

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BEAR CREEK TECHNOLOGIES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
T-MOBILE USA, INC.,	)	
	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

COMPLAINT

Plaintiff, Bear Creek Technologies, Inc. (“BCT”), and for causes of action against T-Mobile USA, Incorporated (“Defendant”), hereby states and alleges as follows:

NATURE OF ACTION

1. This is a patent infringement action arising under the Patent Laws of the United States, 35 U.S.C. § 271 *et seq.*, and involving voice-over-internet-protocol-enabling technologies.

2. As the internet rose in prominence in the early to mid 1990s, technologies developed to allow people to use computers to place long distance telephone calls over the internet, rather than the public switched telephone network (“PSTN”), thereby avoiding long-distance charges. Understanding the economic impact this development would have upon the telecommunications industry, tensions developed between providers of standard telephone switching technologies and proponents of what was soon to be called Voice Over Internet Protocol (“VoIP”) technology.

3. Rather than viewing VoIP technology as an exclusive alternative to standard telephony equipment and infrastructure, Joseph B. Thompson, founder of Bear Creek

Technologies, Inc., envisioned a paradigm in which VoIP would complement and cooperate with existing standard telephony equipment and with the switching and trunking infrastructure already in place.

4. Joe Thompson applied for a patent in early 1996 to memorialize these novel ideas during a time when telephony companies were each spending millions of dollars per year deploying and managing new telephone trunking and PSTN infrastructure.

5. On February 15, 2011, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent Number 7,889,722 (the “’722 Patent”), entitled “System for Interconnecting Standard Telephony Communications Equipment to Internet Protocol Networks” after a full and fair examination. A true and correct copy of the ’722 Patent is attached hereto as Exhibit A.

6. Bear Creek Technologies, Inc. is the assignee and owner of the ’722 Patent, and owns all right, title and interest in, to and under, the ’722 Patent, including the right to sue for infringement of any and all claims thereof. A true and correct copy of the Assignment to Bear Creek Technologies, Inc., and a true and correct copy of an electronic receipt from the USPTO showing that the Assignment has been submitted to the USPTO for recordation, are attached hereto as Exhibit B.

7. Defendant is infringing and contributing to and inducing infringement of one or more claims of the ’722 Patent.

PARTIES

8. Bear Creek Technologies, Inc. (“BCT”) is a corporation organized and existing under the laws of Delaware with its principal place of business in Orange Beach, Alabama.

9. T-Mobile USA, Inc. (“Defendant”) is a corporation organized and existing under

the laws of the State of Delaware, with its principal place of business at 12920 SE 38th Street, Bellevue, Washington. Defendant and/or one or more of its affiliates provides VoIP Services (“the VoIP Services”) as described below to subscribers, which VoIP Services, on information and belief, may or may not be marketed or provided under a specific name or trade name. The VoIP Services include but are not limited to the T-Mobile@Home service.

JURISDICTION AND VENUE

10. This Court has exclusive original jurisdiction of the subject matter of this action under 28 U.S.C. § 1338(a).

11. This Court has personal jurisdiction over Defendant. Defendant is incorporated under the laws of the State of Delaware. In addition, Defendant has conducted and does conduct regular and ongoing business in Delaware. Upon information and belief, Defendant, directly or through intermediaries (including distributors, agents, retailers, subsidiaries, affiliates, and others) ships, distributes offers for sale, sells, advertises, operates and/or uses its VoIP products and services in the United States and in Delaware. On information and belief, Defendant has committed acts of patent infringement in Delaware, including, making, using, offering for sale, and/or selling infringing VoIP products or services in Delaware. These products or services have been used and continued to be used and/or purchased by consumers in Delaware and consumers in Delaware benefit from these products and services.

12. Venue is proper under 28 U.S.C. §§ 1391 and 1400(b) because both BCT and Defendants are incorporated under the laws of the State of Delaware. In addition, upon information and belief, Defendant regularly conducts business in Delaware and has made, used, offered to sell, and sold, and/or continue to make, use, offer to sell, and/or sell products and/or services within Delaware, including without limitation, VoIP products and services which, upon

information and belief, infringe the '722 Patent in this District. Upon information and belief, portions of the infringing infrastructure and actions, as well as a number of relevant party and third party witnesses with information relevant to the development, deployment, and use of such infrastructure and actions, reside in or near this Judicial District.

COUNT I
Direct Infringement of U.S. Patent No. 7,889,722

13. BCT realleges the allegations of the above paragraphs 1 through 12, as if expressly set forth herein.

14. BCT is the owner by assignment of all right, title, and interest in and to the '722 Patent, entitled "System for Interconnecting Standard Telephony Communications Equipment to Internet Protocol Networks," which duly and legally issued in the name of Joseph B. Thompson on February 15, 2011.

15. The '722 Patent is valid and enforceable.

16. Defendant directly or through an affiliate provides subscribers with the VoIP Services above, giving each subscriber access to a communications network for placing voice phone calls via an internet protocol connection at the subscriber's premises.

17. The VoIP Services provide subscribers with such access using a telephone connected to the internet protocol connection.

18. The VoIP Services connect some subscriber calls, placed via the internet protocol connection, via a public switched telephone network, to call recipients, and connects other subscriber calls, placed via the internet protocol connection, without traversing the public switched telephone network.

19. Upon information and belief, Defendant, through at least the provision of the VoIP Services, is infringing directly (either by literal infringement or by infringement under the

Doctrine of Equivalents) at least claim 1 of the '722 Patent by making, using, selling, offering for sale, operating, advertising and/or marketing VoIP products, systems or services within the United States. More particularly, and without being limited thereto, Defendant deploys, operates, advertises, markets and/or sells VoIP products, systems, or services (including the VoIP Services) that, on information and belief, directly infringe at least claim 1 of the '722 Patent.

20. As a direct and proximate result of Defendant's infringement of the '722 Patent, BCT has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which BCT is entitled to relief.

21. On February 22, 2011, BCT filed a complaint for patent infringement against Defendant in the U.S. District Court for the Eastern District of Virginia ("the RCN Action"). This Complaint included as an exhibit a true and correct copy of the '722 Patent.

22. By the end of March, 2011, on information and belief, Defendant was given a copy of the '722 Patent and the Complaint of the RCN Action, which included BCT's allegations of infringement.

23. On August 17, 2011, Defendant was dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure.

24. There was an objectively high likelihood that Defendant was infringing the '722 Patent.

25. Upon information and belief, Defendant knew of the high likelihood that it was infringing the '722 Patent.

26. Furthermore, the risk of infringement was so obvious that, even if Defendant did not know of the risk of infringement, Defendant should have known of the risk that it was

infringing the '722 Patent.

27. Upon information and belief, Defendant has not taken any action to end its infringement of the '722 Patent.

28. Upon information and belief, Defendant's infringement of the '722 Patent is continuing and will continue unless enjoined by this Court.

29. Upon information and belief, Defendant's continued infringement of the '722 Patent is willful and deliberate.

COUNT II
Induced Patent Infringement of U.S. Patent No. 7,889,722

30. BCT realleges the allegations of the above paragraphs 1 through 29 as if expressly set forth herein.

31. Upon information and belief, at least one of Defendant's affiliates, third-party service providers, or customers is directly infringing the '722 Patent.

32. Upon information and belief, Defendant has communicated, directly or indirectly through an affiliate, with one or more certain affiliates, one or more third parties, and plural subscribers ("the Other Entities"), each regarding the VoIP Services subject to BCT's claims in this action. The certain affiliates include affiliates of Defendant; the third-parties include but are not limited to a third party with which Defendant has contracted to install or test the VoIP Services for subscribers. The subscribers are subscribers of the VoIP Services.

33. Upon information and belief, Defendant, directly or in concert with one or more of certain affiliates or third parties, arranged operations necessary for, devised and/or implemented a marketing plan to sell, planned for, carried out, and/or devised or adopted a business and revenue generating model, each involving the deployment and/or provision of the VoIP Services.

34. Upon information and belief, Defendant has taken actions that have caused, urged, encouraged, and/or aided one or more of the Other Entities to infringe directly on the '722 Patent.

35. Upon information and belief, at least as early as March 31, 2011 and since that time, Defendant had actual knowledge of the '722 Patent and, with such knowledge, has continued the above-mentioned actions to cause, urge, encourage, and/or aid the Other Entities to infringe directly on the '722 Patent.

36. Upon information and belief, Defendant has had knowledge, and/or has willfully remained blind to such knowledge, and/or has acted with deliberate indifference that its actions induced the conduct by the Other Entities that directly infringes on the '722 Patent.

37. Upon information and belief, Defendant acted with the specific intent to induce one or more of the Other Entities to infringe the '722 Patent.

38. Upon information and belief, Defendant is inducing infringement of the '722 by the Other Entities in violation of 35 U.S.C. § 271(b).

39. Upon information and belief, Defendant's continued infringement of the '722 Patent is willful and deliberate.

40. Upon information and belief, the direct infringement by the one or more Other Entities involves infringement of at least claim 1 of the '722 Patent either literally or under the doctrine of equivalents.

COUNT III

Contributory Patent Infringement of U.S. Patent No. 7,889,722

41. BCT realleges the allegations of the above paragraphs 1 through 40 as if expressly set forth herein.

42. Upon information and belief, Defendant offers to sell within the United States,

sells within the United States, or imports into the United States a component of the infringing apparatus used in the VoIP Services (“the Component”) to one or more of the Other Entities. The Component is one or a combination of an IP hardphone, an Analog Telephone Adaptor (“ATA”), a VoIP PBX, a VoIP gateway, a VoIP softswitch, a VoIP intermediary server, and a PSTN or Voice gateway.

43. Upon information and belief, the Component is a component of the infringing apparatus being used during the VoIP Services, including during such use direct infringement by one or more of the Other Entities.

44. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

45. Upon information and belief, the Defendant knows or should know or have reason to know that the Component is made or especially adapted for use in the infringing apparatus, because, among other reasons, the Defendant had specific notice and knowledge of the ’722 Patent and the infringement alleged either by them or by one or more of the Other Entities or acted with deliberate indifference to the possibility of such infringement despite knowing about the ’722 Patent and the alleged infringement.

46. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

47. Upon information and belief, Defendant has communicated, directly or indirectly through an affiliate, with one or more of the Other Entities regarding the VoIP Services.

48. Upon information and belief, Defendant, directly or in concert with one or more of the Other Entities, arranged operations necessary for, devised and/or implemented a

marketing plan to sell, planned for, carried out, and/or devised or adopted a business and revenue generating model, each involving the deployment and/or provision of the VoIP Services.

49. Upon information and belief, Defendant has taken actions, including but not limited to providing the Component, that have caused, urged, encouraged, and/or aided one or more of the Other Entities to infringe directly on the '722 Patent.

50. Upon information and belief, Defendant had actual knowledge of the '722 Patent and, with such knowledge, has continued the above-mentioned actions to cause, urge, encourage, and/or aid the Other Entities to infringe directly on the '722 Patent.

51. Upon information and belief, Defendant is contributing to the infringement of the '722 Patent by one or more of the Other Entities in violation of 35 U.S.C. § 271(c).

52. Upon information and belief, Defendant's continued infringement of the '722 Patent is willful and deliberate.

53. Upon information and belief, the direct infringement by the one or more Other Entities involves infringement of at least claim 1 of the '722 Patent either literally or under the doctrine of equivalents.

PRAYER FOR RELIEF

54. WHEREFORE, BCT respectfully requests entry of judgment in its favor and against Defendant as follows:

- a) Enter judgment that Defendant has directly infringed the '722 Patent;
- b) Enter judgment that Defendant has induced infringement of the '722 Patent;
- c) Enter judgment that Defendant has contributed to the infringement of the '722 Patent;
- d) Enter a permanent injunction, pursuant to 35 U.S.C. § 283, restraining and

enjoining Defendant and its respective officers, agents, servants, employees, attorneys, customers, and those in concert or participation with it from any further sales or use of its infringing products and services and any other infringement of the '722 Patent, whether direct or indirect;

e) Enter judgment ordering Defendant to compensate BCT for infringement of the '722 Patent pursuant to 35 U.S.C. § 284;

f) Enter judgment ordering Defendant to pay enhanced damages pursuant to 35 U.S.C. § 284;

g) Enter a judgment for an award of pre-judgment and post-judgment interest and costs to BCT pursuant to 35 U.S.C. § 284;

h) Enter a judgment for an award of BCT's reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

i) Grant to BCT such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

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By its attorneys,

/s/ Peter J. Faben

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