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

BARRY W. THOMAS,

Plaintiff,

v.

COX COMMUNICATIONS, INC., a Delaware corporation; COMCAST CORPORATION, a Pennsylvania corporation; CENTENNIAL COMMUNICATIONS CORP., a Delaware corporation; CRICKET COMMUNICATIONS, INC., a Delaware corporation; DOBSON CELLULAR SYSTEMS, INC., an Oklahoma corporation; CHARTER COMMUNICATIONS, INC., a Delaware corporation; SPRINT SPECTRUM L.P., a Delaware corporation; NEXTEL OPERATIONS, INC., a Delaware corporation; CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, a Delaware general partnership; TRACFONE WIRELESS, INC., a Florida corporation; METROPCS INC., a Delaware corporation; GENERAL MOTORS CORPORATION, a Delaware corporation; and ONSTAR CORP., a Delaware corporation,

Defendants.

Case No. 2:07-cv-231
(JURY TRIAL DEMANDED)

COMPLAINT

Plaintiff Barry W. Thomas ("Thomas"), by and through his counsel, complains and alleges as follows:

JURISDICTION

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U. S. C. §§ 271, 281, 283, and 284.
2. This Court has jurisdiction over this action pursuant to 28 U. S. C. § 1338(a), as this action arises under an Act of Congress relating to patents.
3. Venue is properly established in this Court pursuant to 28 U.S. C. §§ 1391(b) and (c) and 1400(b).

PARTIES

4. Plaintiff Barry W. Thomas is an individual residing at 16316 Woolwine Road, Charlotte, North Carolina.
5. Upon information and belief, Defendant Cox Communications Corporation ("Cox") is a corporation of the State of Delaware having its principal place of business at 1400 Lake Hearn Drive, Atlanta, Georgia.
6. Upon information and belief, Cox sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.
7. Upon information and belief, Cox is subject to the personal jurisdiction of the courts of this State and this judicial district.
8. Upon information and belief, Defendant Comcast Corporation ("Comcast") is a corporation of the State of Pennsylvania having its principal place of business at 1500 Market Street, Philadelphia, Pennsylvania.

9. Upon information and belief, Comcast sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

10. Upon information and belief, Comcast is subject to the personal jurisdiction of the courts of this State and this judicial district.

11. Upon information and belief, Defendant Centennial Communications Corp. ("Centennial") is a corporation of the State of Delaware having its principal place of business at 3349 Route 138, Wall, New Jersey.

12. Upon information and belief, Centennial sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

13. Upon information and belief, Centennial is subject to the personal jurisdiction of the courts of this State and this judicial district, and has admitted as such.

14. Upon information and belief, Defendant Cricket Communications, Inc. ("Cricket") is a corporation of the State of Delaware having its principal place of business at 10307 Pacific Center Court, San Diego, California.

15. Upon information and belief, Cricket sells and offers to sell its products in the State of Texas, has substantial contacts with the State of Texas, has a regular place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.

16. Upon information and belief, Cricket is subject to the personal jurisdiction of the courts of this State.

17. Upon information and belief, Defendant Dobson Cellular Systems, Inc., ("Dobson") is a corporation of the State of Oklahoma having its principal place of business at 14201 Wireless Way, Oklahoma City, Oklahoma.

18. Upon information and belief, Dobson sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

19. Upon information and belief, Dobson is subject to the personal jurisdiction of the courts of this State and this judicial district.

20. Upon information and belief, Defendant Charter Communications, Inc. ("Charter") is a corporation of the State of Delaware having its principal place of business at 12405 Powerscourt Drive, Saint Louis, Missouri.

21. Upon information and belief, Charter sells and offers to sell its products in the State of Texas, has substantial contacts with the State of Texas, has a regular place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.

22. Upon information and belief, Charter is subject to the personal jurisdiction of the courts of this State.

23. Upon information and belief, Defendant Sprint Spectrum L.P. ("Sprint") is a limited partnership organized under the laws of the state of Delaware and having its principal place of business at 490 Main Street, Kansas City, Missouri.

24. Upon information and belief, Sprint sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a

regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

25. Upon information and belief, Sprint is subject to the personal jurisdiction of the courts of this State and this judicial district.

26. Upon information and belief, Defendant Nextel Operations, Inc. ("Nextel") is a corporation of the state of Delaware having its principal place of business at 2001 Edmund Halley Drive, Reston, Virginia.

27. Upon information and belief, Nextel sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

28. Upon information and belief, Nextel is subject to the personal jurisdiction of the courts of this State and this judicial district.

29. Upon information and belief, Defendant Cellco Partnership d/b/a Verizon Wireless ("Verizon") is a general partnership organized under the laws of the state of Delaware and having its principal place of business at 180 Washington Valley Road, Bedminster, New Jersey, and is composed of wholly owned indirect subsidiaries of Verizon Communications Inc. and Vodafone Group Plc.

30. Upon information and belief, Verizon sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

31. Upon information and belief, Verizon is subject to the personal jurisdiction of the courts of this State and this judicial district.

32. Upon information and belief, Defendant TracFone Wireless, Inc. ("TracFone") is a corporation of the state of Florida having its principal place of business at 8390 Northwest 25th Street, Miami, Florida.

33. Upon information and belief, TracFone sells and offers to sell its products in the State of Texas, including in this judicial district, has substantial contacts with this judicial district, has a regular place of business in this judicial district, and has made, used, sold, or offered for sale infringing products in the State of Texas, as well as within this judicial district.

34. Upon information and belief, TracFone is subject to the personal jurisdiction of the courts of this State and this judicial district.

35. Upon information and belief, Defendant MetroPCS, Inc. ("MetroPCS") is a corporation organized under the laws of the state of Delaware and having its principal place of business at 8144 Walnut Hill Lane, Suite 800, Dallas, Texas.

36. Upon information and belief, MetroPCS sells and offers to sell its products in the State of Texas, has substantial contacts with this State, has its principal place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.

37. Upon information and belief, MetroPCS is subject to the personal jurisdiction of the courts of this State.

38. Upon information and belief, Defendant General Motors Corporation ("GM") is a corporation organized under the laws of the state of Delaware and having its principal place of business at 300 Renaissance Center, Detroit, Michigan.

39. Upon information and belief, GM sells and offers to sell its products in the State of Texas, has substantial contacts with this State, has its principal place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.

40. Upon information and belief, GM is subject to the personal jurisdiction of the courts of this State.

41. Upon information and belief, Defendant OnStar Corp. ("OnStar") is a corporation organized under the laws of the state of Delaware and having its principal place of business at 400 Renaissance Center, Detroit, Michigan.

42. Upon information and belief, OnStar sells and offers to sell its products in the State of Texas, has substantial contacts with this State, has its principal place of business in this State, and has made, used, sold, or offered for sale infringing products in the State of Texas.

43. Upon information and belief, OnStar is subject to the personal jurisdiction of the courts of this State.

COUNT I
INFRINGEMENT OF U. S. PATENT NO. 4,777,354

44. On October 11, 1988, United States Patent No. 4,777,354 ("the'354 patent"), entitled "System for Controlling the Supply Utility Services to Consumers," was duly and legally issued to inventor Plaintiff Barry Thomas. A copy of the '354 patent is attached hereto as **Exhibit A**.

45. At all times relevant to this action, Thomas was and is the owner of the entire right, title, and interest, legal and equitable, in the '354 the patent.

46. The '354 patent was valid, subsisting, and enforceable within the United States until its expiration on January 27, 2006.

47. Defendants Cox, Comcast, and Charter infringed the '354 patent by using (including leasing, renting, or otherwise giving use of), selling, and/or offering to sell cable television reception equipment in the United States, and/or importing the same into the United States, which equipment was covered by one or more of the claims of the '354 patent, in violation of 35 U.S.C. § 271(a).

48. Defendants Centennial, Dobson, Sprint, Nextel, Verizon, TracFone, and MetroPCS infringed the '354 patent by using, selling, and/or offering to sell wireless telephone handset equipment in the United States, and/or importing the same into the United States, which equipment was covered by one or more claims of the '354 patent, in violation of 35 U.S.C. § 271(a).

49. Defendants GM and OnStar infringed the '354 patent by using, selling, and/or offering to sell wireless communications and positioning equipment in the United States, and/or importing the same into the United States, which equipment was covered by one or more claims of the '354 patent, in violation of 35 U.S.C. § 271(a).

50. The acts of direct infringement of the '354 patent undertaken by Cox, Comcast, Sprint, Nextel, and Verizon were performed with the full knowledge of the '354 patent and without leave, license, or permission of Plaintiff. Such activities constitute willful infringement of the '354 patent.

COUNT II
INDUCING PATENT INFRINGEMENT

51. Plaintiff realleges and incorporates by reference paragraphs 1 through 50 of this complaint into Count II, as if fully set forth herein.

52. Defendants Cox, Comcast, Sprint, Nextel, and Verizon infringed the '354 patent by actively inducing others to use and/or to sell equipment that infringes the '354 patent with knowledge that such use constitutes infringement by inducement in violation of 35 U.S.C. § 271(b).

53. Defendants Cox, Comcast, Sprint, Nextel, and Verizon have committed these acts of infringement with the full knowledge of the '354 patent and without leave, license, or permission of Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays unto the court that Judgment be granted in his favor and that he be awarded the following relief:

1. Declare that each Defendant's acts and conduct infringed the '354 patent and the exclusive rights in said patent held by Plaintiff;
2. Declare that Defendants Cox, Comcast, Sprint, Nextel, and Verizon each induced infringement of the '354 patent, in violation of 35 U. S. C. § 271(b);
3. Declare that the infringement by Defendants Cox, Comcast, Sprint, Nextel, and Verizon was willful;
4. Require each Defendant to account to Plaintiff for all profits and expense realized by Defendants and any subsidiary or affiliate of Defendants during the term of the '354 patent;
5. Award Plaintiff actual and enhanced damages suffered as a result of each Defendant's infringement of the '354 patent and the rights held by Plaintiff in said patent, and, as to Defendants Cox, Comcast, Sprint, Nextel, and Verizon, pursuant to a finding of willful infringement, order that such damages be trebled;

6. Declare this case to be exceptional under 35 U.S.C. § 285 and award reasonable attorney fees and Plaintiff's costs of suit, pursuant to 35 U.S.C. § 284;

7. Grant such other and further relief as the equity of the case may require and as this Court may deem just and proper.

A jury trial is demanded.

Date: May ___, 2007.

Respectfully Submitted:

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Barry W. Thomas

(b) County of Residence of First Listed Plaintiff Mecklenburg, NC
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Steve Harrelson, PO Box 40, Texarkana, AR 75504

DEFENDANTS

Cox Communications, Inc., et al

County of Residence of First Listed Defendant Fulton, GA; Kent, GA
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881		☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	PROPERTY RIGHTS	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 820 Copyrights	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☒ 830 Patent	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health	☐ 840 Trademark	☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other		☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise			☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence	☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	Habeas Corpus:	☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty		☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other			☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights			☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 35 USC § 271,281,283,284

Brief description of cause: Patent infringement

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 6/6/2007 SIGNATURE OF ATTORNEY OF RECORD Steve Harrelson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____