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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TJTM TECHNOLOGIES, LLC, Plaintiff, v. **CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**, Defendant.	Case No. 4:22-cv-02801-YGR **AMENDED COMPLAINT FOR PATENT INFRINGEMENT** **JURY TRIAL DEMANDED**

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Plaintiff **TJTM Technologies, LLC** ("TJTM"), brings this action against **Cellco Partnership d/b/a Verizon Wireless** ("Verizon") to stop it from using TJTM's patented technology in cell phones sold by it without permission. TJTM seeks damages and injunctive relief. On information and belief, it alleges as follows:

I. NATURE OF THE ACTION

1. This is a civil action for patent infringement under 35 U.S.C. § 1 et seq.

2. On February 17, 2015, the United States Patent and Trademark Office ("USPTO") issued U.S. Patent No. 8,958,853, entitled "Mobile Device Inactive Mode and Inactive Mode Verification" to its inventor (the "'853 Patent"). This describes the "OFF MODE" application. A true and correct copy of the '853 Patent is attached hereto as **Exhibit A**.

3. The inventor of the '853 patent is an engineer, inventor and restauranteur. TJTM is the legal owner of the '853 patent by assignment. The Managing Member of TJTM is the wife of the inventor, Dr. Connie Morris, who practices dentistry in South San Francisco.

4. The "OFF MODE" application was invented in 2010. The inventor was concerned that drivers were increasingly distracted by incoming calls and text messages while driving, which creates a public safety hazard. The "OFF MODE" application allows users to block telephone calls, text messages, and other notifications while driving and otherwise, gives them the option of issuing automated replies to senders or callers informing them that the driver is temporarily unavailable, and then provides a log of missed communications when "OFF MODE" is turned off. "OFF MODE" increases highway safety by diminishing the urge to use one's cell phone while driving. This allows drivers to focus solely on the road and traffic.

5. TJTM had a software engineer build the "OFF MODE" application. It was available for downloading in 2013 on Google Play and their business website. Since then, it has been downloaded more than 61,000 times.

6. "OFF MODE" was the first application of its kind and the inventor was issued the '853 patent.

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7. Verizon has infringed and continues to infringe one or more claims of the '853 Patent by offering a "Driving Mode" feature in the Messages ("Message+") app on cellular telephones to millions of consumers throughout the world. To the extent that this is not pre-loaded onto the phones, Verizon offers directions to its customers on how they can download the software. Verizon's "Driving Mode" mirrors the claims of the '853 patent.

8. Verizon had to know about the '853 patent and the "OFF MODE" app when it first adopted the "Driving Mode" feature for cellular phones sold by it. Instead of licensing the '853 patent for a reasonable royalty, however, Verizon took TJTM's invention and paid no compensation for it. On information and belief, Verizon gambled that TJTM could not afford to litigate its claims under the '853 patent. This lawsuit followed, and seeks, among other things, monetary damages and injunctive relief.

II. THE PARTIES

9. Plaintiff **TJTM Technologies, LLC**, is a California limited liability company with its principal place of business in San Francisco, California. Dr. Connie Morris is its Managing Member.

10. Defendant **Cellco Partnership d/b/a Verizon Wireless** is a general partnership organized and existing under the laws of the State of Delaware, with a principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920. Verizon does business all over the United States and internationally.

III. JURISDICTION

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (Federal question) and 1338 (a) (any act of Congress relating to patents and trademarks.).

12. This Court has personal jurisdiction because Verizon operates and resides in this District. It has more locations in California than any other state. The patented technology is used while driving an automobile. There are more automobiles used in California than any other state. It employs hundreds of people in offices in San Francisco, San Jose, and Walnut Creek. It has over 200 licensed franchisees ("authorized retailers") and its own stores in the District who, among other things, sell the infringing phones for Verizon. One such company-owned store is

located at 768 Market Street in San Francisco. There are 6,426 Verizon Wireless locations in the United States as of February 22, 2022. The state with the most number of Verizon Wireless locations in the US is California, with 528 locations, which is 8% of all Verizon Wireless locations in America. On information and belief, selling cellular phones is one of the requirements of an authorized dealer. This Court also has personal jurisdiction as Verizon has committed and induced acts of patent infringement and has regularly and systematically conducted and solicited business in this District by and through, at a minimum, its sales, and offers for sale of Verizon products and services, and other contractual arrangements with Verizon customers, and it and its authorized dealers sell Verizon products and services, including the infringing phones, are located in and/or doing business within this District.

IV. VENUE AND INTRA-DISTRICT ASSIGNMENT

13. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) and 1400 (b). Pursuant to Local Rule 3-2(c), intellectual property actions are assigned on a District-wide basis.

14. There were two previous cases in this District involving the same patent, *SMTM Technology, LLC, v. Apple, Inc*., Case No. 4:19-cv-08133-YGR and *TJTM Technologies, LLC. v. Samsung Electronics America, Inc.,* 4:21-cv-05500-YGR. Both of these settled prior to trial.[1] Because both were assigned to the Hon. Yvonne Gonzalez Rogers, in the interest of judicial economy this case should be assigned to her because it is a related case.

V. FACTUAL ALLEGATIONS

A. THE PATENT CREATES A NOVEL APPLICATION TO SHUT OFF CELL PHONE NOTIFICATIONS WHILE DRIVING

15. In 2010, Dr. Morris and her children were complaining that her husband was always on or checking his phone while he was driving. As a result, the "OFF MODE" was developed for a breakthrough application for cell phones. It was clear that there were an increasing number of automobile accidents caused by driver distraction due to cell phone use. Automobile accidents caused by distracted driving were on the rise and had become as serious a

[1] To the extent that Verizon has sold any phones made by Apple or Samsung, they are expressly excluded from the claims in this Complaint.

public safety problem as driving while intoxicated. As many as 25% of all automobile accidents – millions of crashes – were caused by texting and driving. Many drivers are aware of the risks of distracted driving but lack the willpower not to use their phones while driving as shown by studies.

16. It was recognized that there was a need for a technological solution that would limit user distractions without forcing the user to turn off their phone and thereby miss essential communications. In furtherance of this, the "OFF MODE" function of the '853 patent automatically notifies the sender that the recipient is temporarily unavailable, and it provides a log of missed communications once "OFF MODE" is turned off.

17. The proliferation of accidents caused by distracted driving also created a need for a driver to prove, in the event of an accident, that he or she was not using their phone while driving. Accordingly, the patent created novel functionality for suppressing communications to a user and a means for verifying that a user was not receiving or responding to communications while driving.

18. In essence, "OFF MODE" as described in the '853 patent allows users to shut off notifications while driving, and replies with automated responses letting people know they are busy. The "OFF MODE" application blocks the screen from showing text, email, phone calls and other notifications, eliminating distractions so that the driver can focus on road safety. Users still receive incoming messages but without the distracting pop-up notifications, pings, dings, vibrations or other sounds. When "OFF MODE" is turned off, a report of all missed texts and calls is made available to the driver.

19. In 2013, after conceiving of the "OFF MODE" function, a software engineer was hired to build an app for the Android platform and a patent lawyer to draft the patent application.

20. In May 2013, the "OFF MODE" app was released to the public. A Facebook page for it was made and the app was available on the Google Play website.

21. The inventor felt so strongly about the public safety advantages of his app that it was made it available to the public for free.

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B. THE USPTO ISSUES THE '853 PATENT

22. On June 14, 2013, a provisional patent application was filed for the "OFF MODE" app titled "Mobile Device Inactive Mode and Inactive Mode Verification."

23. On February 9, 2014, a non-provisional, continuation of patent application for "OFF MODE" was filed.

24. On February 17, 2015, a patent was issued, United States Patent No. 8,958,853 for "Mobile Device Inactive Mode and Inactive Mode Verification." *See* **Exhibit A**.

C. VERIZON INFRINGES THE '853 PATENT BY SELLING PHONES WITH THE DRIVING MODE FEATURE

25. At a time unknown, but occurring after the filing date of the provisional patent application, Verizon began selling phones containing the Driving Mode feature in its Messaging (Message +) app. It had the same features as the "Do Not Disturb" app. "Driving Mode" while driving causes the phone to stay silent and the screen to stay dark while the user is driving. Likewise, if someone sends a message, they receive an automatic reply letting them know that the user is temporarily unavailable. If the message is important, the sender can type the word "urgent" to make sure the user receives a notification. Verizon's "Driving Mode" feature for its phones mirrors or constitutes the equivalent of the elements comprising the '853 patent.

26. While "Driving Mode" while driving may have been new to Verizon, it was certainly not new to the marketplace. It was released after the TJTM released its "OFF MODE" app and after the grant of the '853 patent. Given the massive legal resources available to Verizon to search new technology for patent infringement, and the knowledge that its software engineers and business executives have of the apps available for download, Verizon was fully aware of the TJTM app and the '853 patent at the time it adopted "Driving Mode" for its.

27. On information and belief, "Driving Mode" has been preloaded on many phones sold by Verizon. To the extent it is not pre-loaded, Verizon's website contains instructions on how to download and install it.

D. THE PTAB AFFIRMS THE VALIDITY OF THE PATENT

28. It was learned that Apple had incorporated his invention into its iOS 11 software

and was profiting from it. It was wrong for Apple to steal the invention, profit from it, and not pay royalties. Apple was told it that it was using the technology covered by the '853 and requested that he be paid an appropriate royalty. Apple refused.

29. Shortly thereafter, the '853 patent was challenged at the Patent Trial and Appeal Board ("PTAB")[2] by a company called Unified Patents, Inc. Unified Patents is a membership-based organization dedicated to eliminating what a member considers to be a "poor quality patent," particularly in the tech field. On information and belief, Verizon is a member of Unified Patents.

30. Unified Patents claimed that the '853 patent was invalid because the technology was already known, or strongly suggested by, previous patents. The PTAB disagreed, and on July 30, 2019, issued a decision holding that United Patents "failed to demonstrate a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim of the '853 Patent." The PTAB decision is attached as **Exhibit B**.[3]

31. TJTM ultimately sued Apple for infringing the '853 patent. That lawsuit settled before trial.

33. At a minimum, Verizon learned of the '853 patent from Unified Patents either at the time the proceeding was filed or after its unsuccessful conclusion. Notwithstanding this knowledge, Verizon continued using "Driving Mode" in the phones it sells.

FIRST CLAIM FOR RELIEF

(Infringement of Patent No. 8,958,853)

34. TJTM re-alleges and incorporates by reference the allegations in Paragraphs 1-33 of this Complaint.

35. Verizon has directly infringed, and continues to infringe, the claims of the '853, pursuant to 35 U.S.C. § 271, by using, selling, or offering to sell within the United States,

[2] The Patent Trial and Appeal Board is an adjudicative body within the U.S. Patent and Trademark Office. It decides appeals from decisions of the patent examiners, and adjudicates the patentability of issued patents challenged by third parties in post-grant proceedings.

[3] After the PTAB proceeding and the settlement of the Apple case, SMTM assigned the '853 patent to TJTM.

without authority, phones containing the infringing "Driving Mode" during the term of the '853 patent.

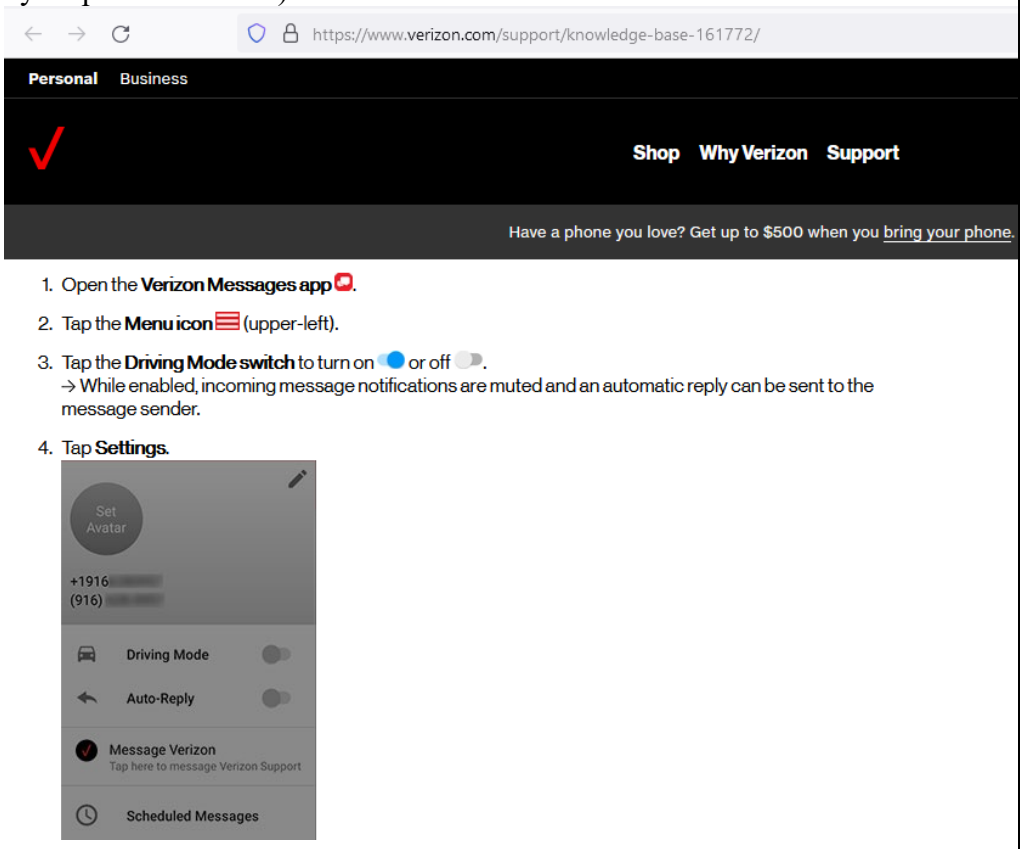
36. As just one non-limiting example, set forth below is a description of Verizon's infringement of claim one of the '853 patent in connection with Verizon's "Driving Mode" feature of the phones it sells. TJTM reserves the right to modify this description, including, for example, on the basis of information about Verizon's "Driving Mode" feature that is obtained through discovery.

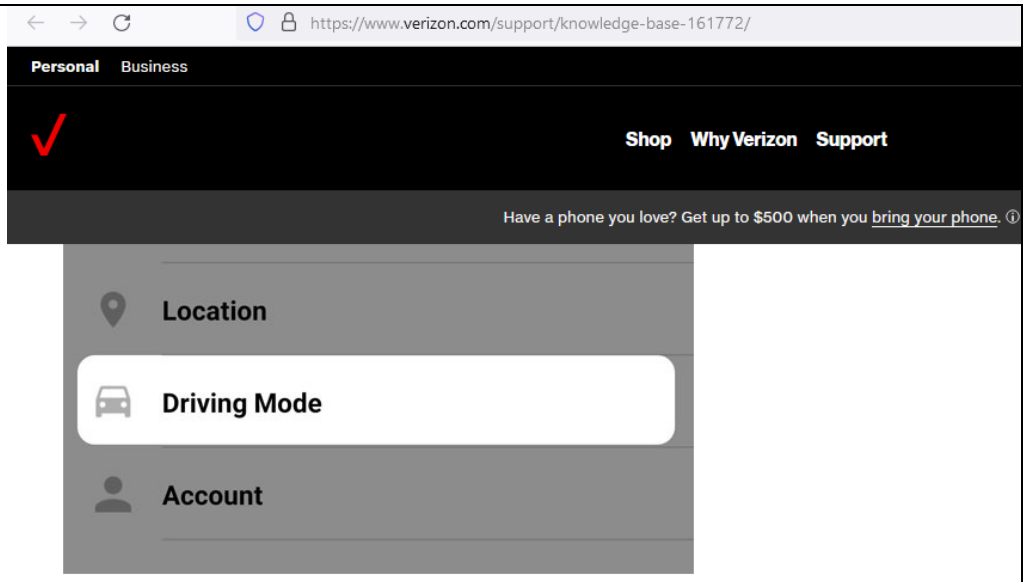
37. The "Driving Mode" feature of the Android phones infringes the'853 patent in the following ways:

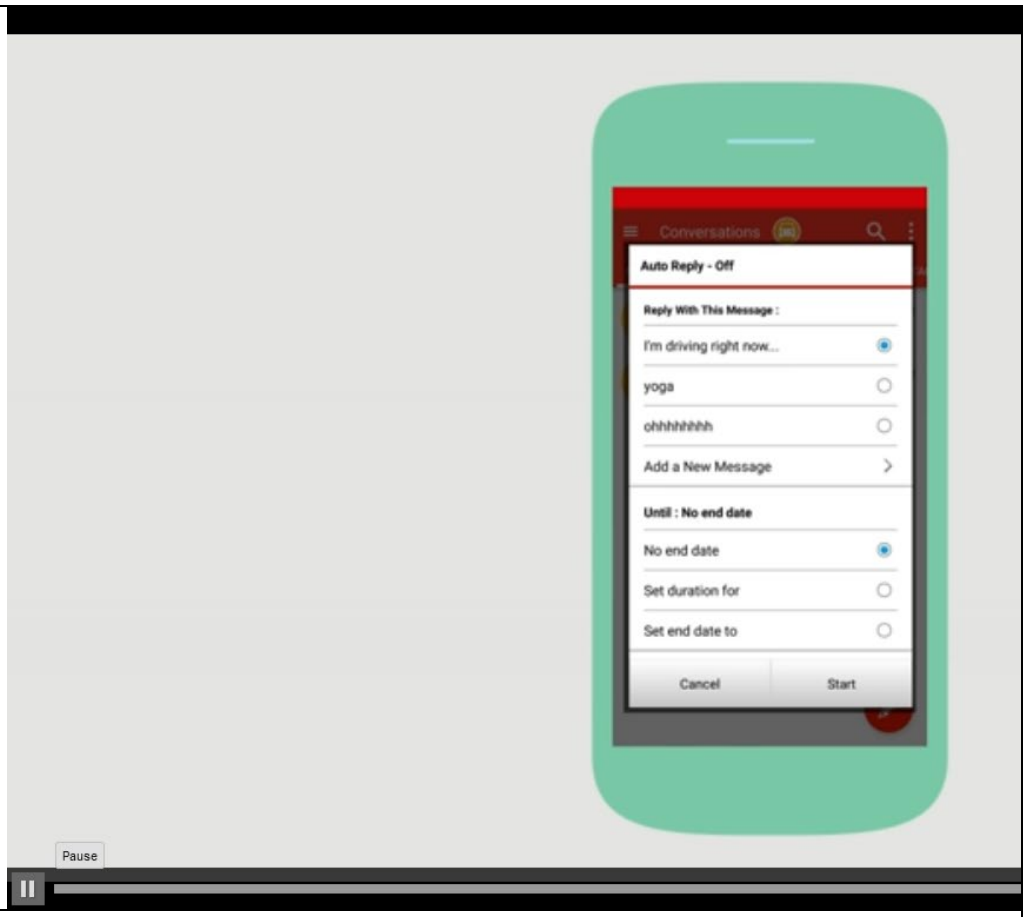
Claim Chart for U.S. Patent No. 8,958,853
Mobile Devices using Verizon Messages (Message+) App

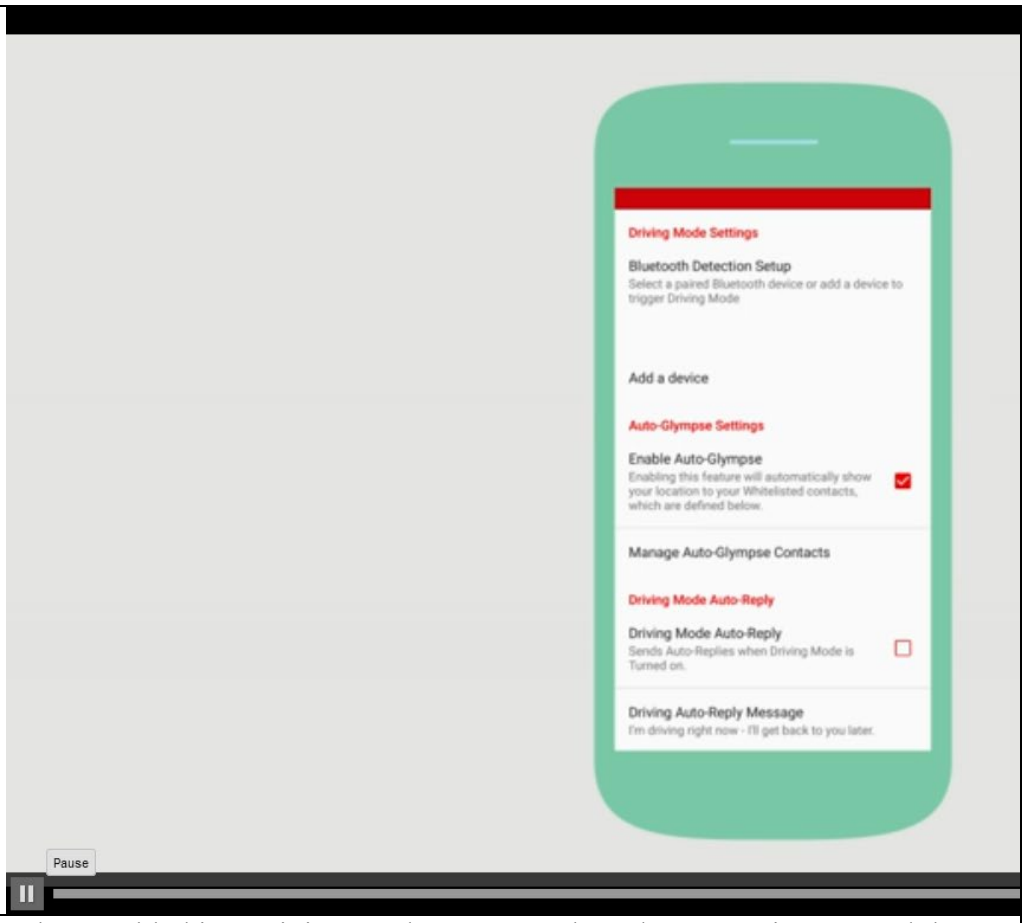
U.S. Patent No. 8,958,853	Accused Product
Claim 1	
1. A mobile device comprising:	"Driving Mode" is a feature incorporated into Verizon's Messages (Message+) App for use on Android mobile devices. "Verizon Messages (Message+) comes already installed on many Verizon Android smartphones." https://www.verizon.com/support/how-to-use-verizon-messages-android/
a wireless communication module;	Android mobile devices include a wireless communication module for sending and receiving phone calls, messages and the like.
a processor, controlling the wireless communication module; and	Android mobile devices include a microprocessor that controls the wireless communication module.
a memory controlled by the processor, the memory including instructions that when executed by the processor cause the processor to perform the	"Driving Mode" on the Verizon Messages (Message+) App is performed by the execution of the instructions stored in the memory of the mobile device by the processor.

steps of:	

providing a graphical user interface through which a user customizes one or more functions of the mobile device when placed in an inactive mode;	The user can customize one or more functions, e.g., how it activates, etc. (https://www.verizon.com/support/knowledge-base-161772/) For example, "Driving Mode" can be activated or de-activated using a graphical user interface on the Android mobile devices. ("If you need to enable or disable Driving Mode, which mutes incoming notifications within the Verizon Messages (Message+) app on your Android™ smartphone, follow these step-by-step instructions.") 
receiving a user selection to automatically initiate the inactive mode in response to the pairing of the mobile device with a vehicle;	The user can select "Driving Mode" and can tap the "Bluetooth Detection Setup Switch" to automatically engage when the Android mobile device pairs to the vehicle via Bluetooth. ("Tap the Bluetooth Detection Setup switch to turn on or off. While enabled, tap Add a device then select a Bluetooth device from the list that automatically triggers Driving Mode when connected." https://www.verizon.com/support/knowledge-base-161772/)

	
receiving a user selection of an away message to use when the mobile device is in inactive mode;	An away message for when the mobile device is in "Driving Mode" on the Verizon Messages (Message+) App can be input and saved. ("While enabled, tap Driving Auto-Reply Message, enter the desired message then tap Save." https://www.verizon.com/support/knowledge-base-161772/)

	
in response to the pairing of the mobile device and the vehicle, automatically initiating a process to place the mobile device in inactive mode;	When activated by a user, and in response to the pairing of the mobile device and the vehicle, "Driving Mode" is automatically initiated. ("While enabled, tap Add a device then select a Bluetooth device from the list that automatically triggers Driving Mode when connected." https://www.verizon.com/support/knowledge-base-161772/)

	
when the mobile device is in inactive mode, in response to receiving a communication from the wireless communication module, transmitting the user selected away message via the wireless module and suppressing one or more sound, visual, or vibration communication cues that	When enabled in "Driving Mode", a user-selected message is sent, and the incoming message alert is "muted." ("While enabled, incoming message notifications are muted and an automatic reply can be sent to the message sender." https://www.verizon.com/support/knowledge-base-161772/)

would have accompanied the communication had the mobile device not been in inactive mode.	

38. To the extent that the Driving Mode app is not pre-loaded into the phones sold by Verizon and its authorized dealers Verizon is indirectly liable as it offers the app for downloading into phones and provides directions to consumers on how to download the app with, on information and belief, knowledge of the '853 patent and that the downloading the app into the phone would create a mobile device that infringes it.

39. As the direct and proximate result of Verizon's infringing conduct, TJTM has suffered injury and, if Verizon's conduct is not stopped, will continue to suffer, irreparable injury, and significant damages, in an amount to be proven at trial. Because TJTM's remedy at law is inadequate, it seeks permanent injunctive relief.

40. TJTM is informed and believes, and on that basis alleges, that Verizon's infringement of the '853 patent has been and continues to be intentional, willful, and without regard to TJTM's rights. TJTM is informed and believes, and on that basis alleges, that Verizon's infringement of the '853 patent is and has been intentional, deliberate, and willful at least because it had knowledge of the '853 as a result of its participation in the cell phone industry. It surely had knowledge of the "OFF MODE" app which was available for download long before the launch of the "Driving Mode" feature which, on information and belief, led Verizon to knowledge of the '853 patent.

41. TJTM is informed and believes, and on that basis alleges, that Verizon has gained profits by virtue of its infringement of the '853 patent or, at a minimum, has avoided paying license fees for the use of the technology claimed in the '853 patent.

42. TJTM has sustained damages as a direct and proximate result of Verizon's infringement of the '853.

43. TJTM will suffer and is suffering irreparable harm from Verizon's infringement

of the '853. TJTM has no adequate remedy at law and is entitled to an injunction against Verizon's continuing infringement of the '853. Unless enjoined, Verizon will continue its infringing conduct.

PRAYER FOR RELIEF

WHEREFORE, TJTM prays for relief, as follows:

1. A judgment that the '853 is valid and enforceable;

2. A judgment that Verizon has infringed one of more claims of the '853 patent;

3. An order and judgment permanently enjoining Verizon and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns from further acts of infringement of the '853 patent;

4. A judgment awarding TJTM all damages adequate to compensate for Verizon's infringement of the '853, and in no event less than a reasonable royalty for Verizon's acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

5. A judgment awarding TJTM all damages, including treble damages, based on any infringement found to be willful pursuant to 35 U.S.C. § 284, together with prejudgment interest;

6. Actual damages suffered by TJTM as a result of Verizon's unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

7. A judgment that this is an exceptional case and an award to TJTM of its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285; and

8. Such other relief as this Court deems just and proper.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, TJTM hereby demands a jury trial on all issues raised by the Complaint.

Dated: May 19, 2022

By: */s/ Joseph W. Cotchett*

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