

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

ASPEN NETWORKS, INC., a California Corporation,

Plaintiff,

v.

T-MOBILE US, INC., a Delaware Corporation, and T-MOBILE USA, INC., a Delaware Corporation,

Defendants.

Case No.: 2:23-cv-00558

JURY TRIAL DEMANDED

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

Plaintiff Aspen Networks, Inc. (“Aspen”) files this Complaint for patent infringement against Defendants T-Mobile US, Inc. (“T-Mobile US”) and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively, “Defendants” or “T-Mobile”) 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 T-Mobile in 2014). 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. T-Mobile has used Aspen’s intellectual property without Aspen’s permission, which has allowed T-Mobile 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, T-Mobile US, including its predecessors-in-interest, is a domestic, for-profit corporation organized under the laws of the State of Delaware. T-Mobile US may be served with process via its registered agent, The Corporation Service Company, at 251 Little Falls Drive, Wilmington, Delaware 19808. Upon information and belief, T-Mobile US is the

parent of T-Mobile USA.

6. Upon information and belief, T-Mobile USA is a domestic, for-profit corporation organized under the laws of the State of Delaware. Since November 22, 1999, T-Mobile USA has been registered to do business in Texas under Texas SOS File No. 0012958406. T-Mobile USA may be served with process via its registered agent, The Corporation Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701, or as otherwise authorized under applicable law. Upon information and belief, T-Mobile USA is a subsidiary of T-Mobile US.

7. In 2020, T-Mobile US announced completion of the merger of T-Mobile US and Sprint Corporation. The merger resulted in the combined company under the name T-Mobile US, Inc.

8. Upon information and belief, in connection with the closing of the merger on April 1, 2020, T-Mobile US assumed Sprint Corporation's legal obligations, rights, and liabilities. This includes contractual obligations for wireless devices, network services, equipment, software, lease-out and leaseback agreements for tower sites, and other items. Further, T-Mobile combined its retail operations with Sprint and rebranded thousands of Sprint stores to T-Mobile stores. Upon information and belief, T-Mobile US is the successor-in-interest to Sprint Corporation.

9. T-Mobile US and T-Mobile USA operate, and/or have operated, one or more wireless telecommunication networks to provide wireless telecommunication services, including to the residents of the State of Texas, including in this district, under brand names including "T-Mobile."

JURISDICTION AND VENUE

10. 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.

11. 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.*

12. This Court has personal jurisdiction over T-Mobile pursuant to the due process clause and the Texas Long-Arm statute because T-Mobile 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. T-Mobile has established minimum contacts with this forum such that the exercise of jurisdiction over T-Mobile would not offend traditional notions of fair play and substantial justice. For example, T-Mobile 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. T-Mobile 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 T-Mobile's customers located in Texas, including in this district.

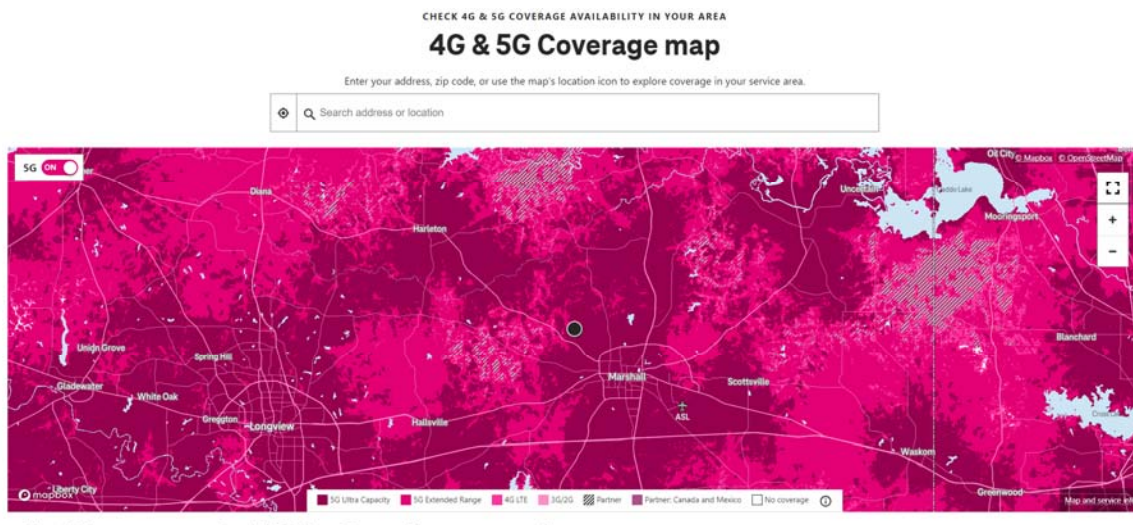
13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b) because T-Mobile has committed infringing acts in this judicial district by making, using, offering for sale, selling, or importing products or services that infringe the '554 Patent. Upon information and belief, T-Mobile maintains 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.

14. Upon information and belief, T-Mobile US owns and operates multiple “T-Mobile Corporate Offices” located, among other places, at 7668 Warren Pkwy., Frisco, TX 75034, and 3560 Dallas Pkwy., Frisco, TX 75034.

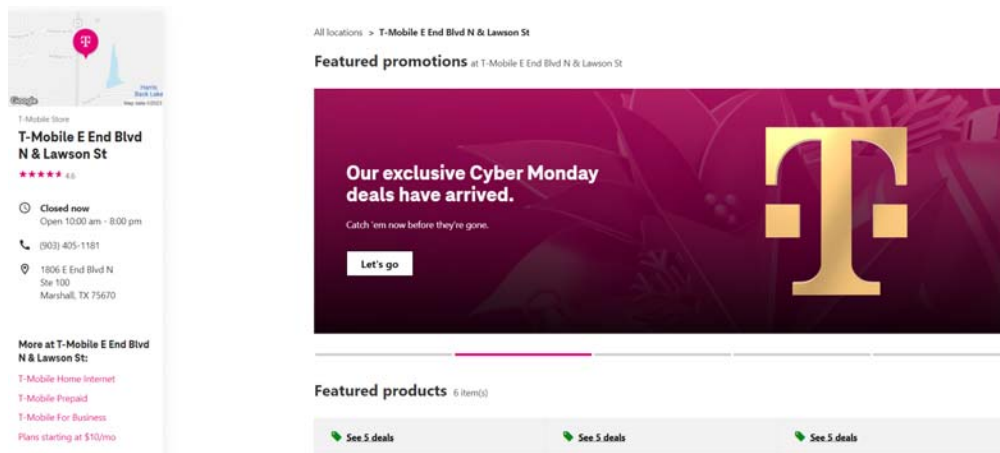
15. Upon information and belief, T-Mobile USA, either directly or through other subsidiaries, affiliates, and/or intermediaries acting on its behalf, offers infringing communications networks and services in this district through its ownership, operation, management, and direction and control of regular and established places of business in this district, including at least retail stores located at: (i) 1806 E. End Blvd. N., Ste. 100, Marshall, TX 75670; (ii) 2108 Gilmer Rd., Longview, TX 75604; (iii) 116 E. Loop 281, Ste. 101, Longview, TX 75605; (iv) 8942 S. Broadway Ave., Ste. 104, Tyler, TX 75703; (v) 3320 Troup Hwy., Tyler, TX 75701; (vi) 3840 State Hwy. 64 W., Tyler, TX 75704; (vii) 1400 W. Southwest Loop 323, Ste. 70, Tyler, TX 75701; (viii) 5899 Eastex Freeway, Suite 100, Beaumont, TX 77706; (ix) 3870 College St., Ste. 100, Beaumont, TX 77701; (x) 5885 Eastex Fwy., Beaumont, TX 77706, that sell products and/or services that are used on T-Mobile’s cellular network and infringe the ’554 Patent.

16. T-Mobile, 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.

17. For example, T-Mobile advertises, and/or has advertised, that its wireless networks are available in Texas, including in this district, on its website. *See, e.g.*, Wireless Coverage Map, T-Mobile, <https://www.t-mobile.com/coverage/coverage-map> (last visited December 1, 2023).



18. T-Mobile further advertises, and/or has advertised, its wireless network services to businesses and residents of the State of Texas, including in this district, via direct marketing. See T-Mobile E End Blvd N & Lawson St., Marshall, TX, T-Mobile, <https://www.t-mobile.com/stores/bd/t-mobile-marshall-tx-75670-1sbu> (last visited December 1, 2023).



19. Upon information and belief, T-Mobile 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 T-Mobile.

20. T-Mobile 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

21. 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.

22. 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.”**

23. T-Mobile (including, but not limited to, its predecessors-in-interest, such as Sprint) manufactures, imports, distributes, offers for sale, or sells, and/or has manufactured, imported, distributed, offered for sale, or sold, a Voice over Wi-Fi calling service (“VoWi-Fi Service”) 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.

24. T-Mobile describes, and provides more information about, its VoWi-Fi on its website at <https://www.t-mobile.com/benefits/wifi-calling-wifi-extenders>. A copy of T-Mobile’s website (as accessed on December 1, 2023) advertising and describing the VoWi-Fi Service is attached here as **“Exhibit B.”**

25. T-Mobile’s VoWi-Fi calling service infringes, and has infringed, one or more claims of the ’554 Patent, including at least Claims 1, 2, 6, and 7.

26. T-Mobile 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, T-Mobile 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.

27. T-Mobile is causing Aspen substantial and irreparable harm and forcing it to bring this action to protect its intellectual property because T-Mobile's VoWi-Fi Service infringes the '554 Patent.

COUNT I- INFRINGEMENT OF THE '554 PATENT

28. Aspen incorporates by reference the allegations contained in Paragraphs 1 – 27 as if fully stated here and further alleges:

29. 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.

30. 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.

31. 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.

32. T-Mobile offers, and has offered, 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.t-mobile.com/benefits/wifi-calling-wifi-extenders>.
- The call data transmission between end terminals used by T-Mobile's VoWi-Fi calling can occur over a first path such as the LTE network. T-Mobile's VoWi-Fi calling provides the ability to automatically switch calls between LTE and Wi-Fi Networks. <https://www.t-mobile.com/benefits/wifi-calling-wifi-extenders>.
- T-Mobile'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.t-mobile.com/benefits/wifi-calling-wifi-extenders>.

- T-Mobile's VoWi-Fi allows a video or voice data session to seamlessly switch from a first network to another network type. <https://www.t-mobile.com/benefits/wifi-calling-wifi-extenders>.
- T-Mobile's VoWi-Fi uses RTP and SIP based on mobility needs of the network and to maintain seamless connection during switching of networks.
- T-Mobile 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.

33. T-Mobile (including, but not limited to, its predecessors-in-interest, such as Sprint) 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).

34. To the extent, if any, T-Mobile 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, T-Mobile also knowingly and intentionally induces infringement of various claims of the '554 Patent, violating 35 U.S.C. § 271(b). T-Mobile has had knowledge of the '554 Patent and its infringement activities at least as early as the filing of this Complaint. Despite this knowledge, T-Mobile 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. T-Mobile 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, T-Mobile 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.

35. To the extent, if any, T-Mobile 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, T-Mobile 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, T-Mobile 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.

36. T-Mobile (including, but not limited to, its predecessors-in-interest, such as Sprint) has made, and continues to make, unlawful gains and profits from infringing the '554 Patent.

37. T-Mobile 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, T-Mobile has been aware of the unjustifiably high risk that its actions constituted, and continue to constitute, infringement of the '554 Patent. Accordingly, T-Mobile has been willfully infringing the '554 Patent at least since Aspen filed this Complaint.

38. T-Mobile's (including, but not limited to, its predecessors-in-interest, such as

Sprint) 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 T-Mobile is permanently enjoined by this Court from continuing its infringement.

ATTORNEYS' FEES

39. 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

40. 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 T-Mobile (including, but not limited to, its predecessors-in-interest, such as Sprint) 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 T-Mobile to pay Aspen: (i) damages adequate to compensate Aspen for T-Mobile's (and its predecessors', such as Sprint's) past infringement of the '554 Patent; (ii) damages adequate to compensate Aspen for T-Mobile'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 T-Mobile'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 T-Mobile from further infringing the claims of the '554 Patent;

E. that this Court declare this an exceptional case and order T-Mobile 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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