

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED
MAR - 9 2009
CLERK, U.S. DISTRICT COURT By <i>[Signature]</i> Deputy

TIP COMMUNICATIONS, LLC

Plaintiff,

v.

MOTOROLA, INC.

Defendant.

§ Case No.

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JURY TRIAL DEMANDED

3-09CV0464-L
29561

TIP COMMUNICATIONS, LLC'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TIP Communications, LLC (hereinafter "TIP"), for its Complaint against Defendant, Motorola, Inc., alleges as follows:

PARTIES

1. TIP is a limited liability company organized and existing under the laws of Delaware, having a principal place of business at 122 West John Carpenter Parkway, Suite 455, Irving, Texas 75039. TIP is a wholly-owned indirect subsidiary of Research In Motion Limited (hereinafter "RIM Limited"), a corporation organized and existing under the laws of Ontario, Canada, having a principal place of business at 295 Philip Street, Waterloo, Ontario N2L 3W8.

2. Motorola, Inc. is a corporation organized and existing under the laws of Delaware, having a principal place of business at 1303 E. Algonquin Road, Schaumburg, IL 60196 (hereinafter "Motorola"). At all times relevant to this Complaint, Motorola conducted business in the Northern District of Texas.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.* This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and §1400(b). Upon information and belief, Motorola maintains a regular and established place of business in this District, is doing business in this District, and has committed and continues to commit acts of infringement in this District.

CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 5,956,329)

5. TIP repeats and realleges the allegations of paragraphs 1-4 above.

6. On September 21, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,956,329 (“the ‘329 Patent”) entitled “Method of Packet-Wise Data Transmission in a Mobile Radio Network.” A copy of the ‘329 Patent is attached as Exhibit A. TIP owns the entire right, title, and interest to the ‘329 Patent and has the right to claim damages for infringement for the period before it became the assignee of the “329 Patent

7. On December 8, 2008, TIP notified the European Telecommunications Standardization Institute (ETSI) that TIP is the assignee of the ‘329 Patent and that TIP would license the ‘329 Patent on fair, reasonable and non-discriminatory (“FRAND”) terms under the ETSI IPR Policy. The ‘329 Patent is a standards-essential patent which means that the subject standard cannot be practiced without infringing the patent. TIP acknowledges its ETSI obligation to offer licenses to its standards-essential patents on fair, reasonable, and

non-discriminatory (FRAND) terms under the ETSI IPR Policy, but all standard setting organizations like ETSI that adopt standards covered by the '329 Patent recognize that the obligation to provide FRAND licensing is subject to the condition that those who seek licenses agree to reciprocate on commonly understood FRAND licensing terms as Motorola has done in the past with RIM Limited. Both TIP and TIP's ultimate parent, RIM Limited, have offered a FRAND license to Motorola of all of their standards-essential patents and necessary technology patents. Motorola, however, has refused to reciprocate and has not offered nor indicated that it will grant to RIM Limited a FRAND license to patents Motorola claims are standards-essential, and it has misused other technology patents it claims are necessary. In related litigation involving both standards-essential and non standards-essential patents, Motorola is seeking injunctive relief from RIM Limited, and RIM Limited has asserted in that case that Motorola used the prospect of obtaining an injunction with respect to its non standards-essential patents as a coercive threat in an effort to force RIM Limited to pay a non-FRAND royalty to Motorola for Motorola's standards-essential patents. For these reasons, and in the event that Motorola does not undertake to cross license with TIP and RIM on FRAND terms, TIP seeks injunctive relief against Motorola for infringement of the '329 Patent.

8. Upon information and belief, Motorola has infringed, and has contributed to and has induced infringement of the '329 patent, including—without limitation—by making, using, selling and/or offering to sell, in this District and elsewhere in the United States, and/or by importing into this District and elsewhere in the United States, and/or by supplying (or causing to be supplied) outside the United States, products and services, including base stations and other wireless communication, enterprise, and network related equipment and

services, which embody and/or practice and/or induce or contribute to others infringing the claimed inventions of the '329 Patent.

9. Motorola continues to engage in its direct and indirect infringement.

10. Motorola's infringement has been and continues to be willful and deliberate.

11. Motorola's infringement has damaged TIP, for which TIP seeks and is entitled to compensation in an amount to be determined at trial.

12. Motorola's infringement is causing and will continue to cause TIP irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, TIP is entitled to a permanent injunction against further infringement.

PRAYER FOR RELIEF

TIP requests that the Court enter judgment in favor of TIP and against Motorola as follows:

A. Finding that Motorola has infringed and is infringing U.S. Patent No. 5,956,329;

B. Awarding damages to TIP under 35 U.S.C. § 284 in an amount sufficient to compensate TIP for its damages arising from Motorola's infringement and consistent with FRAND terms under which Motorola may have obtained a license as part of a cross license with RIM and TIP, together with pre-judgment and post-judgment interest, and costs;

C. Awarding TIP treble damages for Motorola's willful infringement;

D. In the event of Motorola not undertaking to enter into a cross license with RIM and TIP on FRAND terms, permanently enjoining Motorola and its respective directors, officers, employees, agents and all persons in active concert or participation with them from further infringement (TIP seeks injunctive relief in view of Motorola's request for injunctive

relief against TIP's parent, Research In Motion Limited, in separate patent-infringement litigation and Motorola's refusal to offer Research In Motion Limited a license to Motorola's patents consistent with Motorola's FRAND commitments);

E. Requiring Motorola to pay TIP its costs and reasonable attorneys' fees under 35 U.S.C. § 285; and

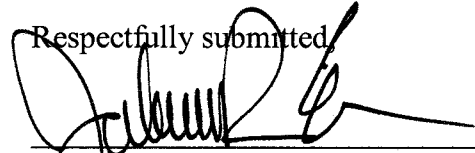
F. Awarding TIP such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff TIP Communications, LLC hereby demands trial by jury in this action.

March 10, 2009

Respectfully submitted,



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