

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

OMNITEK PARTNERS, LLC,

Plaintiff,

v.

HUAWEI TECHNOLOGIES USA, INC., &
HUAWEI DEVICE USA, INC.,

Defendants.

Case No.: 3:23-cv-01744

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Omnitek Partners, LLC (“Plaintiff” or “Omnitek”) for its Complaint against Defendant Huawei Technologies USA, Inc. (“Defendant” or “Huawei Tech”) and Defendant Huawei Device USA, Inc., (“Huawei Device”) (together “Defendants”) states as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §1 *et. seq.*, including 35 U.S.C. §§271, 281, 283, 284 and 285.

THE PARTIES

2. Plaintiff Omnitek Partners, LLC is a New York limited liability company with a principal place of business at 85 Air Park Drive, Unit 3, Ronkonkoma, New York 11779, United States.

3. Defendant Huawei Technologies USA, Inc. is a Texas Company with its principal place of business at 16479 Dallas Parkway, Suite 355, Addison, Dallas, TX 75001. Huawei Tech does business in the State of Texas and this District.

4. Defendant Huawei Technologies USA, Inc. can be served with process at its registered agent, CT Corporation System, at 1999 Bryan St., Ste. 900, Dallas, TX 75201.

5. Defendant Huawei Device USA, Inc. is a Texas Company with its principal place of business at 16479 Dallas Parkway, Suite 355, Addison, Dallas, TX 75001. Huawei Device does business in the State of Texas and this District.

6. Defendant Huawei Device USA, Inc. can be served with process at its registered agent, CT Corporation System, at 1999 Bryan St., Ste. 900, Dallas, TX 75201.

7. Defendants operate under and identify with the trade name “Huawei.” Each of the Defendants may be referred to individually as a “Defendant” and, collectively, Defendants may be referred to below as “Huawei” or as the “Defendants.”

JURISDICTION

8. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285.

9. This is a patent infringement lawsuit over which this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332 and 1338(a).

10. Defendant Huawei Technologies USA, Inc., as described on www.Bloomberg.com, “provides information and communications technology (ICT), infrastructure, and smart devices.” Ex. B, <https://www.bloomberg.com/profile/company/0314367D:US?embedded-checkout=true>).

11. On October 26, 2023, counsel for Huawei sent correspondence to counsel for Omnitek. In such correspondence, counsel for Huawei stated in relevant part: “As mentioned during that call, and discussed during our first call, Huawei Technologies USA (HTU) never sold consumer products in the United States. (See, e.g. attached dismissal of *Cedar Lane v. HTU*.)” (Ex. C, October 26, 2023 email from Huawei to Omnitek.)

12. The attached dismissal to the October 26, 2023 email states, in relevant part, that “Cedar Lane acknowledges that HTU does not currently sell or offer to sell smartphones.” (Ex. D.)

13. The attached dismissal to the October 26, 2023 email further states, in relevant part, that “Cedar Lane acknowledges that HTU does has never sold or offered to sell smartphone [sic] or tablets in the United States.” (Ex. D.)

14. The attached dismissal to the October 26, 2023 email does not definitively state or otherwise establish that Huawei Technologies USA, Inc. never sold consumer products in the United States. (Ex. D.)

15. On November 20, 2023, counsel for Omnitek sought clarification from counsel for Huawei regarding its representations concerning of the alleged activities of Huawei Technologies USA, Inc. (Ex. E, November 20, 2023 email from Omnitek to Huawei.)

16. On November 20, 2023, counsel for Omnitek asked counsel for Huawei, “can you please provide written documentation, including a chart showing the corporate relationship between the two entities in question, so that we may confirm your representation?” (Ex. E, November 20, 2023 email from Omnitek to Huawei.)

17. On November 20, 2023, counsel for Omnitek asked counsel for Huawei:

[I]f Huawei is unwilling to provide such written documentation; can we at least get written agreement that the newly added party will be liable for any infringement-related conduct of the current party? As I'm sure you can appreciate, our client wants to make sure that we do prematurely dismiss a party who may still be necessary to the infringement claims. (For example, you represent that the current entity has not sold, or offered for sale, any accused products in the US. But you are silent on whether such entity imported, used, made, or had made any accused products.

(Ex. E, November 20, 2023 email from Omnitek to Huawei.)

18. On November 20, 2023, counsel for Omnitek represented to counsel for Huawei: “Under either of these proposed approaches, Omnitek will agree to further amend the complaint to dismiss what you refer to as the HTU entity, if appropriate. I also remain open to any other approaches you wish to propose.” (Ex. E, November 20, 2023 email from Omnitek to Huawei.)

19. On December 11, 2023, Counsel for Omnitek requested Huawei reconsider its refusal to provide to counsel for Omnitek either the additional information sought in Paragraph 17, above, or the agreement requested in paragraph 18, above. (Ex. F, December 11, 2023 email from Omnitek to Huawei.)

20. Counsel for Huawei has steadfastly refused to provide both the additional information sought in Paragraph 16, above, and the agreement requested in paragraph 17, above.

21. Huawei Technologies Co., Ltd. is the owner of certain Huawei trademarks, including the trademark for an accused product in this litigation, HUAWEI WATCH GT. (Ex. G, U.S. Trademark Registration Number 6720681 (generated by TSDR on 2023-12-11 14:43:08 EST)).)

22. Upon information and belief, Huawei Technologies USA, Inc. is a U.S. subsidiary of Huawei Technologies Co., Ltd.

23. Defendant Huawei Device USA, Inc. sells consumer products in the United States, including mobile phones and watches.

24. Defendants are subject to this Court’s specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, by virtue of at least its substantial business conducted in this forum, directly and/or through intermediaries, including (i) having solicited business in the State of Texas, transacted business within the State of Texas and attempted to derive financial benefit from residents of the State of Texas, 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 Texas and in this District; and (iii) either alone or in conjunction with others, having committed acts of infringement within Texas and in this District.

25. On information and belief, within the District, Defendants directly and/or through intermediaries have advertised (including through websites), offered to sell, sold and/or distributed infringing products, and/or have induced the sale and use of infringing products in the United States, Texas, and this District.

26. On information and belief, Defendants have directly, or through their distribution network, purposefully and voluntarily placed such products in the stream of commerce knowing and expecting them to be purchased and used by consumers in Texas and this District.

27. Upon information and belief, Defendants committed direct infringement in Texas and this District.

28. Upon information and belief, Defendants committed indirect infringement based on acts of direct infringement in Texas and this District.

29. Upon information and belief, Defendants derived substantial revenues from their infringing acts in this District, including from their marketing, licensing, and sale of infringing products in the United States.

VENUE

30. Venue is proper against Defendants in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b) because both Defendants have a regular and established place of business in this District at 16479 Dallas Parkway, Suite 355, Addison, Dallas, TX 75001. Defendants do business in the State of Texas and this District and has committed acts of infringement in this District.

31. Upon information and belief, Defendants employ full-time personnel, such as sales personnel, office workers, and engineers in this district, including in Dallas, Texas.

THE ASSERTED PATENT

32. On September 18, 2007, U.S. Patent No. 7,272,293 (the “’293 Patent”), entitled “Device having a casing and/or interior acting as a communication bus between electronic components,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’293 Patent is attached as Exhibit A to this Complaint.

33. The ’293 Patent issued from U.S. patent application Serial Number 10/639,001 filed on August 12, 2003 and discloses and relates to a communication bus as a portion of a casing.

34. The ’293 Patent claims patent-eligible subject matter and is valid and enforceable.

35. Omnitek is the sole owner of all rights, title, and interests in the ’293 Patent, including the right to assert all causes of actions arising under the ’293 Patent and the right to any remedies for infringement of the ’293 Patent.

36. Defendants are not licensed to the ’293 Patent in either an expressed or implied manner.

THE ACCUSED INSTRUMENTALITIES

37. Defendants made, used, sold, offered for sale, and/or imported into the United States, smart watches that infringed at least claims 1, 2, 17, and 18 of the ’293 Patent (the “Accused Instrumentalities”).

38. The Accused Instrumentalities include, but are not limited to, the Huawei GT and Ultimate Watches, as well as the Band and Fit products (collectively the “Huawei Smartwatches”).

COUNT I – INFRINGEMENT OF THE '293 PATENT

39. Plaintiff realleges the allegations set forth in the foregoing paragraphs 1 through 20 as though fully set forth herein.

40. In violation of 35 U.S.C. §271(a), both Defendants directly infringed at least claims 1, 2, 17, and 18 of the '293 Patent, either literally and/or under the Doctrine of Equivalents, by making, using, selling, offering to sell, and/or importing in the United States the Accused Instrumentalities.

41. Huawei manufactures smart watches, including the Huawei Watch GT, that have a plurality of electronic/electrical components. *See, e.g.*, Ex. H, Huawei Watch GT Repairability Assessment (<https://www.ifixit.com/Guide/Huawei+Watch+GT+Repairability+Assessment/124018>).

42. Electrical components of Huawei smart watches, including the Huawei Watch GT, can detect and transmit signals to optical sensors. *Id.*

43. Electrical components of Huawei smart watches, including the Huawei Watch GT, are contained in casings. *Id.*

44. There are groups of electrical components on the back of optical sensors of Huawei smart watches, including the Huawei Watch GT, that receive and process the signals generated. *Id.*

45. If electrical components of Huawei smart watches, including the Huawei Watch GT, were not capable of detecting or transmitting signals to optical sensors, the optical sensors would not function properly and/or the optical sensors would not be able to monitor a customer's vitals, including heart rate and sleep patterns. *Id.*

46. A communication bus is described in the '293 Patent as anything that transmits one or more signals between two or more components. (Ex. A, Column 1, lines 12-14).

47. Huawei smart watches, including the Huawei Watch GT, have casings with at least portion of such casings acting as communication buses for transmitting signals in a point-to-many links manner between the plurality of electronic/electrical components. (*See, e.g.*, Ex. H, Huawei Watch GT Repairability Assessment (<https://www.ifixit.com/Guide/Huawei+Watch+GT+Repairability+Assessment/124018>)).

48. A plurality of electrical components of Huawei smart watches, including the Huawei Watch GT, are operatively connected to communication buses in a point-to-many links manner capable of transmitting and detecting signals on the communication buses. *Id.*

49. The signals of Huawei smart watches, including the Huawei Watch GT, as described in Paragraph 45, are available to each of the plurality of electronic/electrical components on the communication buses. *Id.*

50. A portion, or part, of the casings of Huawei smart watches, including the Huawei Watch GT, have optical sensors. *Id.*

51. The optical sensors of Huawei smart watches, including the Huawei Watch GT, transmit and receive optical signals to monitor heart rate and/or sleep patterns. *Id.*

52. The signals received from the optical sensors of Huawei smart watches, including the Huawei Watch GT, are then transmitted to a plurality of electrical components for processing information relating to a user's health. *Id.*

53. The transmitted signals from the communication buses of Huawei smart watches, including the Huawei Watch GT, are available to each of the plurality of electronic/electrical components on the communication buses. *Id.*

54. Huawei smart watches, including the Huawei Watch GT, have communication buses formed at least in part by the casings. *Id.*

55. Dictionary.com defines “form” as “to construct or frame.” (see <https://www.dictionary.com/browse/formed>).

56. The optical sensors of Huawei smart watches, including the Huawei Watch GT, are formed, or framed, by the casings. *See, e.g.*, Ex. H, Huawei Watch GT Repairability Assessment (<https://www.ifixit.com/Guide/Huawei+Watch+GT+Repairability+Assessment/124018>).

57. The optical sensors of Huawei smart watches, including the Huawei Watch GT, transmit an optical signal to monitor heart rate and sleep patterns. *Id.*

58. Huawei smart watches, including the Huawei Watch GT, have casings where a portion of the casings is an optical waveguide. *Id.*

59. The optical waveguides of Huawei smart watches, including the Huawei Watch GT, are part of a casing. *Id.*

60. The optical waveguides of Huawei smart watches, including the Huawei Watch GT, are on the exterior surfaces of the smart watches to be capable of gathering accurate health readings from smart watch users, such as heart rate and sleep patterns. *Id.*

61. Huawei smart watches, including the Huawei Watch GT, have optical waveguides where one of a plurality of electronic/electrical components comprises a transmitter operatively connected to the optical waveguides for transmitting optical signals into the optical waveguides. *Id.*

62. Huawei smart watches, including the Huawei Watch GT, have health sensors which contain both an optical transmitter as well as an optical receiver/detector to map and track a user’s health information, such as heart rate and/or sleep patterns. *Id.*

63. Huawei smart watches, including the Huawei Watch GT, have transmitters and receivers that are connected, and the receivers are comprised of at least two electrical components (for example, a receiver and a connected wire connected in order for the device to function). *Id.*

64. The optical transmitters and detectors of Huawei smart watches, including the Huawei Watch GT, function synergistically to monitor health readings from smart watch users, such as heart rate and/or sleep patterns. *Id.*

65. Omnitek gave Defendants notice of its infringement by virtue of a letter sent on May 18, 2020. (Ex. I, May 18, 2020 letter from Omnitek to Huawei.)

66. Omnitek gave Defendants further notice of its infringement at least by virtue of service or acknowledged delivery of this Complaint.

67. All infringement of the '293 Patent following Defendants' knowledge of the '293 Patent is willful and Omnitek is entitled to treble damages and attorneys' fees and costs incurred in this action under 35 U.S.C §§ 284 and 285.

68. Omnitek has incurred substantial damages, including monetary damages.

69. Omnitek has been irreparably harmed by Defendants' infringement of the '293 Patent.

70. Therefore, Omnitek is entitled to actual and/or compensatory damages, reasonable royalties, pre-judgment and post-judgment interest, enhanced damages, and costs.

JURY DEMAND

71. Plaintiff hereby requests a trial by jury of any and all issues triable of right before a jury, pursuant to Rule 38 of the Federal Rules of the Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- (i) A declaration that the '293 Patent is valid and enforceable;
- (ii) A declaration that Defendants have directly infringed one or more claims of the '293 Patent, either literally and/or under the doctrine of equivalents;
- (iii) An award of damages sufficient to compensate Omnitek for Defendants' infringement of the '293 Patent pursuant to 35 U.S.C. §284;
- (iv) An award of pre-judgment and post-judgment interest pursuant to 35 U.S.C. §284;
- (v) An award of treble damages for willful infringement as permitted under 35 U.S.C. §284;
- (vi) An award of attorneys' fees incurred in prosecuting this action, on the basis that this is an exceptional case provided by 35 U.S.C. §285;
- (vii) Enjoin Defendants, their officers, subsidiaries, agents, servants and employees and all persons in active concert with any of the foregoing from further infringement of the '293 Patent; and
- (viii) Such other and further relief as this Court shall deem appropriate.

Dated: December 15, 2023

Respectfully Submitted

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