

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

EMSAT ADVANCED GEO-LOCATION
TECHNOLOGY, LLC and LOCATION
BASED SERVICES LLC,

Plaintiffs,

v.

AT&T MOBILITY LLC f/k/a
CINGULAR WIRELESS LLC and
TRACFONE WIRELESS, INC.,

Defendants.

)
) Civil Action Nos. 4:08-cv-00822

)
) JUDGE JOHN R. ADAMS

)
) **SECOND AMENDED COMPLAINT**
) **FOR PATENT INFRINGEMENT AND**
) **BREACH OF CONTRACT**

)
) **JURY TRIAL DEMANDED**
)
)

Plaintiffs EMSAT Advanced Geo-Location Technology, LLC (“Emsat”) and Location Based Services LLC (“LBS”) (collectively, “Plaintiffs”) file this Second Amended Complaint against AT&T Mobility LLC f/k/a Cingular Wireless LLC (“AT&T Mobility”) and TracFone Wireless, Inc. (“TracFone”) (collectively, “Defendants”), as follows:

INTRODUCTION

1. This case arises as a result of Defendants’ infringements of United States patents that disclose and claim inventions that were created in Youngstown, Ohio by employees of what was then a small regional wireless telephone service provider, named Sygnet Communications, Inc. Until Sygnet was acquired by a larger wireless carrier in 1998, it was headquartered in the Youngstown area and operated under the name Wilcom Cellular.

2. Additionally, the ongoing infringements of AT&T Mobility violate the terms of an Assignment Agreement dated June 5, 1998, a copy of which is attached hereto as Exhibit A (the “1998 Assignment Agreement”). AT&T Mobility succeeded to the 1998 Assignment Agreement following the filing of this lawsuit.

THE PARTIES

3. Emsat is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business located at 101 Southbend Court, Loveland, Ohio.

4. LBS is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 500 Newport Center Drive, Newport Beach, California.

5. AT&T Mobility is a Delaware limited liability company with its principal place of business at Glenridge Highlands Two, 5565 Glenridge Connector, Atlanta, Georgia 30342.

6. TracFone is a Delaware corporation with its principle place of business at 9700 N.W. 112th Avenue, Miami, Florida 33178.

JURISDICTION AND VENUE

7. Plaintiffs bring this action for patent infringement under the Patent Laws of the United States, namely 35 U.S.C. § 271, 281, and 284-285, among others, and for the related ongoing breach of the 1998 Assignment Agreement.

8. The Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

9. The Court has personal jurisdiction over each Defendant, and venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). Each Defendant has substantial contacts with the forum as a result of pervasive business activities conducted within the State of Ohio and within this District, including but not limited to: (i) the marketing, sale, and distribution of cellular telephones; (ii) the marketing and sale of services for cellular telephone communications; and

(iii) in certain instances, the ownership and/or operation of stores where Defendants sell their respective products and services.

10. Each Defendant has committed and continues to commit acts of patent infringement, directly and/or through agents and intermediaries, by making, distributing, importing, using, offering for sale, and/or selling certain infringing products, services, and systems in Ohio and, particularly, the Northern District of Ohio. Specifically, each Defendant has purposefully and voluntarily placed one or more of its infringing products and services into the stream of commerce with the expectation that they will be purchased by consumers in this District, which products and services have been, and continue to be, purchased by consumers in this District. Each Defendant provides support for their infringing products and services to their respective customers in this District.

BACKGROUND

11. In the early 1990s, the cellular telephone industry was much smaller than it is today. Cellular telephone networks encountered numerous problems, including false roaming charges. For example, a caller subscribing to one network covering one geographic area (e.g., the Youngstown, Ohio area) would suddenly, and unknowingly, begin using another network covering a neighboring geographic area (e.g., Western Pennsylvania), despite the fact that the caller never ventured beyond his/her own network's borders.

12. Employees of a small cellular service provider in Youngstown, Ohio named Sygnet Wireless, including Everett Dennison ("Dennison"), invented a solution to this problem. Their solution entailed combining certain features of the cellular system with location-finding technology to create a location-aware network that could determine the exact geographic location

of mobile phones. Information about mobile phone location could be used to improve the operation of the cellular telephone network by avoiding the generation of false roaming charges.

13. In solving the false roaming problem, the inventors realized that their location-aware network permitted cellular telephone service providers to offer various location-based services, such as location-based emergency 911. Indeed, the cellular telephone network could determine and transmit the location of mobile phones to nearby emergency call centers, also known as “Public Safety Answering Points” (“PSAPs”).

14. In 1991, Dennison and his co-inventors filed for the first of several issued patents (the “Dennison Patents”). Emsat is the assignee of the Dennison Patents and owns all rights, title, and interest in and to them. LBS is the exclusive licensee of the Dennison Patents and possesses all rights of recovery under them, including the right to prosecute this action and the exclusive right to sue for past, present, and future infringement.

15. Some five years after Dennison and his co-inventors filed their first patent application the Federal Communications Commission (“FCC”) established the Enhanced 911 (“E911”) program. Under “Phase 2” of the E911 program, all cellular telephone service providers in the United States provide the location of cellular telephones to PSAPs with a specified accuracy for a specified percentage of wireless 911 calls.

16. The methods and systems involved in deploying a mobile E911 system, as described above, are substantially similar to those required to deploy so-called “commercial” location-based services to cell phone subscribers. In fact, commentators have asserted that the FCC-required development of mobile E911 systems allowed cellular telephone service providers such as AT&T Mobility to develop and deploy commercial location-based services. These location-based services permit the mobile phone user, often for a fee, to use his or her phone as a

navigation device, to locate nearby products and services, and to find friends, among other things.

17. Defendants, directly or through intermediaries, make, have made, use, sell, and/or offer for sale the above-described location-based services and systems for cellular telephones. These services and systems infringe U.S. Patent Nos. 6,847,822 (“the ‘822 Patent”) and 7,289,763 (“the ‘763 Patent”).

COUNT I - INFRINGEMENT OF THE '822 PATENT

18. Plaintiffs incorporate each of the allegations in paragraphs 1 through 17 as if fully set forth herein.

19. Defendants have infringed and are continuing to infringe, contribute to the infringement of, and/or induce the infringement of claims 10, 21, 24, 31, 36, and 37 of the ‘822 Patent without the consent or authorization of Plaintiffs by or through their making, having made, offer for sale, sale, use, and/or inducement of the use, offer for sale, and sale of mobile E911 services and related systems.

20. Plaintiffs have been damaged as a result of Defendants’ infringing conduct, and Defendants are, thus, liable to Plaintiffs in an amount that adequately compensates them for Defendants’ infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II - INFRINGEMENT OF THE '763 PATENT

21. Plaintiffs incorporate each of the allegations in paragraphs 1 through 17 as if fully set forth herein.

22. Defendants have infringed and are continuing to infringe, contribute to the infringement of, and/or induce the infringement of claims 1, 23, 24, 25, 26, 27, 28, 31, and 32 of

the '763 Patent without the consent or authorization of Plaintiffs by or through their making, having made, offer for sale, sale, use, and/or inducement of the use, offer for sale, and sale of mobile E911 services and related systems. Additionally, AT&T Mobility also has infringed and is continuing to infringe, contribute to the infringement of, and/or induce the infringement of claims 1, 4, 23, 26, 28, 31, and 32 of the '763 Patent without the consent or authorization of Plaintiffs by or through its making, having made, offer for sale, sale, use, and/or inducement of the use, offer for sale, and sale of commercial location based-services and related systems. Such commercial location-based services include, but are not limited to, AT&T Navigator and AT&T Navigator Global Edition.

23. Plaintiffs have been damaged as a result of Defendants' infringing conduct, and Defendants are, thus, liable to Plaintiffs in an amount that adequately compensates them for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III – WILLFUL INFRINGEMENT

24. Plaintiffs incorporate each of the allegations in paragraphs 1 through 23 as if fully set forth herein.

25. Defendants have knowledge of the patents-in-suit as a result of, at a minimum, the filing and serving of the Original Complaint. Thus, each Defendant's infringements have been willful since knowingly engaging in the infringing activities alleged in this lawsuit.

COUNT IV - BREACH OF THE 1998 ASSIGNMENT AGREEMENT

26. Plaintiffs incorporate each of the allegations in paragraphs 1 through 25 as if fully set forth herein.

27. Pursuant to the 1998 Assignment Agreement, Sygnet Communications, Inc. (“Sygnet”) assigned all right, title and interest in and to the Dennison Patents to Sycord Limited Partnership (as “Assignee”). The Dennison Patents were specifically included within the definition of “Assigned Assets.”

28. Pursuant to Section 8 of the 1998 Assignment Agreement, each of the Assignors, including Sygnet, further expressly agreed that “they will not at any time, directly or indirectly, for their own benefit or for the benefit of any third party, disclose or divulge to any third party, or use for any purpose, any of the Assigned Assets without the prior written consent of the Assignee.”

29. On February 3, 2009, AT&T Mobility disclosed in a filing with this Court that on January 30, 2009, Dobson Cellular Systems, LLC (as the successor to Sygnet) had formally transferred all of its rights and obligations under the 1998 Assignment Agreement to AT&T Mobility.

30. Pursuant to an Agreement of Assignment of Contract between Sycord and Emsat, Sycord has assigned and transferred to Emsat all of its rights, title, interest, powers, privileges, and other benefits under the 1998 Assignment Agreement, including, without limitation, any and all personal rights (including any and all claims, potential claims, and/or choses in action that have accrued) under the 1998 Assignment Agreement.

31. AT&T Mobility’s unauthorized use of the Assigned Assets, without Emsat’s consent, specifically including the claimed inventions of the Dennison Patents, constitutes an ongoing breach of 1998 Assignment Agreement.

32. As a result of AT&T Mobility’s breach of the 1998 Assignment Agreement, Emsat has been damaged in an amount in excess of \$75,000.00 to be determined at trial.

33. Emsat is further entitled to injunctive relief specifically enforcing the 1998 Assignment Agreement and barring AT&T Mobility from making any further use of the Assigned Assets, including the claimed inventions of the Dennison Patents.

PRAYER FOR RELIEF

Plaintiffs request that the Court find in their favor and against Defendants, and that the Court grant Plaintiffs the following relief:

- a. Judgment that one or more claims of United States Patent No. 6,847,822 and/or United States Patent No. 7,289,763 have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringements have been induced by Defendants;
- b. Judgment that Defendants account for and pay to Plaintiffs all damages to and costs incurred by them because of Defendants' infringing activities and other conduct complained of herein;
- c. That Defendants' infringements be found to be willful as alleged in the Complaint or, otherwise, from the time that Defendants became aware of the infringing nature of their respective products and services, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- d. That this Court specifically enforce the 1998 Assignment Agreement and permanently enjoin AT&T Mobility from making any further use of the Assigned Assets, including the claimed inventions of United States Patent No. 6,847,822 and United States Patent No. 7,289,763;
- e. That Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- f. That this Court declare this an exceptional case and award Plaintiffs their reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- g. That Plaintiffs be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs request a trial by jury of all issues so triable in this action.

Dated: December 14, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2010, a copy of PLAINTIFFS' SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND BREACH OF CONTRACT was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Edward R. Nelson, III