

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TUNE HUNTER INC.,

Plaintiff,

VS.

SAMSUNG TELECOMMUNICATIONS §
AMERICA, LLC; APPLE INC; SHAZAM §
ENTERTAINMENT LTD.; AMAZON.COM, §
INC.; NAPSTER, LLC; MOTOROLA, INC.; §
GRACENOTE, INC.; CELLCO §
PARTNERSHIP d/b/a VERIZON WIRELESS; §
LG ELECTRONICS USA, INC.; AT&T §
MOBILITY LLC; and PANTECH WIRELESS, §
INC., §

Defendants.

Case No. 2:09-CV-00148-TJW

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Tune Hunter Inc. (“Tune Hunter”) brings this action against defendants Samsung Telecommunications America, LLC (“Samsung”), Apple Inc. (“Apple”), Shazam Entertainment, Ltd. (“Shazam”), Amazon.com, Inc. (“Amazon”), Napster, LLC (“Napster”), Motorola, Inc. (“Motorola”), Gracenote, Inc. (“Gracenote”), Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), LG Electronics USA, Inc. (“LG”), AT&T Mobility LLC (“AT&T”), and Pantech Wireless, Inc. (“Pantech”), and alleges:

THE PARTIES

1. Tune Hunter is a corporation organized and existing under the laws of Texas. It is the owner of the entire right, title, and interest in the patent at issue in this case.

2. On information and belief, Samsung is a limited liability company organized and existing under the laws of Delaware, having a principal place of business within this District at 1301

East Lookout Drive, Richardson, Texas 75082, has designated its registered agent for purposes of service of process as Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and is doing business in this judicial district and elsewhere in the United States.

3. On information and belief, Apple is a corporation organized and existing under the laws of California, having a principal place of business at One Infinite Loop, Cupertino, California 95014, has designated its registered agent for purposes of service of process as CT Corporation System, 818 West Seventh Street, Los Angeles, California 90017, and is doing business in this judicial district and elsewhere in the United States.

4. On information and belief, Shazam is a registered corporation organized and existing under the laws of England, having a principal place of business at Charles House 4th Floor, 315 Kensington Street, London, England, W14 8QH, has a registered office for purposes of service of process as Avery Wang, 415 Cambridge Avenue, Suite 11, Palo Alto, California 94306-1608, and is doing business in this judicial district and elsewhere in the United States.

5. On information and belief, Amazon is a corporation organized and existing under the laws of the state of Delaware, having a principal place of business at 1200 12th Avenue, Suite 1200, Seattle, Washington 98122, has designated its registered agent for purposes of service of process as Corporation Service Company, 6500 Harbour Heights Parkway, Suite 400, Mukilteo, Washington 98275-4889, and is doing business in this judicial district and elsewhere in the United States.

6. On information and belief, Napster is a corporation organized and existing under the laws of the state of Delaware, having a principal place of business at 9044 Melrose Avenue, West Hollywood, California 90069-5610, has designated its registered agent for purposes of service of process as Aileen Atkins, 9044 Melrose Avenue, Los Angeles, California 90069, and is doing business in this judicial district and elsewhere in the United States.

7. On information and belief, Motorola is a corporation organized and existing under the laws of Delaware, having a principal place of business at 1303 East Algonquin Road, Schaumburg, Illinois 60196-4041, has designated its registered agent in Texas for purposes of service of process as C T Corporation System, 350 North St. Paul Street, Dallas, Texas 75201, and is doing business in this judicial district and elsewhere in the United States.

8. On information and belief, Gracenote is a corporation organized and existing under the laws of the state of Delaware, having a principal place of business at 2000 Powell Street, Suite #1380, Emeryville, California 94608, has designated its registered agent for purposes of service of process as Corporation Service Company, 2730 Gateway Oaks Drive, Suite 100, Sacramento, California 95833-3503, and is doing business in this judicial district and elsewhere in the United States.

9. On information and belief, Verizon Wireless is a general partnership organized and existing under the laws of Delaware, having a principal place of business at One Verizon Way, Basking Ridge, New Jersey, 07920, has designated its registered agent for purposes of service of process as The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and is doing business in this judicial district and elsewhere in the United States.

10. On information and belief, LG is a corporation organized and existing under the laws of Delaware, having a principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, has designated its registered agent in Texas for purposes of service of process as United States Corporation Co., 701 Brazos Street, Suite 1050, Austin, Texas 78701, and is doing business in this judicial district and elsewhere in the United States.

11. On information and belief, AT&T is a limited liability company organized and existing under the laws of Delaware, having a principal place of business at 5565 Glenridge Connector NE, Suite 510, Atlanta, Georgia 30342-4796, has designated its registered agent in Texas for purposes of service of process as Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232, and is doing business in this judicial district and elsewhere in the United States.

12. On information and belief, Pantech is a corporation organized and existing under the laws of California, having a principal place of business at 5607 Glenridge Drive, Suite 500, Atlanta, Georgia 30342, has designated its registered agent for purposes of service of process as Kathleen E. Jones, 11240 Warland Drive, Cypress, California 90630, and is doing business in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

13. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

14. Subject-matter jurisdiction over Tune Hunter's claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

15. On information and belief, each defendant has solicited business in the State of Texas, transacted business within the State of Texas and attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein.

16. Each defendant is subject to personal jurisdiction in Texas and this judicial district, and is doing business in this judicial district.

17. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b).

PATENT INFRINGEMENT

18. On September 6, 2005, U.S. Patent No. 6,941,275 (“the ‘275 patent”), entitled “Music Identification System,” a copy of which is attached hereto as Exhibit A, was duly and legally issued to the inventor, Remi Swierczek. Tune Hunter is the owner by assignment of all right, title and interest in and to the ‘275 patent, including the right to sue for and recover all past, present and future damages for infringement of the ‘275 patent.

19. The ‘275 patent is presumed valid.

20. Upon information and belief, the defendants, either alone or in conjunction with others, have in the past and continue to infringe, contribute to infringement, and/or induce infringement of the ‘275 patent, in this judicial district and/or elsewhere in the United States, by making, using, selling, offering to sell and/or importing, and/or causing others to make, use, sell, offer to sell and/or import, and/or supplying or causing to be supplied in or from the United States, and/or importing into the United States, music identification systems, devices, products, and/or components thereof that embody, are made by and/or are covered by, in whole or in part, one or more of the claims of the ‘275 patent.

21. Defendants are each liable for infringement of the ‘275 patent pursuant to 35 U.S.C. § 271.

22. Upon information and belief, at least one or more of the Defendants were previously notified of and/or had knowledge of the ‘275 patent. Despite such notification and/or knowledge, those Defendants have continued their infringement of the ‘275 patent. On information and belief,

those Defendants' infringement of the '275 patent have therefore been with notice and knowledge of the patent and has been willful and deliberate.

23. Each defendant's acts of infringement have caused damage to Tune Hunter, and Tune Hunter is entitled to recover from each defendant the damages sustained by Tune Hunter as a result of each defendant's wrongful acts in an amount subject to proof at trial.

24. As a consequence of the infringement complained of herein, Tune Hunter has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless each defendant is enjoined by this Court from committing further acts of infringement.

PRAYER FOR RELIEF

WHEREFORE, Tune Hunter prays for entry of judgment that:

A. Each defendant has infringed, contributed to infringement of, and/or induced infringement of the '275 patent;

B. One or more of the defendants' infringement, contributory infringement, and/or induced infringement of the '275 patent have been willful and deliberate;

C. Each defendant account for and pay to Tune Hunter all damages caused by its infringement of the '275 patent in accordance with 35 U.S.C. § 284;

D. The Court increase the amount of damages as a result of one or more of Defendants' infringement, contributory infringement, and/or induced infringement of the '275 patent to three times the amount found or assessed by the Court because of the willful and deliberate nature of the infringement, all in accordance with 35 U.S.C. § 284;

E. Tune Hunter be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining each defendant, its officers, agents, servants, employees and those persons in active concert or participation with them from further acts of patent infringement;

F. Tune Hunter be granted pre-judgment and post-judgment interest on the damages caused to him by reason of each defendant's patent infringement complained of herein;

G. The Court declare this an exceptional case and that Tune Hunter be granted its reasonable attorneys' fees in accordance with 35 U.S.C. § 285;

H. Costs be awarded to Tune Hunter; and,

I. Tune Hunter be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Tune Hunter demands trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: July 10, 2009

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