

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

TANTIVY COMMUNICATIONS, INC.

v.

LUCENT TECHNOLOGIES, INC.

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CIVIL ACTION NO. 2-04CV-79 (TJW)

PLAINTIFF’S SECOND AMENDED COMPLAINT

Plaintiff, Tantivy Communications, Inc. (“Tantivy”), for its complaint against Defendant Lucent Technologies, Inc. (“Lucent”), alleges on information and belief the following:

PARTIES

1. Tantivy is a Delaware corporation, having its principal place of business at 300 Delaware Avenue, Suite 527, Wilmington, Delaware 19801.

2. Lucent is a Delaware corporation, having its principal place of business at 600 Mountain Avenue, Murray Hill, New Jersey 07974.

3. Lucent may be served with process in this state by serving its registered agent for service of process, Prentice Hall Corporation System, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

JURISDICTION

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* The Court has personal jurisdiction over Lucent because Lucent has committed

acts within Texas and this judicial district giving rise to this action, and because Lucent has established minimum contacts with the forum such that the exercise of jurisdiction over Lucent would not offend traditional notions of fair play and substantial justice.

VENUE

5. Lucent has committed acts within this judicial district that give rise to this action and does business in this district, including making sales and providing service and support to its customers in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) (c) and 1400(b).

THE PATENTS

6. On June 27, 2000, United States Patent No. 6,081,536 (the “‘536 Patent”) was duly and legally issued for an invention entitled “Dynamic Bandwidth Allocation to Transmit a Wireless Protocol Across a Code Division Multiple Access (CDMA) Radio Link,” naming Thomas E. Gorsuch and Carlo Amalfitano as the inventors. Tantivy is the sole owner of all rights granted in the ‘536 Patent. A true and correct copy of the ‘536 Patent is attached as Exhibit 1.

7. On November 21, 2000, United States Patent No. 6,151,332 (the “‘332 Patent”) was duly and legally issued for an invention entitled “Protocol Conversion and Bandwidth Reduction Technique Providing Multiple nB+D ISDN Basic Rate Interface Links Over a Wireless Code Division Multiple Access Communication System,” naming Thomas E. Gorsuch and Carlo Amalfitano as the inventors. Tantivy is the sole owner of all rights granted in the ‘332 Patent. A true and correct copy of the ‘332 Patent is attached as Exhibit 2.

8. On February 25, 2003, United States Patent No. 6,526,281 (the “‘281 Patent”) was duly and legally issued for an invention entitled “Dynamic Bandwidth Allocation to Transmit a Wireless Protocol Across a Code Division Multiple Access (CDMA) Radio Link,”

naming Thomas E. Gorsuch and Carlo Amalfitano as the inventors. Tantivy is the sole owner of all rights granted in the '281 Patent. A true and correct copy of the '281 Patent is attached as Exhibit 3.

9. On September 2, 2003, United States Patent No. 6,614,776 (the "'776 Patent") was duly and legally issued for an invention entitled "Forward Error Correction Scheme for High Rate Data Exchange in a Wireless System," naming James A. Proctor, Jr., as the inventor. Tantivy is the sole owner of all rights granted in the '776 Patent. A true and correct copy of the '776 Patent is attached as Exhibit 4.

10. On May 22, 2001, United States Patent No. 6,236,647 (the "'647 Patent") was duly and legally issued for an invention entitled "Dynamic Frame Size Adjustment and Selective Reject on a Multi-Link Channel to Improve Effective Throughput and Bit Error Rate," naming Carlo Amalfitano as the inventor. Tantivy is the sole owner of all rights granted in the '647 Patent. A true and correct copy of the '647 Patent is attached as Exhibit 5.

11. The '536, '332, '281, '776, 'and 647 Patents are referred to collectively as the "Patents-in-Suit."

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,081,536

12. Tantivy incorporates by reference the allegations set forth in paragraphs 1 through 11 as if fully set forth herein.

13. Lucent has infringed and continues to infringe the '536 Patent. The infringing acts include but are not limited to the manufacture, use, sale, importation, and/or offer for sale of products and services claimed in the '536 Patent and to the practice of the methods claimed in the '536 Patent; and inducing and contributing to the manufacture, use, sale, importation, and/or offer for sale of such products and services claimed in the '536 Patent and to the practice of such

methods claimed in the '536 Patent. Lucent is liable for willful infringement of the '536 Patent pursuant to 35 U.S.C. § 271.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 6,151,332

14. Tantivy incorporates by reference the allegations set forth in paragraphs 1 through 11 as if fully set forth herein.

15. Lucent has infringed and continues to infringe the '332 Patent. The infringing acts include but are not limited to the manufacture, use, sale, importation, and/or offer for sale of products and services claimed in the '332 Patent and to the practice of the methods claimed in the '332 Patent; and inducing and contributing to the manufacture, use, sale, importation, and/or offer for sale of such products and services claimed in the '332 Patent and to the practice of such methods claimed in the '332 Patent. Lucent is liable for willful infringement of the '332 Patent pursuant to 35 U.S.C. § 271.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 6,526,281

16. Tantivy incorporates by reference the allegations set forth in paragraphs 1 through 11 as if fully set forth herein.

17. Lucent has infringed and continues to infringe the '281 Patent. The infringing acts include but are not limited to the manufacture, use, sale, importation, and/or offer for sale of products and services claimed in the '281 Patent and to the practice of the methods claimed in the '281 Patent; and inducing and contributing to the manufacture, use, sale, importation, and/or offer for sale of such products and services claimed in the '281 Patent and to the practice of such methods claimed in the '281 Patent. Lucent is liable for willful infringement of the '281 Patent pursuant to 35 U.S.C. § 271.

COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 6,614,776

18. Tantivy incorporates by reference the allegations set forth in paragraphs 1 through 11 as if fully set forth herein.

19. Lucent has infringed and continues to infringe the ‘776 Patent. The infringing acts include but are not limited to the manufacture, use, sale, importation, and/or offer for sale of products and services claimed in the ‘776 Patent and to the practice of the methods claimed in the ‘776 Patent; and inducing and contributing to the manufacture, use, sale, importation, and/or offer for sale of such products and services claimed in the ‘776 Patent and to the practice of such methods claimed in the ‘776 Patent. Lucent is liable for willful infringement of the ‘776 Patent pursuant to 35 U.S.C. § 271.

COUNT V – INFRINGEMENT OF U.S. PATENT NO. 6,236,647

20. Tantivy incorporates by reference the allegations set forth in paragraphs 1 through 11 as if fully set forth herein.

21. Lucent has infringed and continues to infringe the ‘647 Patent. The infringing acts include but are not limited to the manufacture, use, sale, importation, and/or offer for sale of products and services claimed in the ‘647 Patent and to the practice of the methods claimed in the ‘647 Patent; and inducing and contributing to the manufacture, use, sale, importation, and/or offer for sale of such products and services claimed in the ‘647 Patent and to the practice of such methods claimed in the ‘647 Patent. Lucent is liable for willful infringement of the ‘647 Patent pursuant to 35 U.S.C. § 271.

DAMAGES AND RELIEF

22. Lucent’s infringement of the Patents-in-Suit has caused damages to Tantivy, and Tantivy is entitled to recover from Lucent the damages sustained by Tantivy as a result of Lucent’s wrongful acts in an amount subject to proof at trial.

23. Lucent's infringement of Tantivy's exclusive rights under the Patents-in-Suit will continue to damage Tantivy's business, causing irreparable harm, for which there is no adequate remedy at law, unless Lucent is enjoined by this Court.

PRAYER

WHEREFORE Tantivy prays:

- a. For judgment that the '536 Patent has been and continues to be infringed by Lucent;
- b. For judgment that the '332 Patent has been and continues to be infringed by Lucent;
- c. For judgment that the '281 Patent has been and continues to be infringed by Lucent;
- d. For judgment that the '776 Patent has been and continues to be infringed by Lucent;
- e. For judgment that the '647 Patent has been and continues to be infringed by Lucent;
- f. For an award of damages in an amount not less than a reasonable royalty;
- g. For a permanent injunction under 35 U.S.C. § 283 against continued infringement;
- h. For enhanced damages pursuant to 35 U.S.C. § 284;
- i. That the Court find this case to be exceptional under 35 U.S.C. § 285 and that the Court award Tantivy its attorneys' fees;
- j. For an assessment of prejudgment and post-judgment interest and costs against Lucent Technologies, Inc. for infringement; and
- k. For such other and further relief, both in law and equity, to which Tantivy may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the following counsel of record who are deemed to have consented to electronic service are being served this 3rd day of June, 2005, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by, electronic mail, facsimile transmission and/or first class mail on this same date.

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