

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ASPEN NETWORKS, INC., a California
Corporation,

Plaintiff,

v.

CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS, a Delaware
Corporation,

Defendant.

Case No.: 2:23-cv-00557

JURY TRIAL DEMANDED

**PLAINTIFF ASPEN NETWORKS, INC.'S COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiff Aspen Networks, Inc. (“Aspen”) files this Complaint for patent infringement against Defendant Cellco Partnership d/b/a Verizon Wireless (“Defendant” or “Verizon Wireless”) and alleges as follows:

NATURE OF THE ACTION

1. Mobile phones are ubiquitous, and consumers demand uninterrupted connectivity when using their phones. They do not want calls dropped. Historically, cellular carriers sought to meet the demand by building enough cell towers to provide coverage for customers. But mobile phone users use their phones in places that often do not have good cellular network coverage, such as conference rooms, private residences, restaurants, coffee shops and vacation spots. Realizing the limits (and high cost) of providing coverage using only signals from cellular towers, the cellular carriers needed a solution. That solution arrived in the form of Wi-Fi calling (introduced by Verizon Wireless in 2015). Wi-Fi calling allows mobile phone users with Wi-Fi calling enabled to

use a Wi-Fi network to make and receive calls in locations with poor or no access to the cellular network so long as a Wi-Fi signal is available, as is typically the case in residences, restaurants, coffee shops, hotels and other places where people congregate. Wi-Fi calling allows cellular carriers to meet the demands of mobile phone users who want uninterrupted connectivity and no dropped calls. But to fully deliver on the promise of uninterrupted connectivity, the cellular carriers needed a way to reliably switch a call between a Wi-Fi network and a cellular network so that the call is not dropped when the phone user moves from one network to the other.

2. In 2006, Aspen developed the fundamental technology required to reliably switch connections from a Wi-Fi network to a cellular network and vice versa without dropping the call. Aspen received a patent for its groundbreaking invention, U.S. Patent No. 8,009,554 (the “’554 Patent”).

3. Verizon Wireless has used Aspen’s intellectual property without Aspen’s permission, which has allowed Verizon Wireless to provide uninterrupted calls to its customers and avoid the expense of building more cellular towers that would otherwise have been required without Aspen’s invention.

THE PARTIES

4. Plaintiff Aspen is a domestic, for-profit corporation registered to do business in the State of California, with a principal place of business at 3777 Stevens Creek Blvd., Suite 320, Santa Clara, California 95051.

5. Upon information and belief, Cellco Partnership d/b/a Verizon Wireless is a domestic, for-profit partnership organized under the laws of the State of Delaware. Defendant Verizon Wireless is identified by the Texas Secretary of State as having an “ACTIVE” right to transact business in Texas under Texas taxpayer number 12233728893. Defendant Verizon

Wireless may be served with process via its registered agent, The Corporation Trust Company, at 1209 Orange Street, Wilmington, Delaware 19801, or as otherwise authorized under applicable law.

6. Upon information and belief, Verizon Wireless together with its affiliates, collectively do business under the brand name, and hold themselves out to the public as “Verizon.”

JURISDICTION AND VENUE

7. This is an action arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, specifically 35 U.S.C. §§ 271, 281, and 284-85.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Laws of the United States, including 35 U.S.C. § 1 *et seq.*

9. This Court has personal jurisdiction over Verizon Wireless pursuant to the due process clause and the Texas Long-Arm statute because Verizon Wireless is registered to do business in the State of Texas and has regular and established places of business in the State of Texas and has committed, and continues to commit, acts within this judicial district giving rise to this action. Verizon Wireless has established minimum contacts with this forum such that the exercise of jurisdiction over Verizon Wireless would not offend traditional notions of fair play and substantial justice. For example, Verizon Wireless regularly conducts and solicits business in, engages in other persistent courses of conduct in, and derives substantial revenue from goods and services provided to the residents of the State of Texas, including in this district. Verizon Wireless has committed acts of infringement in this district by, among other things, offering to sell and selling products that infringe the asserted patents, in addition to providing service and support to Verizon Wireless’s customers located in Texas, including in this district.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Verizon Wireless has committed infringing acts in this judicial district by making, using, offering for sale, selling, or importing products or services that infringe the '554 Patent. Upon information and belief, Verizon Wireless maintains regular and established places of business in the State of Texas and this district by: (i) maintaining or controlling retail stores in this district; (ii) maintaining and operating infringing base stations in this district, including on cellular towers and other installation sites owned or leased by them; and (iii) maintaining and operating places of business in this district where research, development, or sales are conducted, where customer service is provided, or where repairs are made.

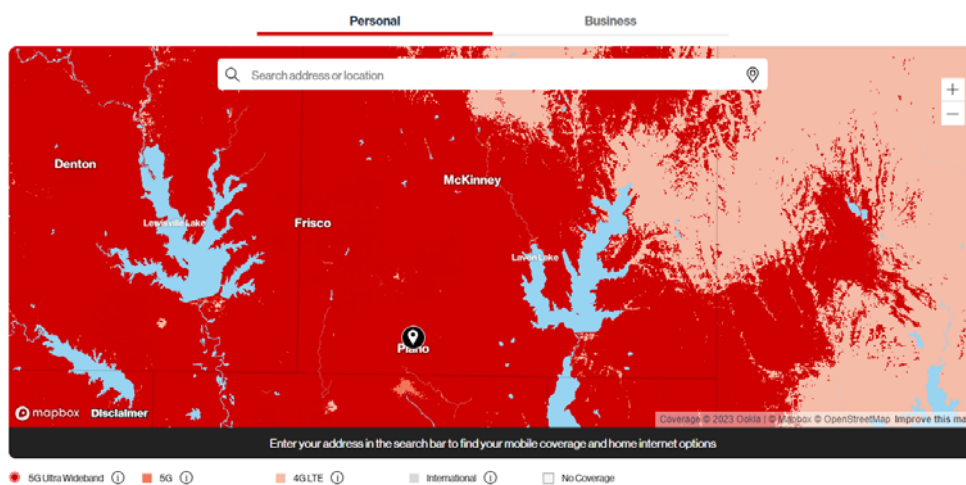
11. Upon information and belief, Verizon Wireless, either directly or through other subsidiaries, affiliates, and/or intermediaries acting on its behalf, offers infringing communications networks and services in this district through its ownership, operation, management, and direction and control of regular and established places of business in this district, including at least retail stores located at: (i) 741 N. Central Expy, Plano, TX 75075; (ii) 204 Central Expy S., Allen, TX 75013; (iii) 1271 W. Exchange Pkwy, Allen, TX 75013; (iv) 190 E. Stacy Rd, Allen, TX 75002; (v) 8049 Preston Rd., Frisco, TX 75034; (vi) 2330 Preston Rd., Frisco, TX 75034; (vii) 2035 N. Central Expy, Suite 620, McKinney, TX 75070; (viii) 3610 W University Dr., McKinney, TX 75071; (ix) 500 E. Loop 281, Longview, TX 75605; (x) 1016 W. SW. Loop 323, Tyler, Texas 75701, that sell products and/or services that are used on Verizon Wireless's cellular network and infringe the '554 Patent.

12. Verizon Wireless, directly or through its subsidiaries, affiliates, and/or intermediaries, has purposefully and voluntarily placed one or more products and/or services in the stream of commerce that practice the '554 Patent with the intention and expectation that they

will be purchased and used by consumers in this district. These products and/or services have been, and continue to be, purchased and used in the State of Texas, including in this district.

13. For example, Verizon Wireless advertises its wireless networks are available in Texas, including in this district, on its website. *See, e.g.*, Wireless Coverage Map, Verizon, <https://www.verizon.com/coverage-map/> (last visited December 1, 2023).

Explore Verizon 5G and 4G LTE network coverage in your area.



14. Verizon Wireless further advertises its wireless network services to businesses and residents of the State of Texas, including in this district, via direct marketing. *See* Wireless Business Cell Phone Plans & Devices, Plano, TX, Verizon, <https://www.verizon.com/business/locations/tx/plano> (last visited December 1, 2023).

Verizon Business Service Areas / Texas / Plano

Sales: 1.866.951.5506 [Contact Sales](#)

About Verizon Business Plans and Services in Plano, TX

Explore Verizon's full selection of wireless business solutions tailored to fit your business. We partner with you to create custom combinations of tech products and services that drive the outcomes your business needs.

Compare our collection of 5G devices for business and find the right one to put our 5G network to work for you. Check the availability of Verizon plans, devices and solutions in the Plano, TX area.

[Shop plans](#)

Find a Verizon Store

[Find a Location](#)

Verizon Business Services

Closed - Opens at 10:00 AM [In-Store Pickup](#) ✓
741N Central Expy [Same Day Delivery](#) ✓
Plano, TX 75075

[Get Directions >](#)

[\(844\) 550-0092](#)

[Request a business sales appointment](#)

[Feedback](#)

15. Upon information and belief, Verizon Wireless also maintains regular and established places of business in this district, including by maintaining and operating communication networks in this district, including on cellular towers and other installation sites owned or leased by Verizon Wireless.

16. Verizon Wireless is engaging in activities, including but not limited to, transacting business in this district and purposefully directing its business activities, including the installation, maintenance, and use of infringing products and other related technologies in this district, and the sale or offer for sale of services and goods in this district.

THE PATENT-IN-SUIT

17. On August 30, 2011, the United States Patent and Trademark Office (“USPTO”) duly issued U.S. Patent No. 8,009,554, entitled “Method For Multiple Link Quality Of Service For Voice And Video Over Internet Protocol,” (the “’554 Patent”) to Aspen.

18. The ’554 Patent is valid, enforceable, and was duly issued in full compliance with

Title 35 of the United States Code. A true and accurate copy of the '554 Patent is attached as **“Exhibit A.”**

19. Verizon Wireless manufactures, imports, distributes, offers for sale, or sells a Voice over Wi-Fi calling service (“VoWi-Fi”) that enables multi-media (voice and/or video) calls to switch seamlessly between Wi-Fi and cellular long-term evolution (“LTE”) networks based on the Quality of Service (“QoS”) parameters of the network.

20. Verizon Wireless described, and provided more information about, its VoWi-Fi Service on its website at <https://www.verizon.com/support/wifi-calling-faqs/>. A copy of Verizon’s past webpage (as accessed on December 1, 2023) advertising and describing the VoWi-Fi Service is attached here as **“Exhibit B.”**

21. Verizon Wireless’s VoWi-Fi calling service infringes one or more claims of the '554 Patent, including at least Claims 1, 2, 6, and 7.

22. Verizon Wireless has been on notice of the '554 Patent at least as of the date it was notified of the filing of this Complaint. Furthermore, upon information and belief, Verizon Wireless has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and accordingly has remained willfully ignorant of Aspen’s intellectual property rights.

23. Verizon Wireless is causing Aspen substantial and irreparable harm and forcing it to bring this action to protect its intellectual property because Verizon Wireless’s VoWi-Fi Service infringes the '554 Patent.

COUNT I- INFRINGEMENT OF THE '554 PATENT

24. Aspen incorporates by reference the allegations contained in Paragraphs 1 – 23 as if fully stated here and further alleges:

25. Aspen is the owner of the '554 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '554 Patent against infringers, and to collect damages for all relevant times.

26. The '554 Patent describes a method of increasing the reliability of data transmission from a source device to a destination device over a communication network. In particular, the claims of the '554 Patent, including Claim 1, recite a novel and inventive method for data transmissions (e.g. video and/or voice) that can be transferred from one network path to another network path without being dropped. The invention uses Session Initiation Protocol ("SIP"), Real-Time Transport Protocol ("RTP") and Network Address Translation ("NAT") to allow calls to be transferred among different network paths. The invention allows calls to be transferred without being dropped.

27. For example, Claim 1 of the '554 Patent recites:

1. A method of enhancing the reliability of a transmission from a source to a destination in a communications network using a network protocol that operates on top of the Internet Protocol (IP), the method comprising:

Transmitting data between a source and destination over a first network path made up of one or more network links where at least one of the network links is to a local area network that is remote from the transmission source; and

Switching the transmission from the first network path to one of a plurality of alternative networks;

wherein said transmission is not disrupted as a result of said switching to the one of a plurality of alternative network paths, said transmission contains audio or video data and at least one Network Address Translation (NAT) is performed on said transmission;

said transmission uses the Real Time Protocol (RTP);

said transmission uses the Session Initiation Protocol (SIP); and

the SIP signaling sequence of the transmission is maintained after said switching from the first network path to the one of a plurality of alternative network paths.

28. Verizon Wireless offers Wi-Fi calling services (the VoWi-Fi service):
- that enable multimedia calls to switch seamlessly between Wi-Fi and cellular LTE networks based on QoS parameters of the network.
<https://www.verizon.com/support/knowledge-base-201653/>
 - The call data transmission between end terminals used by Verizon Wireless's VoWi-Fi calling can occur over a first path such as the LTE network.
Verizon Wireless's VoWi-Fi calling provides the ability to automatically switch calls between LTE and Wi-Fi Networks.
<https://www.verizon.com/support/wifi-calling-faqs/>.
 - Verizon Wireless's VoWi-Fi service allows a multimedia call session to switch from a first network type to the other network type, such as switching from the LTE Network to the Wi-Fi network or vice versa.
<https://www.verizon.com/support/wifi-calling-faqs/>.
 - Verizon Wireless's VoWi-Fi allows a video or voice data session to seamlessly switch from a first network to another network type.
<https://www.verizon.com/support/wifi-calling-faqs/>.
 - Verizon Wireless's VoWi-Fi uses RTP and SIP based on mobility needs of the network and to maintain seamless connection during switching of networks.
 - Verizon Wireless uses a SIP signaling sequence in which a Cseq number is used to identify the order and integrity of SIP commands. Communicating SIP entities take steps to ensure the correct state of the Cseq numbers during the entire call, including switches to a second path.

29. Verizon Wireless has directly infringed and continues to infringe the '554 Patent, either literally or via the doctrine of equivalents, by making, using, importing, supplying, distributing, offering for sale, or selling, the VoWi-Fi Service within the United States, in violation of 35 U.S.C. § 271(a).

30. To the extent, if any, Verizon Wireless contends it does not directly infringe the '554 Patent and/or that any given element of the asserted claims is performed by a third party, Verizon Wireless also knowingly and intentionally induces infringement of various claims of the '554 Patent, violating 35 U.S.C. § 271(b). Verizon Wireless has had knowledge of the '554 Patent and its infringement activities at least as early as the filing of this Complaint. Despite this knowledge, Verizon Wireless continues to actively encourage and instruct its authorized third parties, customers, and end users to use the VoWi-Fi Service in ways that directly infringe the '554 Patent. Verizon Wireless also continues to make, use, import, supply, distribute, offer for sale, and sell the VoWi-Fi Service despite its knowledge of the '554 Patent, thus specifically inducing others to infringe the '554 Patent through the normal and customary use of the VoWi-Fi Service. Additionally, as stated above, upon information and belief, Verizon Wireless has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and accordingly has remained willfully ignorant of Aspen's intellectual property rights.

31. To the extent, if any, Verizon Wireless contends it does not directly infringe the '554 Patent and/or that any given element of the asserted claims is performed by a third party, Verizon Wireless also contributorily infringes the '554 Patent according to 35 U.S.C. § 271(c) by operating network devices, and making, using, importing, supplying, distributing, offering for sale, or selling, the VoWi-Fi Service to its authorized third parties, customers, and end users. Upon

information and belief, Verizon Wireless has known and knows its VoWi-Fi Service works in concert to perform specific, intended functions, and that the network devices performing these functions are a material part of the '554 patent, especially made or adapted for an infringing use, and are not staple articles of commerce suitable for non-infringing use.

32. Verizon Wireless has made, and continues to make, unlawful gains and profits from infringing the '554 Patent.

33. Verizon Wireless has, upon information and belief, a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and accordingly has remained willfully ignorant of Aspen's intellectual property rights. Furthermore, since at least the filing of this Complaint, Verizon Wireless has been aware of the unjustifiably high risk that its actions constituted, and continue to constitute, infringement of the '554 Patent. Accordingly, Verizon Wireless has been willfully infringing the '554 Patent at least since Aspen filed this Complaint.

34. Verizon Wireless's infringement of the '554 Patent has damaged and irreparably harmed Aspen, and Aspen is entitled to relief under 35 U.S.C. §§ 154(d) and 284. Aspen will continue to suffer damages and irreparable harm unless Verizon Wireless is permanently enjoined by this Court from continuing its infringement.

ATTORNEYS' FEES

35. According to 35 U.S.C. § 285, Aspen is entitled to, and respectfully requests, its reasonable attorneys' fees in this case.

DEMAND FOR JURY TRIAL

36. According to Fed. R. Civ. P. 38(b), Aspen respectfully requests a trial by jury on all issues triable by a jury.

PRAYER FOR RELIEF

Aspen respectfully prays this Court issue the following relief:

A. that this Court declare that Verizon Wireless has directly infringed, induced infringement, or contributed to infringement and continues to directly infringe, induce others to infringe, and/or contribute to the infringement of one or more claims of the '554 Patent under 35 U.S.C. §§ 271(a)-(c);

B. that this Court order Verizon Wireless to pay Aspen: (i) damages adequate to compensate Aspen for Verizon Wireless's past infringement of the '554 Patent; (ii) damages adequate to compensate Aspen for Verizon Wireless's present and future infringement of the '554 Patent; and (iii) interest and costs assessed according to 35 U.S.C. §§ 154(d) and 284;

C. that this Court declare Verizon Wireless's infringement was and is willful, and award treble damages for the period of the willful infringement of the '554 Patent;

D. that this Court enter a permanent injunction to prevent Verizon Wireless from further infringing the claims of the '554 Patent;

E. that this Court declare this an exceptional case and order Verizon Wireless pay Aspen its reasonable attorneys' fees and costs according to 35 U.S.C. § 285; and

F. that this Court award any additional relief to Aspen that this Court deems just and proper.

December 1, 2023

Respectfully submitted,

By: /s/ Eric H. Findlay

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