

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

HENRY S. KERNIUS
Oakville, Ontario
CANADA

RAY J. FRISE
Markham, Ontario
CANADA

Plaintiffs

v.

INTERNATIONAL ELECTRONICS, INC.
5913 C N.E. 127th Avenue
Suite 800
Vancouver, Washington 98682

EMERSON RADIO CORPORATION
9 Entin Road
Parsippany, New Jersey 07054-0430

HUMAN ELECTRONICS, INC.
101 Bleecker Street
Utica, New York 13501-2201

COMMAND COMMUNICATIONS, INC.
7025 South Fulton Street #120
Centennial, Colorado 80112

CLASSCO, INC.
99 Airport Road
Concord, New Hampshire 03302

AT&T
One AT&T Way
Bedminster, New Jersey 07921

GRANDEX INTERNATIONAL CORPORATION
4F, 525 Chung Cheng Road
Hsin Tien, Taipei
Taiwan, R.O.C.

FILED
LODGED
RECEIVED

JUL 15 2005

U.S. DISTRICT COURT
DISTRICT OF MARYLAND

Civil Action No.

RDB 05 CV1927

WAL-MART STORES, INC.)
702 South West 8 th Street)
Bentonville, Arkansas 72716)
)
TARGET CORPORATION)
1000 Nicollet Mall)
Minneapolis, Minnesota 55403)
)
RADIO SHACK CORPORATION)
Riverfront Campus World Headquarters)
300 RadioShack Circle,)
Fort Worth, Texas 76102-1964)
)
VERIZON COMMUNICATIONS INC.)
1095 Avenue of the Americas)
New York, New York 10036)
)
CIRCUIT CITY)
9950 Maryland Drive)
Richmond, Virginia 23233)
)
BEST BUY COMPANY, INC.)
7601 Penn Avenue South)
Richfield, Minnesota 55423)
)
TIGERDIRECT, INC.)
7795 West Flagler St., Suite 35)
Miami, Florida 33144)
)
Defendants)

**COMPLAINT FOR PATENT INFRINGEMENT
AND INJUNCTIVE RELIEF**

Plaintiffs, Kernius and Frise, complain of Defendants, International Electronics, Emerson Radio Company, Human Electronics, Command Communications, ClassCo, AT&T, Grandex, Wal-mart, Target, Radio Shack, Verizon, Circuit City, Best Buy and Tiger Direct as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement under Title 35 United States Code.

2. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1338(a).

3. Plaintiffs Henry S. Kernius of 2177 Shorncliffe Blvd., Oakville, Ontario L6M 3X2 and Ray J. Frise of 17 Greentree Road, Suite 2B, Markham, Ontario L3R 3A9, are individuals residing in Canada in the province of Ontario and are co-inventors and co-owners of United States Letters Patent Number 6,628,771.

4. Defendant International Electronics, Inc. (IEI) is, upon information and belief, a corporation organized under the laws of the State of Washington, having a place of business at 5913 C N.E. 127th Avenue, Suite 800, Vancouver, Washington 98682. IEI is engaged in making, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant IEI under 28 U.S.C. §1391(b) and §1400(a).

5. Defendant Emerson Radio is, upon information and belief, a corporation organized under the laws of the state of New Jersey and having a place of business at 9 Entin Road, Parsippany, New Jersey 07054-0430. Emerson Radio is engaged in making, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Emerson Radio under 28 U.S.C. §1391(b) and §1400(a).

6. Defendant Human Electronics, Inc. (HEI) is, upon information and belief, a corporation organized under the laws of the state of New York, and having a place of business at

101 Bleecker Street, Utica, New York 13501. HEI is engaged in making, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant HEI under 28 U.S.C. §1391(b) and §1400(a).

7. Defendant Command Communications, Inc. (CCI) is, upon information and belief, a corporation organized under the laws of the state of Colorado and having a place of business at 7025 South Fulton Street, #120, Centennial, Colorado 80112. CCI is engaged in making, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant CCI under 28 U.S.C. §1391(b) and §1400(a).

8. Defendant ClassCo, Inc. is, upon information and belief, a corporation organized under the laws of the state of New Hampshire, and having a place of business at 99 Airport Road, Concord, New Hampshire 03302. ClassCo is engaged in making, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant ClassCo under 28 U.S.C. §1391(b) and §1400(a).

9. Defendant AT&T is, upon information and belief, a corporation organized under the laws of the state of New Jersey, and having a place of business at One AT&T Way Bedminster, New Jersey 07921. AT&T is engaged in making, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial

business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant AT&T under 28 U.S.C. §1391(b) and §1400(a).

10. Defendant Grandex International Corporation. is, upon information and belief, a corporation organized under the laws of Taiwan, and having a place of business at 4F, 525 Chung Cheng Road, Hsin Tien, Taipei, Taiwan, R.O.C. Grandex is engaged in making, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Grandex under 28 U.S.C. §1391(b) and (d) and §1400(a).

11. Defendant Wal-Mart, Inc. is, upon information and belief, a corporation organized under the laws of the state of Arkansas, and having a place of business at 702 South West 8th Street Bentonville, Arkansas 72716. Wal-Mart is engaged in purchasing, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Wal-Mart under 28 U.S.C. §1391(b) and §1400(a).

12. Defendant Target, Inc. is, upon information and belief, a corporation organized under the laws of the state of Minnesota, and having a place of business at 1000 Nicollet Mall, Minneapolis, Minnesota 55403. Target is engaged in purchasing, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Target under 28 U.S.C. §1391(b) and

§1400(a).

13. Defendant Radio Shack, Inc. is, upon information and belief, a corporation organized under the laws of the state of Texas, and having a place of business at Riverfront Campus World Headquarters, 300 Radio Shack Circle Fort Worth, Texas 76102-1964. Radio Shack, is engaged in purchasing, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Radio Shack under 28 U.S.C. §1391(b) and §1400(a).

14. Defendant Verizon, Inc. is, upon information and belief, a corporation organized under the laws of the state of New York, and having a place of business at 1095 Avenue of the Americas, New York, New York 10036. Verizon is engaged in purchasing, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Verizon under 28 U.S.C. §1391(b) and §1400(a).

15. Defendant Circuit City, Inc. is, upon information and belief, a corporation organized under the laws of the state of Virginia, and having a place of business at 9950 Maryland Drive, Richmond, Virginia 23233. Circuit City is engaged in purchasing, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Circuit City under 28 U.S.C. §1391(b) and §1400(a).

16. Defendant Best Buy, Inc. is, upon information and belief, a corporation organized

under the laws of the state of Minnesota, and having a place of business at 7601 Penn Avenue South, Richfield, Minnesota 55423. Best Buy is engaged in purchasing, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Best Buy under 28 U.S.C. §1391(b) and §1400(a).

17. Defendant Tiger Direct, Inc. is, upon information and belief, a corporation organized under the laws of the state of Florida, and having a place of business at 7795 West Flagler St., Suite 35, Miami, Florida 33144. Tiger Direct is engaged in purchasing, using, offering for sale and selling products covered under the claims of the '771 patent in suit and conducts substantial business in Maryland has sold infringing product in the State of Maryland, in this Judicial District. Venue is proper in this District as to Defendant Tiger Direct under 28 U.S.C. §1391(b) and §1400(a).

GENERAL ALLEGATIONS

18. United States Patent 6,628,771 issued on September 30, 2003 to Plaintiff's from their application filed February 2, 1998.

19. The 6,628,771 patent is entitled "Distinctive Call Waiting Alert and Management Device" and describes and claims an apparatus and method for alert and signal management for an already engaged telephone line, triggered by conventional call waiting or distinctive call waiting SAS tones to alert by audible and/or visual means.

20. Upon information and belief, Defendants each individually manufacture, use, offer to sell and/or sell devices generally known as call waiting monitoring devices.

21. Defendants make and sell at least the following infringing products:

International Electronics	Catch-A-Call Catch-A-Call ID Catch-A-Call Gold Catch-A-Call Max
Emerson Radio	Switchboard Switchboard Deluxe
Human Electronics	NetSense NetSense CPi NetSense CPi Plus
Command Communications	ComSwitch 5500 ComSwitch 7500 ComSwitch 8500 ComSwitch 3.0 HotCall 2000 HotCall 3000 HotCall 4000
ClassCo	InTouch 510 InTouch 5000
AT&T	AT&T 438
Grandex	I-Ring Internet I-Ring 1 I-Ring 2 I-Ring 3

22. Defendants purchase and re-sell at least the following products:

Wal-Mart	Catch-A-Call / ID / Gold / Max
Target	Catch-A-Call / ID / Gold / Max
Radio Shack	Catch-A-Call / ID / Gold / Max ComSwitch 5500/7500/8500 HotCall 2000 /3000 / 4000
Verizon	InTouch 510 InTouch 5000

Circuit City	Catch-A-Call / ID / Gold / Max
Best Buy	Catch-A-Call / ID / Gold / Max
Tiger Direct	HotCall 2000/ 3000/ 4000 I-Ring Internet ComSwitch 3

23. The Defendants' call waiting monitoring devices manage an already engaged telephone line, and are triggered by conventional call waiting or distinctive call waiting SAS tones to alert by audible and/or visual means.

PATENT INFRINGEMENT GENERAL ALLEGATIONS

24. The General Allegations of Patent infringement apply to each and every one of the Defendants.

25. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

26. Plaintiffs own and have at all times owned and have had standing to sue for infringement of United States Letters Patent 6,628,771 which was duly and legally issued on September 30, 2003.

27. The '771 patent properly names Plaintiffs as co-inventors, is entitled "DISTINCTIVE CALL WAITING ALERT AND MANAGEMENT DEVICE" and includes apparatus Claim 1 which reads as follows:

An apparatus for alerting a subscriber of a call waiting or a distinctive call waiting condition without the subscriber having to aurally monitor the subscriber's telephone receiver for call waiting SAS tones or distinctive call waiting SAS tones comprising;

(a) call progress detector circuitry for detecting either a call waiting SAS signal or a distinctive call waiting SAS signal;

(b) microcontroller set of instructions signals received from the call progress detector circuitry;

(c) circuitry to recognize a first signal with a duty cycle or cadence coupled with frequency and level indication of a call waiting SAS signal or a distinctive call waiting SAS signal; wherein the apparatus is configured to operate in either the presence or absence of a bandwidth encompassing modem signal;

(d) alert circuitry to alert the subscriber visually when the microcontroller set of instructions, stored in program memory, executing logic determines either a call waiting or a distinctive call waiting condition.

COUNT I
PATENT INFRINGEMENT INTERNATIONAL ELECTRONICS

28. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

29. Upon information and belief, Defendant IEI manufactures, uses, sells and offers for sale a product know as Catch-A-Call; Catch-A-Call ID; Catch-A-Call Gold; and Catch-A-Call Max, made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

30. Upon information and belief, Defendant IEI infringes the apparatus claims of the '771 patent.

31. Upon information and belief, Defendant IEI infringes the method claims of the '771 patent.

32. Upon information and belief, Defendant IEI has infringed and continues to infringe the claims of the '771 patent by manufacturing or causing to be manufactured products which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale product which infringes the claims of the '771 patent and by

inducing others to infringe.

33. Plaintiffs are entitled to recover from the Defendant IEI the damages sustained as a result of Defendant's infringing acts.

COUNT II
PATENT INFRINGEMENT EMERSON RADIO

34. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

35. Upon information and belief, Defendant ERI manufactures, uses, sells and offers for sale a product know as Switchboard and Switchboard Deluxe, for the web made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

36. Upon information and belief, Defendant ERI infringes the apparatus claims of the '771 patent.

37. Upon information and belief, Defendant ERI infringes the method claims of the '771 patent.

38. Upon information and belief, Defendant ERI has infringed and continues to infringe the claims of the '771 patent by manufacturing or causing to be manufactured products which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale products which infringe the claims of the '771 patent and by inducing others to infringe.

39. Plaintiffs are entitled to recover from the Defendant ERI the damages sustained as a result of Defendant's infringing acts.

COUNT III
PATENT INFRINGEMENT HUMAN ELECTRONICS

40. Plaintiffs realleges each and every allegation set forth above and incorporates them

herein by reference.

41. Upon information and belief, Defendant HEI manufactures, uses, sells and offers for sale a product know as NetSense; NeSense CPi and NetSense Plus, made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

42. Upon information and belief, Defendant HEI infringes the apparatus claims of the '771 patent.

43. Upon information and belief, Defendant HEI infringes the method claims of the '771 patent.

44. Upon information and belief, Defendant HEI has infringed and continues to infringe the claims of the '771 patent by manufacturing or causing to be manufactured product which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale product which infringes the claims of the '771 patent and by inducing others to infringe.

45. Plaintiffs are entitled to recover from the Defendant HEI the damages sustained as a result of Defendant's infringing acts.

COUNT IV PATENT INFRINGEMENT COMMAND COMMUNICATIONS

46. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

47. Upon information and belief, Defendant CCI manufactures, uses, sells and offers for sale a product know as ComSwitch 3.0; ComSwitch 5500; ComSwitch 7500; ComSwitch 8500; HotCall HC 2000; HotCall HC 3000 and HotCall HC 4000, made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

48. Upon information and belief, Defendant CCI infringes the apparatus claims of the '771 patent.

49. Upon information and belief, Defendant CCI infringes the method claims of the '771 patent.

50. Upon information and belief, Defendant CCI has infringed and continues to infringe the claims of the '771 patent by manufacturing or causing to be manufactured products which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale product which infringes the claims of the '771 patent and by inducing others to infringe.

51. Plaintiffs are entitled to recover from the Defendant CCI the damages sustained as a result of Defendant's infringing acts.

COUNT V
PATENT INFRINGEMENT CLASSCO

52. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

53. Upon information and belief, Defendant CLASSCO manufactures, uses, sells and offers for sale a product know as InTouch 5000 and InTouch 510, made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

54. Upon information and belief, Defendant CLASSCO infringes the apparatus claims of the '771 patent.

55. Upon information and belief, Defendant CLASSCO infringes the method claims of the '771 patent.

56. Upon information and belief, Defendant CLASCO has infringed and continues to

infringe the claims of the '771 patent by manufacturing or causing to be manufactured products which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale product which infringes the claims of the '771 patent and by inducing others to infringe.

57. Plaintiffs are entitled to recover from the Defendant CLASSCO the damages sustained as a result of Defendant's infringing acts.

COUNT VI
PATENT INFRINGEMENT AT&T

58. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

59. Upon information and belief, Defendant AT&T manufactures, uses, sells and offers for sale a product know as AT&T 438, made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

60. Upon information and belief, Defendant AT&T infringes the apparatus claims of the '771 patent.

61. Upon information and belief, Defendant AT&T infringes the method claims of the '771 patent.

62. Upon information and belief, Defendant AT&T has infringed and continues to infringe the claims of the '771 patent by manufacturing or causing to be manufactured products which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale product which infringes the claims of the '771 patent and by inducing others to infringe.

63. Plaintiffs are entitled to recover from the Defendant AT&T the damages sustained

as a result of Defendant's infringing acts.

**COUNT VII
PATENT INFRINGEMENT GRANDEX**

64. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

65. Upon information and belief, Defendant GRANDEX manufactures, uses, sells and offers for sale a product know as I-Ring Internet, I-Ring 1, I-Ring 2 and I-Ring 3, made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

66. Upon information and belief, Defendant GRANDEX infringes the apparatus claims of the '771 patent.

67. Upon information and belief, Defendant GRANDEX infringes the method claims of the '771 patent.

68. Upon information and belief, Defendant GRANDEX has infringed and continues to infringe the claims of the '771 patent by manufacturing or causing to be manufactured products which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale product which infringes the claims of the '771 patent and by inducing others to infringe.

69. Plaintiffs are entitled to recover from the Defendant GRANDEX the damages sustained as a result of Defendant's infringing acts.

**COUNT VIII
PATENT INFRINGEMENT RESELLERS**

70. Plaintiffs realleges each and every allegation set forth above and incorporates them herein by reference.

71. Upon information and belief, Defendants Wal-mart, Target, Radio Shack, Verizon, Circuit City, Best Buy and Tiger Direct purchase sells and offers for sale a products manufactured by one or more of Defendants International Electronics, Emerson Radio, Human Electronics, Command Communications, ClassCo, AT&T and/or Grandex and from others, made according to the invention claimed in the '771 patent, which infringes the claims of the '771 patent.

72. Upon information and belief, Defendants Wal-mart, Target, Radio Shack, Verizon, Circuit City, Best Buy and Tiger Direct infringe the apparatus claims of the '771 patent.

73. Upon information and belief, Defendants Wal-mart, Target, Radio Shack, Verizon, Circuit City, Best Buy and Tiger Direct infringe the method claims of the '771 patent.

74. Upon information and belief, Defendants Wal-mart, Target, Radio Shack, Verizon, Circuit City, Best Buy and Tiger Direct have infringed and continues to infringe the claims of the '771 patent by providing or causing to be provided products which infringe the claims of the '771 patent, by using the invention claimed in the '771 patent, by selling and offering for sale product which infringes the claims of the '771 patent and by inducing others to infringe.

75. Plaintiffs are entitled to recover from the Defendants Wal-mart, Target, Radio Shack, Verizon, Circuit City, Best Buy and Tiger Direct the damages sustained as a result of Defendants' infringing acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgement against Defendants as follows:

76. That Defendants be held to have infringed the '771 patent.

77. That Defendant, its directors, officers, agents, servants, employees and all other

persons in active concert or privity or in participation with them, be enjoined from directly or indirectly infringing Plaintiffs' patent.

78. That Defendants, its directors, officers, agents, servants, employees and all other persons in active concert or privity or in participation with them, be enjoined to return to Plaintiffs any originals, copies, facsimiles, or duplicates of the Plaintiffs' products.

79. That Defendants be enjoined to recall from all distributors, wholesalers, jobbers, dealers, retailers, all customers and distributors and all others known to Defendant, all originals, copies, facsimiles or duplicates of the Defendant's products.

80. That Defendants be enjoined to deliver upon oath, to be impounded during the pendency of this action, and delivered to Plaintiffs pursuant to judgement herein, all originals, copies, facsimiles, or duplicates of any device shown by the evidence to infringe any of Plaintiffs' patent.

81. That Defendant be required to file with the Court and to serve on Plaintiffs, within 30 days after service of the Court's order as herein prayed, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Courts order.

82. That judgement be entered for Plaintiffs against Defendants, for Plaintiffs' actual damages according to proof, and for any additional profits attributable to infringements of Plaintiffs' patent.

83. That judgement be entered for Plaintiffs against Defendants, for statutory damages based upon Defendants' acts of patent infringement and for its other violations of law.

84. That Defendants be required to account for all gains, profits, and advantages derived from its acts of infringement and for its other violations of law.

83. That judgement be entered for Plaintiffs against Defendants, for statutory damages based upon Defendants' acts of patent infringement and for its other violations of law.

84. That Defendants be required to account for all gains, profits, and advantages derived from its acts of infringement and for its other violations of law.

85. That judgement be entered for Plaintiffs and against Defendants, for trebling of the damages awarded for patent infringement.

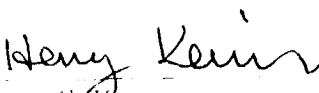
86. That Plaintiffs have judgement against the Defendants for their costs and attorney's fees.

87. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

DEMAND FOR JURY TRIAL

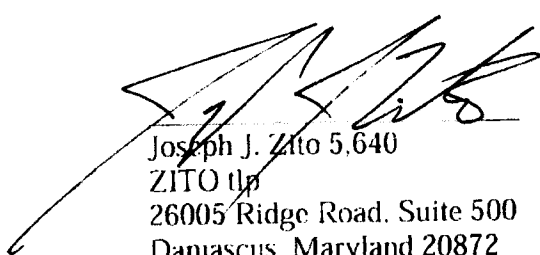
Plaintiffs hereby request and demand a trial by jury on all issues so triable.

Verified By:


Henry S. Kernius


Ray J. Frise

Respectfully submitted,


Joseph J. Zito 5,640
ZITO tlp
26005 Ridge Road, Suite 500
Damascus, Maryland 20872
Tel: (301) 601-5010
Fax: (301) 482-0779
joe@zitotlp.com