

CCM CELLULAR CONNECTION OF MIAMI, INC.,

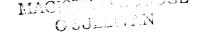
CIV-LOOPE

Plaintiff,

VS.

PRIORITY TECH, INC.,

Defendant.	



## **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").
- 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 filling 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.

- 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.

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By:

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