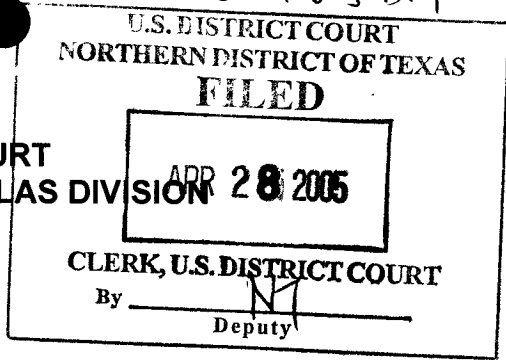


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ORIGINAL



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

JOHN R. GAMMINO

Plaintiff

v.

SOUTHWESTERN BELL TELEPHONE,
L.P. and

SWBT Texas, LLC

Defendants

CIVIL ACTION NO.

3-05.CV-0850K

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, John R. Gammino, ("Mr. Gammino") by his attorneys, Flamm, Boroff & Bacine, P.C., makes this Complaint against Defendant Southwestern Bell Telephone, L.P. and SWBT Texas, LLC.

PARTIES

1. Plaintiff, John R. Gammino, is an adult individual and a resident of the State of Florida and operates his patent licensing business out of the Commonwealth of Pennsylvania.

2. Defendant, SWBT Texas, LLC is general partner of Defendant, Southwestern Bell Telephone, L.P. and SWBT Texas, LLC's registered agent David C. Welsch has an address at One Bell Plaza, Room 2900, Dallas, Texas 75202.

3. Defendant, Southwestern Bell Telephone, L.P. is a limited partnership and its registered agent David C. Welsch has an address at One Bell

Plaza, Room 2900, Dallas, Texas 75202. SBC Southwestern Bell Telephone Company, Southwestern Bell Telecommunications, Inc., SW Bell Texas, Inc. are assumed names of Defendant, Southwestern Bell Telephone, L.P.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338, in that the claims in this action arise under the Patent Act of the United States, 35 U.S.C. §101 et seq.

5. Venue in the Northern District of Texas, Dallas Division is proper pursuant to 28 U.S.C. §1400(b) in that this is a civil action for patent infringement and Defendant either (i) resides in this judicial district, (ii) committed acts of infringement in this judicial district, and/or (iii) has a regular and established place of business in this judicial district.

BACKGROUND FACTS AND INVENTION

6. Plaintiff filed an action against Defendant, Southwestern Bell Telephone, L.P. (in the Defendant's assumed name Southwestern Bell Telephone Company) in the United States District Court for the Eastern District of Pennsylvania (the "Pennsylvania case") and the complaint against the Defendant was dismissed for lack of personal jurisdiction by order dated March 29, 2005. This complaint is a continuation of the claims made in the Pennsylvania case.

7. In this country, there had been a major problem of people making fraudulent international telephone calls on payphones and other devices. That fraud led to losses of billions of dollars to telecommunications companies.

8. The international pay phone fraud escalated in the early 1990s after the FCC, pursuant to new federal law, prohibited the blocking of access codes that permit the consumer to reach the operator service provider of the consumer's choice. Once the access codes were unblocked in payphones and at certain other locations, the fraudulent use of payphones for international calls skyrocketed. At certain payphone sites, losses due to international calls were reaching an average of \$1,500 per month per phone. Fortunately, Mr. Gammino invented a solution that prevents that fraud.

9. In 1991, the Port Authority of New York and New Jersey (the "Port Authority") had massive fraud problems with international calls on payphones, particularly at the Port Authority Bus Terminal in New York City. The Port Authority brought in major phone companies to solve the problem. Those companies, including AT&T and New York Telephone (now Verizon), could not solve the Port Authority's fraud problem and reported to the Port Authority that a solution to the international fraud problem was "not technically possible."

10. In 1991, John Gammino was hired by the Port Authority to try and do what no one else could do – stop the fraud.

11. Mr. Gammino virtually eliminated international payphone fraud at the Bus Terminal. The solution invented by Mr. Gammino comprises an algorithm that can distinguish international calls from other types of calls and can selectively block international calls (the "Solution").

12. The Port Authority recognized Mr. Gammino's Solution when it said that the pay phone fraud problem was virtually eliminated at the Bus Terminal due to the technological changes that Mr. Gammino implemented.

PATENTS

13. Mr. Gammino filed for patent protection for the Solution, which ultimately resulted in U.S. Patent No. 5,809,125 ("the '125 Patent") being duly and legally issued to Mr. Gammino on September 15, 1998, and U.S. Patent No. 5,812,650 ("the '650 Patent") being duly and legally issued to Mr. Gammino on September 22, 1998 (collectively, the "Gammino Patents"). Copies of the Gammino Patents are attached hereto, made a part hereof, and marked as Exhibits "A" and "B", respectively. Hereinafter, for the time period after September 15, 1998, the Solution shall be referred to as the "Patented Solution."

14. The '125 Patent and '650 Patent relate to methods and apparatus for preventing potentially fraudulent international telephone calls.

15. A telephone call is initiated by dialing a sequence of digits. Each dialing sequence is made up of a "plurality" of dialing signals. A plurality is a set of two or more signals. For example, someone might dial "101-0288-011-41-21-619-0670" to attempt an international call using AT&T as the carrier (AT&T's code is 0288). For this example in that call, the first plurality (or set) could be 101 which is an access code to provide access to carriers, the second plurality could be 0288 which is a code identifying AT&T as the carrier desired, and the third plurality could be 011 which is a code that indicates that the call is a direct

dialed international call. As additional examples, the plurality of dialing signals are further shown in the following formulas (X is a "don't care"¹ value):

101 First plurality of dialing signals	XXXX Second plurality of dialing signals	011 Third plurality of dialing signals
950 First plurality of dialing signals	XXXX Second plurality of dialing signals	011 Third plurality of dialing signals
1-800 First plurality of dialing signals	XXX-XXXX Second plurality of dialing signals	011 Third plurality of dialing signals

As an example, in at least one of the claims of the '125 or '650 Patents a call is blocked, if inter alia, the first plurality of dialing signals are determined to be predetermined signals and the third plurality of dialing signals are determined to be predetermined signals used for international dialing.

COUNT I

PATENT INFRINGEMENT OF UNITED STATES
PATENT NO. 5,809,125

16. The averments in paragraphs 1 through 15 above are incorporated herein by reference.

17. SWBT Texas, L.L.C., as general partner of Defendant, Southwestern Bell Telephone, L.P., is jointly and severally liable for all acts and obligations of Defendant, Southwestern Bell Telephone, L.P. In this complaint, "Defendants" mean both SWBT Texas, L.L.C. and Defendant, Southwestern Bell

¹ "Don't care" value means that, for purposes of determining whether to block a call, it does not matter what the value is in that position. Of course, a caller and a carrier like AT&T care about the "don't care" values for other purposes, such as identifying the carrier.

Telephone, L.P. acting on their own behalf, on behalf of the other defendant or with the other defendant acting on their behalf.

18. Defendants have used and continue to use Mr. Gammino's Patented Solution to prevent fraudulent international telephone calls, resulting in millions of dollars in savings.

19. Defendants offer the Patented Solution for a profit and collects revenues from others in connection with the deployment of the Patented Solution in payphones and other devices.

20. Defendants are using the methods in the claims of '125 Patent and '650 Patent in its payphones, network switches, PBX lines, Centrex lines, Business Exchange lines and other lines.

21. Defendants infringed the '125 Patent and '650 Patent by selling its international call blocking service without a license from Mr. Gammino.

22. As a result of the foregoing conduct, Defendants infringe one or more of the claims of the '125 Patent under 35 U.S.C. §271(a) and has caused Mr. Gammino damages as a direct and proximate result thereby. Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the infringement of the '125 Patent including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities, market erosion, and other damages.

23. Based upon Defendants' data concerning the number of its public lines and the fact that those lines have international call blocking, Mr. Gammino's damages for Defendants' infringement of both the '125 Patent and '650 Patent

include, but are not limited to, the loss of greater than \$22.83 million to date in royalty fees resulting from Defendants' use of the Patented Solution in public lines ("Public Line Use Damages"). Mr. Gammino's damages further include the loss of millions of dollars in royalty fees resulting from Defendants' use of the Patented Solution in some portion of its business lines and residential lines.

COUNT II

PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 5,812,650

24. The averments in paragraphs 1 through and including 23 above are incorporated herein by reference.

25. The actions of Defendants as set forth above constitute infringements of one or more of the claims of the '650 Patent under 35 U.S.C. §271(a) and have caused Mr. Gammino damages as a direct and proximate result thereby. Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the infringement of the '650 Patent including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities, market erosion, the Public Line Use Damages, and other damages.

COUNT III

INDUCEMENT TO INFRINGE OF UNITED STATES PATENT NO. 5,809,125

26. The averments set forth in paragraphs 1 through 25 above are incorporated herein by reference.

27. The actions of Defendants as set forth above constitute an active inducement to infringe the '125 Patent under 35 U.S.C. §271(b) and have caused Mr. Gammino damages as a direct and proximate result thereby. Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the infringement of the '125 Patent including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities, market erosion, the Public Line Use Damages, and other damages.

COUNT IV

INDUCEMENT TO INFRINGE OF UNITED STATES PATENT NO. 5,812,650

28. The averments set forth in paragraphs 1 through 27 above are incorporated herein by reference.

29. The actions of Defendants as set forth above constitute an active inducement to infringe the '650 Patent under 35 U.S.C. §271(b) and have caused Mr. Gammino damages as a direct result and proximate result thereby. Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the infringement of the '650 Patent including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities, market erosion, the Public Line Use Damages, and other damages.

WHEREFORE, Plaintiff John R. Gammino prays:

(a) that Defendants be adjudged to have infringed United States Letters Patent No. 5,809,125;

(b) that Defendants be adjudged to have infringed United States Letters Patent No. 5,812,650;

(c) that Defendants, its respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be preliminarily and permanently enjoined from infringing United States Letters Patent No. 5,809,125;

(d) that Defendants, its respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be preliminarily and permanently enjoined from infringing United States Letters Patent No. 5,812,650;

(e) that Defendants account for damages to John R. Gammino for its infringement of United States Letters Patent No. 5,809,125;

(f) that Defendants account for damages to John R. Gammino for its infringement of United States Letters Patent No. 5,812,650;

(g) that the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of United States Letters Patent No. 5,809,125;

(h) that the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of United States Letters Patent No. 5,812,650;

(i) that John R. Gammino be awarded punitive and exemplary damages against Defendants;

(j) that an assessment be awarded to plaintiff of interest on the damages so computed;


(k) that the Court declare this case exceptional and award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. §285; and

(l) that John R. Gammino receive such other and further relief as this Honorable Court shall deem just and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

By:



Michael G. Oddo
TBA No. 15192100

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Attorneys for Plaintiff John R. Gammino

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CIVIL COVER SHEET

JS 44 (Rev. 11/04)

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)

(a) PLAINTIFFS
John R. Gammino

DEFENDANTS
Southwestern Bell Telephone, L.P. and SWBT Texas, LLC

(b) County of Residence of First Listed Plaintiff Indian River County, FL **County of Residence of First Listed Defendant** _____
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

NOTE: INLAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael G. Oddo, Henry Oddo Austin & Flechter, P.C., 1700 Pacific Avenue, Suite 2700, Dallas, Texas 75201 (214) 658-1915

Attorneys (If Known) _____

DISTRICT COURT OF TEXAS

3-05CV-0850K

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)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

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

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

VI. CAUSE OF ACTION Brief description of cause: 35 U.S.C. §101 et seq.; patent infringement

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 22,830,000+ **CHECK YES only if demanded in complaint: JURY DEMAND:** Yes No

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

DATE April 28, 2005 **SIGNATURE OF ATTORNEY OF RECORD** 

FOR OFFICE USE ONLY

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