Google Play Products.

54. The Accused Verykool Smartphones’ touchscreens carry a plurality of codes representing natural language characters and numbers, as well as commands for controlling operation of the data entry and/or merchandising systems. For natural language characters and numbers, the Accused Verykool Smartphones display a keyboard that can be used to input information. For commands, the touchscreen displays apps, buttons, or links that a user may select to control the system.

55. Each code is associated with a visual representation displayed on the Accused Verykool Smartphones’ screens. The codes may be product identifications

such as links to products on the Google Play store.

56. In addition to claim 101, by way of example, Simply infringed at least the independent claims 78, 80-81, 83, and 86 of the '304 Patent and the following dependent claims (as depending from specific independent claims): 13 (12); 45 (44); 55 (53); 40 (78); 59 (78); 60 (78); 32 (81); 34 (81); 35 (81); 44 (78, 81); 53 (78 or 81); 56 (78 or 81); 57 (78 or 81); 20 (86, 83, or 86); 12 (80, 83, 86, or 101); 22 (80, 83, 86, or 101); 23 (80, 83, 86, or 101); and 9 (101).

57. Simply is thus liable for infringement of the '304 Patent under 35 U.S.C. § 271(a).

58. With knowledge of the '304 Patent and knowledge of the infringing nature of Accused Verykool Smartphones (or, at a minimum, willful blindness thereto), Simply has encouraged its retailers to directly infringe the '304 Patent by offering to sell and selling these devices to end user consumers. Simply knew of and intended to cause its retailers' direct infringement and is therefore liable for inducing their infringement of the '304 Patent under 35 U.S.C. § 271(b).

59. With knowledge of the '304 Patent and knowledge of the infringing nature of Accused Verykool Smartphones (or, at a minimum, willful blindness thereto), Simply has encouraged end users to directly infringe the '304 Patent by using these devices. Simply has marketed, promoted, and instructed users to use these devices in an infringing manner. This marketing, promotion, and instruction

has specifically included instructions to use the device's functionality to download apps, games, music, videos, books, magazines, and/or ringtones. Simply knew of and intended to cause its end users' direct infringement and is therefore liable for inducing their infringement of the '304 Patent under 35 U.S.C. § 271(b).

60. As a result of its infringement of the '304 Patent, Simply has damaged DataQuill. Simply is liable to DataQuill in an amount to be determined at trial that adequately compensates DataQuill for the infringement, which by law can be no less than a reasonable royalty.

61. Because Simply knew of the '304 Patent and its infringement thereof (as detailed above), Simply's infringement of the '304 Patent is therefore willful and deliberate, entitling DataQuill to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

DataQuill demands a trial by jury on all issues that may be so tried.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff DataQuill requests that this Court enter judgment in its favor and against Defendants Simply, Inc. and Verykool USA, Inc. as follows:

A. Adjudging, finding, and declaring that Simply has infringed the above-identified claims of the Patent-in-Suit under 35 U.S.C. § 271;

B. Awarding the past damages arising out of Simply's infringement of the Patent-in-Suit to DataQuill in an amount no less than a reasonable royalty, together with prejudgment and post-judgment interest, in an amount according to proof;

C. Adjudging, finding, and declaring that Simply's infringement is willful and awarding enhanced damages and fees as a result of that willfulness under 35 U.S.C. § 284;

D. Adjudging, finding, and declaring that the Patent-in-Suit is valid and enforceable;

E. Awarding attorneys' fees, costs, or other damages pursuant to 35 U.S.C. §§ 284 or 285 or as otherwise permitted by law; and

F. Granting DataQuill such other further relief as is just and proper, or as the Court deems appropriate.

Respectfully submitted June 21, 2021,

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