

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

AEGIS MOBILITY INC.,

Plaintiff,

v.

AVAYA INC.,

Defendant.

C.A. No. _____

DEMAND FOR JURY TRIAL

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

1. Aegis Mobility Inc. (“Aegis” or “Plaintiff”), by and through its counsel, hereby brings this action for patent infringement against Avaya Inc. (“Avaya” or “Defendant”), alleging infringement of the following validly issued patent: U.S. Patent No. 9,094,533 titled “Management of mobile device communication sessions to reduce user distraction,” 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 Aegis Mobility Inc., is a Canadian company with its principal place of business at 8525 Baxter Place, Suite 200, Burnaby, British Columbia, Canada, V5A 4V7.

4. Defendant Avaya Inc. is a Delaware corporation with its principal place of business at 2605 Meridian Parkway, Ste. 200, Durham, NC 27713. Avaya Inc. may be served through its registered agent, C T Corporation System, 7700 E Arapahoe Rd Suite 220, Centennial, CO 80112-1268.

JURISDICTION AND VENUE

5. 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.

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

7. Defendant, directly and/or through intermediaries, ships, distributes, uses, offers for sale, sells, and/or advertises products and services in the United States, the State of Colorado, and the District of Colorado including but not limited to the products which contain the infringing Patent-in-Suit's systems and methods as detailed below. Upon information and belief, Defendant has committed patent infringement in the State of Colorado and in this district; Defendant solicits and has solicited customers in the State of Colorado and in this district; and Defendant has paying customers who are residents of the State of Colorado and this district and who each use and have used the Defendant's products and services in the State of Colorado and in this district.

8. Venue is proper in the District of Colorado pursuant to 28 U.S.C. §§ 1400(b). Defendant maintains a regular and established place of business in this district, has transacted

business in this district, and has directly and/or indirectly committed acts of patent infringement in this district. For instance, Defendant maintains a regular and established place of business at 12121 Grant St, Thornton, CO 80241.

PATENT-IN-SUIT

9. Plaintiff incorporates the above paragraphs herein by reference.

10. On July 28, 2015, United States Patent No. 9,094,533 titled “Management of mobile device communication sessions to reduce user distraction” was duly and legally issued by the United States Patent and Trademark Office. The ’533 Patent is presumed valid and enforceable.

11. Plaintiff is the assignee of all right, title and interest in the Patent-in-Suit, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patent-in-Suit.

12. The Patent-in-Suit relate to mobile communication devices and communication management systems and to systems, methods, and interfaces for managing mobile communications devices utilizing communication profiles and mobile communication device contexts. *See* Ex. A at 1:20-24.

13. The inventions disclosed in the Patent-in-Suit were not well-understood, routine, or conventional. At the time the ’533 Patent was filed, there existed various problems in how mobile communications devices processed environmental inputs. For instance, the particular environment in which a mobile communication device is used, such as in a moving automobile, can impact the use of the mobile communication device, the safety of the specific users, and/or the safety of other individuals. *See* Ex. A at 1:33-37.

14. One approach to mitigating this safety concern was through the use of a control algorithm that could allow or deny communication based on monitoring various environmental

sensors, such as the placement of a parking brake, the detection of a vehicle in gear, vehicle velocity and/or a distance traveled. *See* Ex. A at 1:55-62. But this approach did not sufficiently distinguish urban driving conditions from a person in a parked car, merely measuring velocity and/or distance traveled. *See* Ex. A at 1:63-66. An alternative approach involved intercepting a request from a third party to initiate audio communication and then poll the mobile communication device or a third-party information system, such as calendaring software, in order to determine the device's availability to establish audio communication. *See* Ex. A at 2:9-16. However, at the time of the inventions, these approaches were inefficient because they increased communication initiation latencies due to asynchronous polling of the mobile communication device. *See* Ex. A at 2:24-27. Additionally, these approaches generally do not facilitate management of outgoing communications by a user of a mobile device and/or the continued management of the mobile communication device once a communication channel has been established. *See* Ex. A at 2:28-32.

15. The Patent-in-Suit addressed these dilemmas and others by teaching how to utilize context assessment algorithms to process environmental inputs into mobile device context information. *See* Ex. A at 2:39-42. Another embodiment teaches how a communication management system may determine how to route or process incoming calls to a mobile communication device using context information already received from the device rather than requiring an additional polling of the device for its context. *See* Ex. A at 2:63-3:2. Yet another embodiment teaches how the communication management system can facilitate the provisioning and management of some aspects of a mobile communication device profile via various graphical interfaces. *See* Ex. A at 3:11-18.

16. The claims of the Patent-in-Suit do not merely recite the performance of a familiar business practice with a requirement to perform it on the Internet. Instead, the claims recite one or

more inventive concepts that are rooted in computerized electronic data communications networks and an improved method for managing mobile device communication.

17. Moreover, the inventions taught in the Patent-in-Suit, which are rooted in utilizing context assessment algorithms based on inputs from various sensors, cannot be performed with pen and paper or in the human mind. And one of ordinary skill in the art at the time of the patent would have understood that the inventions could not be performed with pen and paper. Additionally, because the Patent-in-Suit addresses problems rooted in limiting mobile device communication by aggregating information from mobile device sensors and/or other information sources, the solutions it teaches are not merely drawn to longstanding human activities.

ACCUSED PRODUCTS

18. Defendant makes, uses, offers for sale and sells in the U.S. products, systems, and/or services that infringe the '533 Patent, including, but not limited to, its Avaya one-X Mobile application for Android-based mobile phones (the “Accused Product” or “Accused Instrumentality”).

19. The Avaya one-X Mobile application provides unified communications (UC) capabilities (such as voice calls, instant messaging and voicemail while travelling) to mobile phone users in a business and allows them to connect to the IP Office communication server. The application includes a Do Not Disturb feature, which allows users to prevent incoming calls based on the status of the user.

COUNT I

(Infringement of U.S. Patent No. 9,094,533)

Direct Infringement – 35 U.S.C. § 271(a)

20. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

21. Without a license or permission from Plaintiff, Defendant has infringed and continues to directly infringe on one or more claims of the '533 Patent 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 '533 systems and methods, in violation of 35 U.S.C. § 271.

22. Defendant has been and now is directly infringing by, among other things, practicing all of the steps of the '533 Patent, for example, internal testing, quality assurance, research and development, and troubleshooting. *See, e.g., Waymark Corp. v. Porta Sys. Corp.*, 245 F.3d 1364, 1366 (Fed. Cir. 2001) (noting that "testing is a use of the invention that may infringe under § 271(a)").

23. By way of example, Defendant has infringed and continues to infringe at least one or more claims of the '533 Patent, including at least Claim 12. Attached hereto as Exhibit B is an exemplary claim chart detailing representative infringement of Claim 12 of the '533 Patent.

Induced Infringement – 35 U.S.C. § 271(b)

24. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

25. Defendant has been and now is indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '533 Patent in the State of Colorado, in this judicial District, and elsewhere in the United States, by, among other things, making, using, offering for sale, and/or selling, without license or authority, products that require the accused technology for intended functionality, testing, configuration, troubleshooting, and other utilization.

26. Defendant had pre-suit knowledge of the Patent-in-Suit as early as May 21, 2021

when it received a letter from Plaintiff notifying Defendant of Defendant's infringement. Defendant had post-suit knowledge when this suit was filed. *See EON Corp. IP Holdings, LLC v. Sensus USA, Inc.*, No. C-12-1011 EMC, 2012 WL 4514138, at *1 (N.D. Cal. 2012) (citing *In re Bill of Lading Transmission and Processing System Patent Litigation*, 681 F.3d 1323, 1345 (Fed. Cir. 2012)) (noting that the Federal Circuit has determined that post-filing knowledge is sufficient to meet the knowledge requirement for indirect infringement).

27. Defendant knew the Accused Product infringes the '533 Patent and yet Defendant induced and continues to induce others—including partners, customers, and third parties—to directly infringe at least one claim of the '533 Patent under 35 U.S.C. § 271(b). Defendant took active steps to induce infringement, such as advertising an infringing use, which supports a finding of an intention. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932 (2005) (“[I]t may be presumed from distribution of an article in commerce that the distributor intended the article to be used to infringe another's patent, and so may justly be held liable for that infringement”).

28. For example, Avaya induces end users to use the infringing one-X Mobile application, actively prompting infringement by advertising and providing information on how to enable and use the Do Not Disturb feature. *See, e.g.*, Ex. C¹ (advertising various features of the Accused Product); Ex. D² (providing detailed instructions regarding how to enable GPS features of the Accused Product on mobile devices); Ex. E³ (instructing users to configure and enable the Do Not Disturb feature of the Accused Product).

Contributory Infringement – 35 U.S.C. § 271(c)

¹ Available at

https://play.google.com/store/apps/details?id=com.avaya.ScsCommander&hl=en_US&gl=US.

² Available at <https://downloads.avaya.com/css/P8/documents/101029034>.

³ Available at <https://downloads.avaya.com/css/P8/documents/101029034> at *35.

29. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

30. Defendant had pre-suit knowledge of the Patent-in-Suit as early as May 21, 2021 when it received a letter from Plaintiff notifying Defendant of Defendant's infringement. Defendant had post-suit knowledge when this suit was filed. *See EON Corp. IP Holdings, LLC v. Sensus USA, Inc.*, No. C-12-1011 EMC, 2012 WL 4514138, at *1 (N.D. Cal. 2012) (citing *In re Bill of Lading Transmission and Processing System Patent Litigation*, 681 F.3d 1323, 1345 (Fed. Cir. 2012)) (noting that the Federal Circuit has determined that post-filing knowledge is sufficient to meet the knowledge requirement for indirect infringement).

31. On information and belief, Defendant contributes to its users' infringement of at least Claim 12 of the '533 Patent by actions of making, using, selling, offering for sale, and/or importing the Accused Products that have 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).

Willful Infringement

32. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

33. Defendant had pre-suit knowledge of the Patent-in-Suit as early as May 21, 2021 when it received a letter from Plaintiff notifying Defendant of Defendant's infringement. Defendant had post-suit knowledge when this suit was filed. *See EON Corp. IP Holdings, LLC v. Sensus USA, Inc.*, No. C-12-1011 EMC, 2012 WL 4514138, at *1 (N.D. Cal. 2012) (citing *In re*

Bill of Lading Transmission and Processing System Patent Litigation, 681 F.3d 1323, 1345 (Fed. Cir. 2012)) (noting that the Federal Circuit has determined that post-filing knowledge is sufficient to meet the knowledge requirement for indirect infringement).

34. Despite its knowledge of the '533 Patent, Defendant has sold the Accused Product in egregious disregard of Plaintiff's patent rights. Defendant has acted recklessly and engaged in willful, wanton, and deliberately acts of infringement of the '533 Patent, justifying an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

Plaintiff Suffered Damages

35. Defendant's acts of infringement of the Patent-in-Suit have caused damage to Plaintiff, and Plaintiff is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271. The precise amount of damages will be determined through discovery in this litigation and proven at trial.

REQUEST FOR RELIEF

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

- (a) enter a judgment that Defendant has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of each of the '533 Patent;
- (b) enter a judgment awarding Plaintiff all damages adequate to compensate it for Defendant's infringement of, direct or contributory, or inducement to infringe, the 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 Defendant's willful infringement of the '533 Patent;
- (d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the '533 Patent;
- (e) enter a judgment requiring Defendant 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
- (f) award Plaintiff all other relief that the Court may deem just and proper.

Dated: July 22, 2022

Respectfully submitted,

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