

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

02-21684

FILED BY
02 JUN -6
SERIALS
CLERK
U.S. DIST. CT.
S.D. OF FL. - MIAMI

CASE NO.:

CCM CELLULAR CONNECTION OF
MIAMI, INC.,

Plaintiff,

vs.

PRIORITY TECH, INC.,

Defendant.

CIV-MOORE

MAGISTRATE JUDGE
C. SULLIVAN

COMPLAINT AND DEMAND FOR TRIAL BY JURY

The Plaintiff, CCM CELLULAR CONNECTION OF MIAMI, INC., by and through its undersigned counsel and pursuant to Rule 8 of the Federal Rules of Civil Procedure, respectfully brings suit and for its complaint states as follows:

THE PARTIES

1. Plaintiff CCM Cellular Connection of Miami, Inc. (hereinafter "CCM"), is a Florida corporation with its principal place of business located in Miami-Dade County, Florida.
2. Upon information and belief, the Defendant Priority Tech, Inc. (hereinafter "Priority Tech"), is a California corporation with its principal place of business in Fremont, California.
3. CCM is engaged in the business of developing, marketing and selling hands-free cellular devices, and is a competitor of Priority Tech.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 1338, 1367, and 2201, and 15 U.S.C. § 4.

5. The Court has personal jurisdiction over Priority Tech because Priority Tech, upon information and belief, conducts substantial and not isolated business in the State of Florida, including through distributors located in this judicial district. Independently, the events, occurrences and transactions giving rise to CCM's complaint arose in the State of Florida and the damage that CCM is suffering it is suffering in the State of Florida.

6. Venue is proper in this forum pursuant to 28 U.S.C. § 1391(b) because this is a judicial district in which a substantial part of the acts or omission giving rise to the claim occurred.

7. CCM has retained the law firm of Bernardo Burstein, P.A., to prosecute this action and has agreed to pay the firm a reasonable fee for its services.

COUNT I
(REQUEST FOR DECLARATORY RELIEF)

8. CCM repeats and realleges its averments set forth in paragraphs 1 through 7 of this Complaint, inclusive, as if set forth herein in full.

9. Priority Tech is the assignee of U.S. Patent No. 6,304,764 (hereinafter referred to as the "'764 Patent").

10. The '764 Patent is invalid because, *inter alia*, (i) the patent was procured by fraud and/or other inequitable conduct before the United States Patent and Trademark Office ("PTO"); (ii) the patent did not claim any novel invention; (iii) relevant prior art, including devices falling within the claims of the patent, were invented by others and were already in the marketplace prior to the filing of the application for the '764 Patent; and/or (iv) the invention was described in a patent granted on an application for a patent filed by another which was filed in the United States before the invention thereof by the applicant for the '764 Patent.

11. Accordingly, the purported invention of the device claimed in the '764 Patent did not satisfy the conditions for patentability as set forth in 35 U.S.C. §§ 101 and 102, and is invalid under those provisions.

12. Additionally, the '764 Patent is invalid because the differences between the subject matter sought to be patented and the prior art, at the time that the application was filed with the PTO, were such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

13. Priority Tech, by and through its counsel, has written to CCM a letter purporting and/or threatening to enforce the '764 Patent against CCM and demanding and/or proposing by way of settlement a royalty and/or licensing agreement with CCM for "CCM's "Hands-Free Kits that include FM transmission through an audio system within the scope of out [sic] patent."

14. This case presents an actual case or controversy that is ripe for adjudication, such that jurisdiction exists to determine the respective rights of the parties.

WHEREFORE, the Plaintiff CCM Cellular Connection of Miami, Inc., respectfully requests that the Court take jurisdiction of this Count I and that the Court render a judgment declaring that the '764 Patent is invalid and/or that CCM does not infringe the '764 Patent; award CCM its reasonable attorney's fees and costs (to the extent permitted by law); and award CCM such other remedies and relief as the Court deems just and equitable.

COUNT II
(PATENT MISUSE)

15. CCM repeats and realleges its averments set forth in paragraphs 1 through 14 of this Complaint, inclusive, as if set forth herein in full.

16. Priority Tech knows or should reasonably know that the '764 Patent is invalid and unenforceable.

17. Yet, Priority Tech is employing the '764 Patent in order to extort and/or obtain licensing and royalty agreements, in restraint of interstate commerce, trade, and competition. Upon information and belief, Priority Tech has entered into such licensing and royalty agreements with others.

18. Priority Tech's conduct is an illegal restraint of trade, in violation of both Sections 1 and 2 of the Sherman Anti-Trust Act, 15 U.S.C. §§ 1 and 2, and constitutes a misuse of the '764 Patent.

19. CCM has suffered damages in an amount to be determined at trial, as well as irreparable injury.

20. Unless enjoined, Priority Tech will continue to engage in its illegal conduct. Priority Tech's conduct is willful, knowingly, and malicious.

WHEREFORE, the Plaintiff CCM Cellular Connection of Miami, Inc., respectfully requests that the Court take jurisdiction of this Count II and render judgment in favor of CCM (i) temporarily and permanently enjoining Priority Tech from any further misuse of the '764 Patent and other misconduct; (ii) declaring the '764 Patent invalid by virtue of the wrongful and illegal conduct of Priority Tech in enforcing the patent; (iii) awarding CCM compensatory damages, trebled, plus interest; (iv) awarding CCM its reasonable attorney's fees and costs; and (v) awarding CCM such other relief and remedies as the Court deems just and equitable.

COUNT III
(VIOLATION OF CHAPTER 542, FLA. STAT.)

21. CCM repeats and realleges its averments set forth in paragraphs 1 through 20 of this Complaint, inclusive, as if set forth herein in full.

22. Priority Tech's conduct constitutes a violation of Fla. Stat. § 542.15, *et seq.*

WHEREFORE, the Plaintiff CCM Cellular Connection of Miami, Inc., respectfully requests that the Court take jurisdiction of this Count III and render judgment in favor of CCM (i) temporarily and permanently enjoining Priority Tech from any further misuse of the '764 Patent and other misconduct; (ii) awarding CCM compensatory damages, trebled, plus interest; (iii) awarding CCM its reasonable attorney's fees and costs; and (iv) awarding CCM such other relief and remedies as the Court deems just and equitable.

DATED: June 6, 2002

Respectfully submitted,

BERNARDO BURSTEIN, P.A.
Attorneys for the Plaintiff, CCM Cellular
Connection of Miami, Inc.
Rivergate Plaza, Suite 804
444 Brickell Avenue
Miami, Florida 33131
Telephone No.: (786) 425-3004
Facsimile No.: (786) 425-0830
E-mail: Bburstein@BursteinPA.com

By:



Bernardo Burstein
Fla. Bar No. 972207

CIVIL COVER SHEET 21684

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

CCM Cellular Connection of Miami, Inc.

DEFENDANTS

PRIORITY TECH, INC.

CIV-MOORE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF MIAMI-DADE FL
 (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT FRANKLIN
 (IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)
 BERNARDO BURSTEIN, P.A.
 444 BRICKELL AVE., STE 804
 MIAMI, FL 33131

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
 ATTORNEYS (IF KNOWN) COULSON & BAKER LLP
 11:31

(d) CIRCLE COUNTY WHERE ACTION AROSE (DADE) MONROE, BROWARD, PALM BEACH, MARTIN, ST LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

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)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PTF | DEF | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. 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

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A 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 checked="" type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 495 Contract Product Liability	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 - Med. Malpractice <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"/> B 610 Agriculture <input type="checkbox"/> B 620 Other Food & Drug <input type="checkbox"/> B 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> B 630 Liquor Laws <input type="checkbox"/> B 640 R.R. & Truck <input type="checkbox"/> B 650 Airline Regs. <input type="checkbox"/> B 660 Occupational Safety/Health <input type="checkbox"/> B 680 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input checked="" type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 681 Agricultural Acts <input type="checkbox"/> 682 Economic Stabilization Act <input type="checkbox"/> 683 Environmental Matters <input type="checkbox"/> 684 Energy Allocation Act <input type="checkbox"/> 685 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 <input type="checkbox"/> 990 Other Statutory Actions A OR B
A REAL PROPERTY <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"/> 280 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> B 510 Motions to Vacate Sentence <input type="checkbox"/> HABEAS CORPUS <input type="checkbox"/> B 530 General <input type="checkbox"/> A 535 Death Penalty <input type="checkbox"/> B 540 Mandamus & Other <input type="checkbox"/> B 550 Civil Rights <input type="checkbox"/> B 555 Prison Condition	B 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"/> A 791 Empl Ret Inc Security Act	B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1905)P <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC-DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RS (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS - Third Party 28 USC 7809

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Declaratory Judgment that Patent is Invalid; Claim for Patent Misuse

LENGTH OF TRIAL 5 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER FRCP 23

DEMAND \$ Undetermined

CHECK YES only if demanded in complaint
 JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 6, 2002

[Signature]

BERNARDO BURSTEIN, ESQ. FLA BAR 972207

FOR OFFICE USE ONLY

RECEIPT # 863903 AMOUNT \$10000 APPLYING IFF _____

JUDGE _____

6/6/02