

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

DOWNUNDER WIRELESS, LLC,

Plaintiff,

v.

- (1) HTC CORP.;**
- (2) LG ELECTRONICS MOBILECOMM
U.S.A., INC.;**
- (3) MOTOROLA, INC.;**
- (4) NOKIA CORP.;**
- (5) NOKIA, INC.;**
- (6) PANTECH WIRELESS, INC.;**
- (7) PERSONAL COMMUNICATIONS
DEVICES, LLC;**
- (8) SHARP ELECTRONICS CORP.; and**
- (9) SONY ERICSSON MOBILE
COMMUNICATIONS (USA) INC.,**

Defendants.

CASE NO. 2:09-cv-206-DF-CE

JURY TRIAL REQUESTED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1. This is an action for patent infringement in which DownUnder Wireless, LLC, makes the following allegations against: HTC Corp.; LG Electronics MobileComm U.S.A., Inc.; Motorola, Inc.; Nokia Corp.; Nokia, Inc.; Pantech Wireless, Inc.; Personal Communications Devices, LLC; Sharp Electronics Corp.; and Sony Ericsson Mobile Communications (USA), Inc. (collectively the “Defendants”).

PARTIES

2. Plaintiff DownUnder Wireless, LLC (“Plaintiff” or “DownUnder”) is a Texas limited liability company with its principal place of business at 719 West Front Street, Suite 151, Tyler, Texas 75702.

3. On information and belief, Defendant HTC Corp. (“HTC”), is a Taiwanese corporation with its principal place of business at 23 Xinghua Rd, Taoyuan 330, Taiwan, R. O. C.

4. On information and belief, LG Electronics MobileComm, U.S.A., Inc. (“LG”), is a Delaware corporation with its principal place of business at 920 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. Defendant LG’s registered agent in Texas is National Registered Agents, Inc., 16055 Space Center Blvd., Suite 235, Houston, Texas 77062.

5. On information and belief, Motorola, Inc. (“Motorola”), is a Delaware corporation with its principal place of business at 1303 E. Algonquin Road, Schaumburg, Illinois 60196. Defendant Motorola’s registered agent in Texas is CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

6. On information and belief, Nokia Corp. , is a Finland corporation with its principal place of business in the United States at 102 Corporate Park Drive, White Plains, New York 10604.

7. On information and belief, Nokia, Inc., is a Delaware Corporation with its principal place of business at 6000 Connection Dr. # MD2-2210, Irving, Texas 75039-2600. Defendant Nokia, Inc.’s registered agent in Texas is National Registered Agents, Inc., 16055 Space Center Blvd., Suite 235, Houston Texas, 77062.

8. On information and belief, Pantech Wireless, Inc. (“Pantech”), is a Georgia corporation with its principal place of business at 5607 Glenridge Drive, Atlanta, Georgia 30342.

9. On information and belief, Personal Communications Devices, LLC (“PCD”), is a Canadian corporation with its principal place of business in the United States at 555 Wireless Blvd., Hauppauge, New York 11788.

10. On information and belief, Sharp Electronics Corp. (“Sharp”), is a Japanese corporation with its principal place of business in the United States at Sharp Plaza, Mahwah, New Jersey 07495. Defendant Sharp’s registered agent in Texas is CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

11. On information and belief, Sony Ericsson Mobile Communications (USA), Inc. (“Sony”), is a Swedish limited liability company with its principal place of business in the United States at 7001 Development Drive, Research Triangle Park, North Carolina, 27709.

Defendant Sony's registered agent in Texas is Capital Corporate Services, 800 Brazos, Suite 400, Austin, Texas 78701.

JURISDICTION AND VENUE

12. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

14. On information and belief, Defendant HTC is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

15. On information and belief, Defendant LG is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

16. On information and belief, Defendant Motorola is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

17. On information and belief, Defendant Nokia Corp. is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other

persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

18. On information and belief, Defendant Nokia Inc. is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

19. On information and belief, Defendant Pantech is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

20. On information and belief, Defendant PCD is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

21. On information and belief, Defendant Sharp is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

22. On information and belief, Defendant Sony is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses

of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,741,215

23. Plaintiff is the owner by assignment of United States Patent No. 6,741,215 (“the ‘215 patent”) entitled “Inverted Safety Antenna for Personal Communications Devices.” The ‘215 Patent issued on May 25, 2004. A true and correct copy of the ‘215 Patent is attached as Exhibit A.

24. Upon information and belief, Defendant HTC has been and is now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendant HTC is marketing, distributing, using, selling, and offering to sell the Shadow 2009 phones. Defendant HTC is thus liable for infringement of the ‘215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

25. Upon information and belief, Defendant LG has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendant LG is marketing, distributing, using, selling, and offering to sell: CF360; Rhythm AX-585; Shine CU720; Venus VX-8800; VX-8500 and VX-8550 phones. Defendant LG is thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

26. Upon information and belief, Defendant Motorola has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing

portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendant Motorola is marketing, distributing, using, selling, and offering to sell: Evoke QA4; Hint QA30; W376 / W377; Z6x; Z9; W375; W395; Sidekick Slide; RIZR Z6tv; RAZR V3x; W385; ROKR Z6x; W490 / W510 / W5; W370; KRZR K1m; RIZR Z3; and V80 phones. Defendant Motorola is thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

27. Upon information and belief, Defendants Nokia Corp. and Nokia, Inc. have been and now are directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing

defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendants Nokia Corp. and Nokia, Inc. are marketing, distributing, using, selling, and offering to sell: 6600 Slide; N85; N96; 6210 Navigator; 5610; N81; 6500 slide; 5300; and 6111 phones. Defendants Nokia Corp. and Nokia, Inc. are thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

28. Upon information and belief, Defendant Pantech has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendant Pantech is marketing, distributing, using, selling, and offering to sell its Ocean 2 and Matrix phones. Defendant Pantech is thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

29. Upon information and belief, Defendant PCD has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendant PCD is marketing, distributing, using, selling, and offering to sell its Blitz TXT8010 (UTStarcom), QuickFire and Shuttle CDM-8964/CDM-8965 phones. Defendant PCD is thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

30. Upon information and belief, Defendant Sharp has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing

portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendant Sharp is marketing, distributing, using, selling, and offering to sell its Sharp Sidekick 2009 phones. Defendant Sharp is thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

31. Upon information and belief, Defendant Sony has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '215 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, using, selling and offering to sell wireless communication devices comprising a housing, a microphone, a speaker earpiece, a user interface mounted in an upright orientation on the communication device, and a transmitting antenna. The infringing instrumentalities are provided such that the housing comprises an upper housing portion on top and a lower housing portion on the bottom, the speaker earpiece is mounted in the upper housing portion and defines a resting surface for resting against a user's ear to communicate sound to the user's ear, a transmitting antenna for transmitting electromagnetic signals is mounted in the lower housing portion, and a microphone is positioned on the communication device to detect audible sounds from a user. The infringing instrumentalities are provided such that during use, the communication device positions the transmitting antenna away from the user's ear because of the distance between the speaker earpiece and said transmitting antenna. The infringing instrumentalities are further provided such that the housing defines an obtuse angle between the top of said upper housing portion and the bottom of said lower housing portion such that the bottom of said housing is positioned substantially away from both the plane defined by the

resting surface and the user's face during use. The infringing instrumentalities are provided such that the position of the transmitting antenna is angled away from the user's head and face during use. For example, without limitation, Defendant Sony is marketing, distributing, using, selling, and offering to sell: Sony Ericsson W760; Sony Ericsson W910; Sony Ericsson W580; Sony Ericsson W600i/W550i; Sony Ericsson S710a; and Sony Ericsson S700i phones. Defendant Sony is thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

1. A judgment in favor of Plaintiff that Defendants have infringed, directly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '215 Patent;
2. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '215 Patent;
3. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '215 Patent as provided under 35 U.S.C. § 284;
4. An award to Plaintiff for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct with notice being made as of the date of correspondence with each Defendant, or at least as early as the date of the filing of this Complaint, as provided under 35 U.S.C. § 284;
5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and
6. Any and all other relief to which Plaintiff may show itself to be entitled.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Respectfully Submitted,

DOWNUNDER WIRELESS, LLC

Dated: December 14, 2009

By: /s/ William E. Davis, III

William E. Davis III

Texas State Bar No. 24047416

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ATTORNEY FOR PLAINTIFF

DOWNUNDER WIRELESS, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the foregoing was served on all counsel of record who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d), all others not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing via process server.

/s/ William E. Davis, III

William E. Davis, III