

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INTELLECT WIRELESS, INC.,

Plaintiff,

v.

SHARP CORPORATION, SHARP
ELECTRONICS CORPORATION,
HEWLETT-PACKARD COMPANY,
PALM, INC., DELL INC. and GARMIN
INTERNATIONAL, INC.

Defendants.

Case No. 10-cv-06763

Honorable Rebecca R. Pallmeyer

Magistrate Judge Jeffrey Cole

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Intellect Wireless, Inc. ("Intellect Wireless") complains of defendants Sharp Corporation, Sharp Electronics Corporation, Hewlett-Packard Company, Palm, Inc., Dell, Inc., and Garmin International, Inc. as follows:

NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

2. Intellect Wireless is a Texas corporation with offices in Fort Worth, Texas and Reston, Virginia.

3. Daniel Henderson is the founder of Intellect Wireless and the sole inventor of the patents-in-suit. Mr. Henderson has been awarded 25 United States patents, with several more pending, which relate to picture/video messaging in wireless devices such as PDAs, portable computers, and cellular phones. Mr. Henderson's prototype for a wireless picturephone device was received as part of the permanent collection of the Smithsonian Institution in the National

Museum of American History. In 2009, the magazine *PC Today* described Mr. Henderson's role in the history of the camera phone:

The idea of camera phones is as old as cameras and phones, but it wasn't until 1993, when Daniel A. Henderson put together a couple of prototypes, that the two started to converge in a meaningful way. Dubbed the "Intellect," Henderson's design was for a phone that could display pictures received wirelessly instead of taking pictures and sending them wirelessly.

"Say 'Cheese' To Your Cell – A History of the Camera Phone", *PC Today*, Vol. 7 Issue 6 at 28 (June 2009). Former United States Senator Gordon H. Smith (OR) also declared that Mr. Henderson has "truly blazed new trails in the fields of wireless technology and digital convergence" and called him a "true visionary."

4. Intellect Wireless owns all right, title, interest in and has standing to sue for the infringement of United States Patent No. 7,266,186, which issued on September 4, 2007 and is entitled "Method and Apparatus for Improved Paging Receiver and System" ("the '186 patent").

5. Intellect Wireless owns all right, title, interest in and has standing to sue for the infringement of United States Patent No. 7,310,416, which issued on December 18, 2007 and is entitled "Method and Apparatus for Improved Personal Communication Devices and Systems" ("the '416 patent").

6. Sharp Corporation is a foreign corporation organized and existing under the laws of Japan, with its principal place of business at 22-22 Nagaike-cho, Abeno-ku, Osaka 545-8522, Japan. Sharp Electronics Corporation is the United States sales and marketing subsidiary of Sharp Corporation. Sharp Electronics Corporation is organized and existing under the laws of the State of New York, with its headquarters at 1 Sharp Plaza, Mahwah, New Jersey 07495. Sharp Corporation and Sharp Electronics Corporation are herein collectively referred to as "Sharp." Sharp does substantial business in this judicial district and provides the wireless portable communication devices accused of infringement in this judicial district including, but not limited to, the Sharp FX, the Sharp Kin One, and the Sharp Kin Two. Sharp's wireless

portable communication devices are sold and offered for sale throughout this judicial district at retail outlets such as those operated by AT&T and Verizon Wireless.

7. Hewlett-Packard Company ("HP") is a Delaware corporation with its principal place of business at 3000 Hanover Street, Palo Alto, California, 94304. HP does substantial business in this judicial district and provides the wireless portable communication devices accused of infringement in this judicial district including, but not limited to, the HP iPAQ Glisten. HP's wireless portable communication devices are sold and offered for sale throughout this judicial district at retail outlets such as those operated by AT&T.

8. Palm, Inc. ("Palm") is a Delaware corporation with its principal place of business at 950 West Maude Avenue, Sunnyvale, California 94085. In July 2010, HP completed its acquisition of Palm, and Palm became a subsidiary of HP. Palm does substantial business in this judicial district and provides the wireless portable communication devices accused of infringement in this judicial district including, but not limited to, the Palm Pixi, the Palm Pre Plus, and the Palm Pixi Plus. Palm's wireless portable communication devices are sold and offered for sale throughout this judicial district at retail outlets such as those operated by AT&T and Verizon Wireless.

9. Dell, Inc. ("Dell") is a Delaware corporation with its principal place of business at One Dell Way, Round Rock, Texas 78682. Dell does substantial business in this judicial district and provides the wireless portable communication devices accused of infringement in this judicial district including, but not limited to, the Dell Aero, the Dell Streak, and the Dell Venue Pro. Dell's wireless portable communication devices are sold and offered for sale throughout this judicial district through Dell's operation of its website.

10. Garmin International, Inc. ("Garmin") is a Kansas corporation with its principal place of business at 1200 East 151st Street, Olathe, Kansas 66062. In 2009, Garmin formed a strategic alliance named Garmin-ASUS to design, manufacture and distribute mobile phones.

Garmin does substantial business in this judicial district and, acting under the Garmin-ASUS name, provides the wireless portable communication devices accused of infringement in this judicial district including, but not limited to, the Garmin-ASUS Garminfone. Garmin's wireless portable communication devices are sold and offered for sale throughout this judicial district at retail outlets such as those operated by T-Mobile.

JURISDICTION AND VENUE

11. This Court has exclusive jurisdiction over the subject matter of this case under 28 U.S.C. § 1338(a).

12. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b). Sharp, HP, Palm, and Garmin transact business in this district and have committed acts of infringement in this judicial district, at least by offering to sell or selling infringing wireless portable communication devices through cellular service provider retail stores such as those operated by AT&T, T-Mobile, and Verizon Wireless, other retailers such as Wal-Mart and Best Buy, and websites operated by those cellular service providers and retailers that are designed to reach Illinois customers and are used by customers in this judicial district. Dell transacts business in this district and has committed acts of infringement in this judicial district, at least by offering to sell or selling infringing wireless portable communication devices through its website that is designed to reach Illinois customers and is used by customers in this judicial district.

PATENT INFRINGEMENT

13. On June 29, 2010, Chief Judge Holderman construed several of the claims of the '186 patent and the '416 patent in *Intellect Wireless, Inc. v. Kyocera Communications, Inc.*, No. 08 C 1350 (N.D. Ill.).

14. Sharp has directly infringed several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing into the United States wireless portable communication devices that receive and

display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the Sharp FX, the Sharp Kin One, and the Sharp Kin Two. Sharp's manufacture, use, sale, offer to sell, and/or importation into the United States of the Sharp FX infringes at least claims 1, 2, 4, 5, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 35, 36, 43, and 44 of the '416 patent. Sharp's manufacture, use, sale, offer to sell, and/or importation into the United States of the Sharp Kin One and Kin Two infringes at least claims 1, 2, 4, 5, 14, and 17 of the '186 patent and at least claim 43 of the '416 patent.

15. Sharp has also committed and, unless enjoined by this Court or ceased upon filing of this First Amended Complaint, will continue to commit acts with knowledge of the '186 patent and the '416 patent that constitute knowing and intentional inducement of infringement of several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(b). These acts include, without limitation, providing wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the Sharp FX, the Sharp Kin One, and the Sharp Kin Two, and demonstrating and instructing users of these wireless portable communication devices how to utilize its picture and video messages service and/or Multimedia Messaging Service, through, for example, user guides and manuals. Sharp has committed, and will continue to commit, these acts with knowledge of the '186 patent and the '416 patent and with knowledge of infringement of these patents through the use of Sharp's wireless portable communication devices by Sharp and other users. Sharp has had this knowledge since, at the latest, October 20, 2010, when Intellect Wireless filed its Complaint in this lawsuit. Users of Sharp's wireless portable communication devices, in turn, directly infringe several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) through their use and operation of Sharp's wireless portable communication devices to receive and display caller ID information,

non-facsimile pictures, video messages, and other information provided by Multimedia Messaging Service. Sharp induces infringement of at least claims 1, 2, 4, 5, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 35, 36, 43, and 44 of the '416 patent through its aforementioned activities with regard to the Sharp FX. Sharp induces infringement of at least claims 1, 2, 4, 5, 14, and 17 of the '186 patent and at least claim 43 of the '416 patent through its aforementioned activities with regard to the Sharp Kin One and Sharp Kin Two.

16. HP has directly infringed several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing into the United States wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the HP iPAQ Glisten. HP's manufacture, use, sale, offer to sell, and/or importation into the United States of the HP iPAQ Glisten infringes at least claims 1, 2, 4, 5, 6, 14, and 17 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 43, and 44 of the '416 patent.

17. HP has also committed and, unless enjoined by this Court or ceased upon filing of this First Amended Complaint, will continue to commit acts with knowledge of the '186 patent and the '416 patent that constitute knowing and intentional inducement of infringement of several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(b). These acts include, without limitation, providing wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the HP iPAQ Glisten, and demonstrating and instructing users of these wireless portable communication devices how to utilize its picture and video messages service and/or Multimedia Messaging Service, through, for example, user guides and manuals. HP has committed, and will continue to commit, these acts with knowledge of the

'186 patent and the '416 patent and with knowledge of infringement of these patents through the use of HP's wireless portable communication devices by HP and other users. HP has had this knowledge since, at the latest, October 20, 2010, when Intellect Wireless filed its Complaint in this lawsuit. Users of HP's wireless portable communication devices, in turn, directly infringe several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) through their use and operation of HP's wireless portable communication devices to receive and display caller ID information, non-facsimile pictures, video messages, and other information provided by Multimedia Messaging Service. HP induces infringement of at least claims 1, 2, 4, 5, 6, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 35, 36, 43, and 44 of the '416 patent through its aforementioned activities with regard to the HP iPAQ Glisten.

18. Palm has directly infringed several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing into the United States wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the Palm Pre Plus, the Palm Pixi, and the Palm Pixi Plus. Palm's manufacture, use, sale, offer to sell, and/or importation into the United States of the Palm Pre Plus, Palm Pixi, and Palm Pixi Plus infringes at least claims 1, 2, 4, 5, 6, 14, and 17 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 43, and 44 of the '416 patent.

19. Palm has also committed and, unless enjoined by this Court or ceased upon filing of this First Amended Complaint, will continue to commit acts with knowledge of the '186 patent and the '416 patent that constitute knowing and intentional inducement of infringement of several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(b). These acts include, without limitation, providing wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia

Messaging Service, including but not limited to the Palm Pre Plus, Palm Pixi, and Palm Pixi Plus, and demonstrating and instructing users of these wireless portable communication devices how to utilize its picture and video messages service and/or Multimedia Messaging Service, through, for example, user guides and manuals. Palm has committed, and will continue to commit, these acts with knowledge of the '186 patent and the '416 patent and with knowledge of infringement of these patents through the use of Palm's wireless portable communication devices by Palm and other users. Palm has had this knowledge since, at the latest, October 20, 2010, when Intellect Wireless filed its Complaint in this lawsuit. Users of Palm's wireless portable communication devices, in turn, directly infringe several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) through their use and operation of Palm's wireless portable communication devices to receive and display caller ID information, non-facsimile pictures, video messages, and other information provided by Multimedia Messaging Service. Palm induces infringement of at least claims 1, 2, 4, 5, 6, 14, and 17 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 43, and 44 of the '416 patent through its aforementioned activities with regard to the Palm Pre Plus, Palm Pixi, and Palm Pixi Plus.

20. Dell has directly infringed several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing into the United States wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the Dell Aero, Dell Streak, and Dell Venue Pro. Dell's manufacture, use, sale, offer to sell, and/or importation into the United States of the Dell Aero infringes at least claims 1, 2, 4, 5, 6, 12, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 35, 36, 43, and 44 of the '416 patent. Dell's manufacture, use, sale, offer to sell, and/or importation into the United States of the Dell Streak infringes at least claims 1, 2, 4, 6, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25,

26, 35, 36, 43, and 44 of the '416 patent. Dell's manufacture, use, sale, offer to sell, and/or importation into the United States of the Dell Venue Pro infringes at least claims 1, 2, 4, 5, 6, 14, and 17 of the '186 patent and at least claim 43 of the '416 patent.

21. Dell has also committed and, unless enjoined by this Court or ceased upon filing of this First Amended Complaint, will continue to commit acts with knowledge of the '186 patent and the '416 patent that constitute knowing and intentional inducement of infringement of several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(b). These acts include, without limitation, providing wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the Dell Aero, Dell Streak, and Dell Venue Pro, and demonstrating and instructing users of these wireless portable communication devices how to utilize its picture and video messages service and/or Multimedia Messaging Service, through, for example, user guides and manuals. Dell has committed, and will continue to commit, these acts with knowledge of the '186 patent and the '416 patent and with knowledge of infringement of these patents through the use of Dell's wireless portable communication devices by Dell and other users. Dell has had this knowledge since, at the latest, October 20, 2010, when Intellect Wireless filed its Complaint in this lawsuit. Users of Dell's wireless portable communication devices, in turn, directly infringe several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) through their use and operation of Dell's wireless portable communication devices to receive and display caller ID information, non-facsimile pictures, video messages, and other information provided by Multimedia Messaging Service. Dell induces infringement of at least claims 1, 2, 4, 5, 6, 12, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 35, 36, 43, and 44 of the '416 patent through its aforementioned activities with regard to the Dell Aero. Dell induces infringement of at least claims 1, 2, 4, 6, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25,

26, 35, 36, 43, and 44 of the '416 patent through its aforementioned activities with regard to the Dell Streak. Dell induces infringement of at least claims 1, 2, 4, 5, 6, 14, and 17 of the '186 patent and at least claim 43 of the '416 patent through its aforementioned activities with regard to the Dell Venue Pro.

22. Garmin has directly infringed several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing into the United States wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the Garmin-ASUS Garminfone. Garmin's manufacture, use, sale, offer to sell, and/or importation into the United States of the Garmin-ASUS Garminfone infringes at least claims 1, 2, 4, 5, 6, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 35, 36, 43, and 44 of the '416 patent.

23. Garmin has also committed and, unless enjoined by this Court or ceased upon filing of this First Amended Complaint, will continue to commit acts with knowledge of the '186 patent and the '416 patent that constitute knowing and intentional inducement of infringement of several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(b). These acts include, without limitation, providing wireless portable communication devices that receive and display caller ID information, non-facsimile pictures, video messages and/or Multimedia Messaging Service, including but not limited to the Garmin-ASUS Garminfone, and demonstrating and instructing users of these wireless portable communication devices how to utilize its picture and video messages service and/or Multimedia Messaging Service, through, for example, user guides and manuals. Garmin has committed, and will continue to commit, these acts with knowledge of the '186 patent and the '416 patent and with knowledge of infringement of these patents through the use of Garmin's wireless portable communication devices by Garmin and other users. Garmin has had this knowledge since, at the latest, October 20, 2010, when

Intellect Wireless filed its Complaint in this lawsuit. Users of Garmin's wireless portable communication devices, in turn, directly infringe several apparatus claims of the '186 patent and the '416 patent in violation of 35 U.S.C. § 271(a) through their use and operation of Garmin's wireless portable communication devices to receive and display caller ID information, non-facsimile pictures, video messages, and other information provided by Multimedia Messaging Service. Garmin induces infringement of at least claims 1, 2, 4, 5, 6, 14, 17, 34, and 35 of the '186 patent and at least claims 1, 3, 4, 5, 7, 20, 21, 25, 26, 35, 36, 43, and 44 of the '416 patent through its aforementioned activities with regard to the Garmin-ASUS Garminfone.

24. The defendants' direct infringement and/or inducement to infringe has injured Intellect Wireless, and Intellect Wireless is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, Intellect Wireless, Inc., respectfully requests this Court enter judgment against the defendants and against their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

- A. The entry of judgment in favor of Intellect Wireless;
- B. An award of damages adequate to compensate Intellect Wireless for the infringement that has occurred (together with prejudgment interest from the date the infringement began), but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284;
- C. A finding that this case is exceptional and an award to Intellect Wireless of its attorneys' fees and costs as provided by 35 U.S.C. § 285;
- D. Such other relief that Intellect Wireless is entitled to under law and any other relief that this Court or a jury may deem just and proper.

JURY DEMAND

Intellect Wireless demands a trial by jury on all issues presented in this complaint.

Respectfully submitted,

/s/ Joseph A. Culig_____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 7, 2011, the foregoing **PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT** was filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel of record, and/or will be served via email transmission.

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