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A PROFESSIONAL CORPORATION  
A LIMITED LIABILITY COMPANY

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Attorneys for Ericsson Inc. and Cingular Wireless LLC

14 IN THE UNITED STATES DISTRICT COURT  
 15 FOR THE DISTRICT OF ARIZONA

16 Ericsson Inc. and Cingular Wireless LLC,	)	No.
	)	
17 Plaintiffs,	)	<b>COMPLAINT</b>
	)	
18 vs.	)	
	)	
19 Freedom Wireless, Inc.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
20 Defendant.	)	
	)	

21  
 22 As and for their Complaint against Defendant Freedom Wireless, Inc.,  
 23 Plaintiffs Ericsson Inc. and Cingular Wireless LLC (collectively "Plaintiffs") allege as  
 24 follows:

**PARTIES**

25  
 26  
 27 1. Plaintiff Ericsson Inc. ("Ericsson") is a Delaware corporation with its  
 28 principal place of business at 6300 Legacy Drive, Plano, Texas 75024.

1 2. Plaintiff Cingular Wireless LLC (“Cingular”) is a Delaware limited  
2 liability company with its principal place of business at 5565 Glenridge Connector,  
3 Atlanta, GA 30342.

4  
5 3. On information and belief, Defendant Freedom Wireless, Inc.  
6 (“Freedom Wireless”) is a Nevada corporation with its principal place of business at  
7 132 S. Central Ave., Phoenix, Arizona 85004, and is doing business in the State of  
8 Arizona. Freedom Wireless is identified as the assignee of issued United States  
9 Patent No. 5,722,067 (“the ‘067 Patent”) and United States Patent No. 6,157,823 (“the  
10 ‘823 Patent”), the subjects of this suit.

### 12 **JURISDICTION AND VENUE**

13 4. This is a civil action arising under the Patent Laws of the United States,  
14 35 U.S.C. § 101, *et seq.*, seeking a declaration that no valid and enforceable claim of  
15 United States Patent Numbers 5,722,067 (“the ‘067 Patent”) and 6,157,823 (“the ‘823  
16 Patent”) (collectively, “patents-in-suit”) is infringed by Plaintiffs. Accordingly,  
17 subject matter jurisdiction of this Court exists under the Federal Declaratory  
18 Judgment Act, Title 28, United States Code §§ 2201 and 2202, and under Title 28,  
19 United States Code §§ 1331 and 1338(a).

22 5. Freedom Wireless maintains its principal place of business in the State  
23 of Arizona. Also, Freedom Wireless does business in the State of Arizona.  
24 Accordingly, the District of Arizona possesses personal jurisdiction over Freedom  
25 Wireless and venue in the District of Arizona is proper under 28 U.S.C. §§ 1391(b),  
26 1391(c).

**EXISTENCE OF AN ACTUAL CONTROVERSY**

1  
2 6. Freedom Wireless identifies itself as the owner of the ‘067 Patent,  
3 entitled “Security Cellular Telecommunications System,” a copy of which is attached  
4 to this Complaint as Exhibit “A.” The ‘067 Patent was issued by the United States  
5 Patent and Trademark Office (“USPTO”) on February 24, 1998. Freedom Wireless  
6 also identifies itself as the owner of the ‘823 Patent, entitled “Security Cellular  
7 Telecommunications System,” a copy of which is attached to this Complaint as  
8 Exhibit “B.” The ‘823 Patent was issued by the USPTO on December 5, 2000. The  
9 patents-in-suit both concern methods that allow an individual to make cellular calls  
10 based on a pre-paid account and monitor his or her usage in real time.  
11

12  
13 7. Cingular provides pre-paid wireless services to consumers. Cingular’s  
14 platform for providing these services is based on systems or services supplied to  
15 Cingular by Ericsson. Ericsson has certain indemnification obligations to Cingular  
16 with respect to such systems or services.  
17

18 8. For the reasons set forth more fully in Paragraphs 9 through 16 below,  
19 Plaintiffs have a reasonable apprehension that Freedom Wireless will initiate litigation  
20 against them asserting a claim that the systems or services supplied to Cingular by  
21 Ericsson infringe the patents-in-suit.  
22

23 9. Prior to Cingular’s use of Ericsson systems or services, Cingular offered  
24 a previous generation of pre-paid wireless services based on systems or services  
25 supplied to Cingular by Boston Communications Group, Inc. (“BCGI”).  
26

27 10. Freedom Wireless previously filed a lawsuit against Cingular and  
28 BCGI, captioned *Freedom Wireless, Inc. v. Boston Communications Group, Inc., et*

1 *al.*, case no. 4:00-cv-01129-SBA in the United States District Court for the Northern  
2 District of California. The case was later transferred to the United States District  
3 Court for the District of Massachusetts, case no. 00-cv-12234-EFH. In that lawsuit,  
4 Freedom Wireless claimed that Cingular's offering of pre-paid wireless services based  
5 on BCGI systems or services infringed upon the patents-in-suit.  
6

7       11. After the filing of the lawsuit against Cingular, Freedom Wireless filed  
8 two related suits in the United States District Court for the District of Massachusetts  
9 against other parties engaged in the provision of pre-paid wireless systems or services,  
10 captioned *Freedom Wireless, Inc. v. Boston Communications Group, Inc. and Nextel*  
11 *Communications, Inc.*, case no. 1:05-cv-11061-EFH, and *Freedom Wireless, Inc. v.*  
12 *Boston Communications Group, Inc., et al.*, case no. 1:05-cv-11062-EFH. Both of  
13 these cases also alleged infringement of the patents-in-suit.  
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16       12. The lawsuit against Cingular resulted in a jury verdict and judgment in  
17 favor of Freedom Wireless. Upon appeal, Freedom Wireless, BCGI, and Cingular  
18 entered into global settlement negotiations. Freedom Wireless was aware that  
19 Cingular currently offers pre-paid wireless services to consumers implementing  
20 systems or services obtained from Ericsson. During these settlement negotiations,  
21 Freedom Wireless and Cingular agreed that the settlement would apply solely to pre-  
22 paid wireless systems or services provided by BCGI and not to systems or services of  
23 other providers, such as Ericsson. Freedom Wireless thus carved out of the  
24 BCGI/Cingular settlement — and preserved its right to assert — a claim that systems  
25 or services provided by Ericsson infringe the patents-in-suit.  
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1           13.     During the settlement negotiations, Freedom Wireless requested that  
2 BCGI have Cingular enter into a standstill agreement with Freedom Wireless  
3 regarding any non-BCGI related claims. In fact, Freedom Wireless unsuccessfully  
4 sought the following agreement: “If Freedom and Cingular are unable to resolve all  
5 outstanding disputes by the end of the Prepaid Period, unless otherwise agreed by  
6 Freedom and Cingular, all subsequent disputes between Freedom and Cingular shall  
7 be resolved by an action filed with the United States District Court for the District of  
8 Massachusetts and Freedom and Cingular each submit to the jurisdiction of that Court  
9 for the limited purpose of resolving such disputes.”  
10

11  
12           14.     BCGI informed Freedom Wireless that it could not agree to a standstill  
13 agreement on behalf of its carriers. Freedom Wireless, through its counsel, responded  
14 that if Cingular did not participate in the standstill agreement, then Freedom Wireless  
15 would be ready to proceed with litigation against Cingular. BCGI then cautioned  
16 Cingular that Freedom Wireless had requested the standstill agreement, that the  
17 settlement agreement would not cover Cingular’s use of Ericsson systems or services,  
18 and that Cingular and Ericsson would be subject to a claim by Freedom Wireless for  
19 infringement of the patents-in-suit.  
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22           15.     The settlement discussions recently resulted in an executed settlement  
23 agreement between Freedom Wireless, BCGI, and Cingular. As BCGI’s press  
24 release, expressly approved by Freedom Wireless, noted, however, “it does not  
25 resolve or settle any claims, disputes or liabilities relating to the use or infringement  
26 of the Freedom patents by mobile operators in connection with any prepaid wireless  
27 system or service other than services provided by BCGI.” *Boston Communications*  
28

1 *Group, Inc. Signs Definitive Settlement Agreement to End Freedom Wireless*  
2 *Litigation*, BUSINESS WIRE, July 21, 2006, available at DIALOG, File No. 610,  
3 attached at Exhibit “C.”  
4

5 16. In addition to the looming indication that Freedom Wireless is preparing  
6 to initiate infringement litigation against Cingular and Ericsson as set forth above,  
7 three news articles address Freedom Wireless’s intent to sue the Plaintiffs for alleged  
8 infringement of the patents-in-suit. On information and belief, these three news  
9 articles were based in part upon information provided by Freedom Wireless. In a  
10 May 20, 2005 press release following the previous jury trial, Bill Price, Freedom  
11 Wireless’s counsel, stated, “This verdict sends a message to these defendants and any  
12 others who have been infringing these patents that Freedom Wireless will pursue its  
13 rights to the fullest.” *Jury Awards Freedom Wireless \$128 Million against Wireless*  
14 *Telephone Companies for Patent Infringement*, BUSINESS WIRE, May 20, 2005,  
15 available at DIALOG, File No. 610, attached at Exhibit “D.” In a September 21, 2005  
16 press release by The Yankee Group, it was reported that the initial jury decision in the  
17 suit involving Freedom Wireless and Cingular was “merely the beginning for  
18 Freedom Wireless and its lawsuits. It has already filed suit against Nextel and Alltel,  
19 and the May 2005 decision could lead to action against other vendors and service  
20 providers, including Ericsson . . . .” *Yankee Group Reveals Recent Lawsuit Decision*  
21 *Threatens US Prepaid Wireless Market; Sets Precedent for Possible Legal Action*  
22 *against Other Vendors*, BUSINESS WIRE, Sept. 20, 2005, available at DIALOG, File  
23 No. 610, attached at Exhibit “E.” Additionally, the Wall Street Journal published an  
24 article regarding Freedom Wireless and its role in the litigation. The article stated that  
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1 the founders of Freedom Wireless were in a “lucrative line of work: suing cell phone  
2 companies for patent infringement” and had created Freedom Wireless “focusing  
3 solely on patent litigation.” William M. Bulkeley, *Aggressive Patent Litigants Pose*  
4 *Growing Threat to Big Business*, WALL ST. J., Sept. 14, 2005, at A1, attached at  
5 Exhibit “F.”  
6

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8 **INEQUITABLE CONDUCT**

9 17. Plaintiffs further allege that the patents-in-suit are unenforceable  
10 because Freedom Wireless deceptively withheld information from the USPTO that it  
11 knew or should have known was material to their patentability. Freedom Wireless  
12 had a duty of candor and good faith in dealing with the USPTO during prosecution of  
13 the applications that issued as the patents-in-suit. Part of this duty of candor and good  
14 faith included the duty to disclose all information known to be material to  
15 patentability.  
16

17 18. Douglas Fougnes, a co-inventor of the patents-in-suit, and Robert von  
18 Hellens, the then patent counsel for Freedom Wireless’ predecessor, deceptively  
19 withheld an August 29, 1994 brochure, entitled “Making Telecommunications More  
20 Affordable,” created by a company called Cominex along with additional information  
21 that they knew described transparent pre-paid wireless services using the same  
22 configuration as covered by the patents-in-suit.  
23

24 19. Mr. Fougnes and Mr. von Hellens also deceptively withheld material  
25 they received regarding Cellular Service Inc.’s reseller switch proposal before the  
26 California Public Utilities Proceeding (“CSI proposal”). On May 6, 1996, Mr.  
27 Fougnes testified in previous litigation that the incorporation of an intelligent switch  
28

1 into his invention was revolutionary and novel. On May 9, 1996, Mr. Fougnes and  
2 Mr. von Hellens received information regarding the CSI proposal, particularly with  
3 regard to the use of reseller switches related to prepaid cellular services. Although  
4 they received the information regarding CSI's proposed use, they failed to provide the  
5 same material information to the USPTO during prosecution of the patents-in-suit.  
6

7 20. During the prosecution of the '823 Patent, Dan Harned, a co-inventor of  
8 the patents-in-suit, deceptively withheld an article published in Telephony magazine  
9 on November 29, 1993, entitled "Managing the Revenue Stream Real-time billing  
10 technology can help carriers harness future interactive network services," by David E.  
11 Klepp. The Telephony article invalidates claims of the '823 Patent. Mr. Harned  
12 misled his counsel about the significance and materiality of the article when they were  
13 considering whether there was an obligation to disclose it to the USPTO.  
14  
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16 21. Additionally, Mr. Fougnes and Mr. Harned deceptively withheld  
17 material information concerning the prepaid cellular service that was on sale by  
18 Banana Cellular, Inc. in December 1993. Based on what they understood about the  
19 Banana prepaid cellular service, they knew it was material information that should  
20 have been disclosed to the patent office. Specifically, they knew that Banana was  
21 recognizing prepaid cellular calls at a wireless switch using an identifier and  
22 forwarding calls to a prepaid service provider. Furthermore, Mr. Fougnes failed to  
23 disclose the patent application that became U.S. Patent No. 5,826,185, invented by  
24 Andrew Wise and Ted Rich and assigned to Banana Cellular. Mr. Fougnes received  
25 the patent application in 1998 from Mr. Rich. He was aware of the similarity of the  
26 patent application to claims contained in the patents-in-suit.  
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1           22.     During prosecution of the patents at issue, Freedom Wireless knew that  
2 the above-described information constituted material references that should have been  
3 disclosed to the USPTO. By failing to disclose this information, Freedom Wireless  
4 violated its duty of candor and good faith and committed inequitable conduct,  
5 rendering both patents-in-suit unenforceable.  
6

7           23.     Plaintiffs believe and assert that they do not infringe the patents-in-suit  
8 and that the patents-in-suit are invalid and unenforceable.  
9

10                           **REQUEST FOR DECLARATORY JUDGMENT**

11           24.     Plaintiffs incorporate by reference paragraphs 1 through 23 as if fully  
12 set forth herein.  
13

14           25.     Plaintiffs have a reasonable apprehension that Freedom Wireless will  
15 initiate litigation asserting a claim that services offered for sale and sold by Cingular  
16 that contain or implement systems or services supplied to Cingular by Ericsson  
17 infringe both the '067 Patent and the '823 Patent.  
18

19           26.     By reason of the foregoing facts, a ripe and justiciable controversy  
20 exists between the parties regarding whether the patents-in-suit are valid or  
21 enforceable, and if so, whether Ericsson and Cingular infringe these patents.  
22

23           27.     Declaratory relief is necessary and appropriate in this case because the  
24 Court's judgment on the issues of patent invalidity, unenforceability, and non-  
25 infringement will afford Plaintiffs relief from the uncertainty and controversy  
26 surrounding Freedom Wireless's intent to file a patent infringement lawsuit.  
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28           28.     Accordingly, the Court is requested to declare that each and every claim  
of the patents-in-suit is invalid, unenforceable, and not infringed.



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**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury for all claims triable by jury pursuant to Fed. R. Civ. P. 38.

DATED this 8th day of August, 2006.

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**CERTIFICATE OF SERVICE**



I hereby certify that on August 8, 2006, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

s/Susanne Wedemeyer

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