

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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|--------------------------------|---|---------------------|
| BEAR CREEK TECHNOLOGIES, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. _____ |
| |) | |
| VONAGE HOLDINGS CORPORATION; |) | |
| VONAGE AMERICA, INC.; and |) | |
| VONAGE MARKETING LLC, |) | |
| |) | JURY TRIAL DEMANDED |
| Defendants. |) | |

COMPLAINT

Plaintiff, Bear Creek Technologies, Inc. (“BCT”), and for causes of action against Vonage Holdings Corp., Vonage America, Inc., and Vonage Marketing, LLC (“Defendants”), hereby states and alleges as follows:

NATURE OF ACTION

1. This is a patent infringement action arising under the Patent Laws of the United States, 35 U.S.C. § 271 *et seq.*, and involving voice-over-internet-protocol-enabling technologies.

2. As the internet rose in prominence in the early to mid 1990s, technologies developed to allow people to use computers to place long distance telephone calls over the internet, rather than the public switched telephone network (“PSTN”), thereby avoiding long-distance charges. Understanding the economic impact this development would have upon the telecommunications industry, tensions developed between providers of standard telephone switching technologies and proponents of what was soon to be called Voice Over Internet Protocol (“VoIP”) technology.

3. Rather than viewing VoIP technology as an exclusive alternative to standard telephony equipment and infrastructure, Joseph B. Thompson, founder of Bear Creek Technologies, Inc., envisioned a paradigm in which VoIP would complement and cooperate with existing standard telephony equipment and with the switching and trunking infrastructure already in place.

4. Joe Thompson applied for a patent in early 1996 to memorialize these novel ideas during a time when telephony companies were each spending millions of dollars per year deploying and managing new telephone trunking and PSTN infrastructure.

5. On February 15, 2011, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent Number 7,889,722 (hereinafter “the ’722 Patent”), entitled “System for Interconnecting Standard Telephony Communications Equipment to Internet Protocol Networks” after a full and fair examination. A true and correct copy of the ’722 Patent is attached hereto as Exhibit A.

6. Bear Creek Technologies, Inc. is the assignee and owner of the ’722 Patent, and owns all right, title and interest in, to and under, the ’722 Patent, including the right to sue for infringement of any and all claims thereof. A true and correct copy of the Assignment to Bear Creek Technologies, Inc., and a true and correct copy of an electronic receipt from the USPTO showing that the Assignment has been submitted to the USPTO for recordation, are attached hereto as Exhibit B.

7. Defendants are infringing and contributing to and inducing infringement of one or more claims of the ’722 Patent.

PARTIES

8. Bear Creek Technologies, Inc. (“BCT”) is a corporation organized and existing

under the laws of Delaware with its principal place of business in Orange Beach, Alabama.

9. Vonage Holdings Corporation (“Vonage Holdings”) is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 23 Main Street, Holmdel, New Jersey 07733.

10. Vonage America, Inc. (“Vonage America”) is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 23 Main Street, Holmdel, New Jersey 07733.

11. Vonage Marketing, LLC (“Vonage Marketing”) is a company organized and existing under the laws of the state of Delaware with its principal place of business at 23 Main Street, Holmdel, New Jersey 07733.

12. In this Complaint, Vonage Holdings, Vonage America and Vonage Marketing shall be collectively referred to as “Defendants.”

13. Defendants are affiliates of one another. Vonage America and Vonage Marketing are subsidiaries of Vonage Holdings.

14. Defendants and/or their affiliates provide VoIP Services (“the VoIP Services”) as described below to subscribers, which VoIP Services, on information and belief, may or may not be marketed or provided under a specific name or trade name. The VoIP Services include but are not limited to the Vonage Phone service.

JURISDICTION AND VENUE

15. This Court has exclusive original jurisdiction of the subject matter of this action under 28 U.S.C. § 1338(a).

16. This Court has personal jurisdiction over Vonage Holdings. Vonage Holdings is incorporated under the laws of the State of Delaware. In addition, Vonage Holdings has

conducted and does conduct regular and ongoing business in Delaware. Vonage Holdings, directly or through intermediaries (including distributors, agents, retailers, subsidiaries, affiliates, and others) ships, distributes offers for sale, sells, advertises, operates and/or uses its VoIP products and services in the United States and in Delaware. On information and belief, Vonage Holdings has committed acts of patent infringement in Delaware, including, making, using, offering for sale, and/or selling infringing VoIP products or services in Delaware. These products or services have been used and continued to be used and/or purchased by consumers in Delaware and consumers in Delaware benefit from these products and services.

17. This Court has personal jurisdiction over Vonage America. Vonage America is incorporated under the laws of the State of Delaware. In addition, Vonage America has conducted and does conduct regular and ongoing business in Delaware. Vonage America, directly or through intermediaries (including distributors, agents, retailers, subsidiaries, affiliates, and others) ships, distributes, offers for sale, sells, advertises, operates and/or uses its VoIP products and services in the United States and in Delaware. On information and belief, Vonage America has committed acts of patent infringement in Delaware, including, making, using, offering for sale, and/or selling infringing VoIP products or services in Delaware. These products or services have been used and continued to be used and/or purchased by consumers in Delaware and consumers in Delaware benefit from these products and services.

18. This Court has personal jurisdiction over Vonage Marketing. Vonage Marketing is incorporated under the laws of the State of Delaware. In addition, Vonage Marketing has conducted and does conduct regular and ongoing business in Delaware. Vonage Marketing, directly or through intermediaries (including distributors, agents, retailers, subsidiaries, affiliates, and others) ships, distributes, offers for sale, sells, advertises, operates and/or uses its VoIP

products and services in the United States and in Delaware. On information and belief, Vonage Holdings has committed acts of patent infringement in Delaware, including, making, using, offering for sale, and/or selling infringing VoIP products or services in Delaware. These products or services have been used and continued to be used and/or purchased by consumers in Delaware and consumers in Delaware benefit from these products and services.

19. Venue is proper under 28 U.S.C. §§ 1391 and 1400(b) because both BCT and Defendants are incorporated under the laws of the State of Delaware. In addition, Defendants regularly conduct business in Delaware and have made, used, offered to sell, and sold, and/or continue to make, use, offer to sell, and/or sell products and/or services within Delaware, including without limitation, VoIP products and services which, upon information and belief, infringe BCT's Patent in this District. Upon information and belief, portions of the infringing infrastructure and actions, as well as a number of relevant party and third party witnesses with information relevant to the development, deployment, and use of such infrastructure and actions, reside in or near this Judicial District.

COUNT I
Direct Infringement of U.S. Patent No. 7,889,722

20. BCT realleges the allegations of the above paragraphs 1 through 19 as if expressly set forth herein.

21. BCT is the owner by assignment of all right, title, and interest in and to the '722 Patent, entitled "System for Interconnecting Standard Telephony Communications Equipment to Internet Protocol Networks," which duly and legally issued in the name of Joseph B. Thompson on February 15, 2011.

22. The '722 Patent is valid and enforceable.

23. Each of the Defendants directly or through an affiliate provides subscribers with

the VoIP Services above, giving each subscriber access to a communications network for placing voice phone calls via an internet protocol connection at the subscriber's premises.

24. The VoIP Services provide subscribers with such access using a telephone connected to the internet protocol connection.

25. The VoIP Services connect some subscriber calls, placed via the internet protocol connection, via a public switched telephone network, to call recipients, and connects other subscriber calls, placed via the internet protocol connection, without traversing the public switched telephone network.

26. Upon information and belief, each of the Defendants, through at least the provision of the VoIP Services, is infringing directly (either by literal infringement or by infringement under the Doctrine of Equivalents) at least claim 1 of the '722 Patent by making, using, selling, offering for sale, operating, advertising and/or marketing VoIP products, systems or services within the United States. More particularly, and without being limited thereto, Defendants deploy, operate, advertise, market and/or sell VoIP products, systems, or services (including the VoIP Services) that, on information and belief, directly infringe at least claim 1 of the '722 Patent.

27. As a direct and proximate result of Defendants' infringement of the '722 Patent, BCT has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which BCT is entitled to relief.

28. On February 22, 2011, BCT filed a complaint for patent infringement against the Defendants in the U.S. District Court for the Eastern District of Virginia ("the RCN Action"). This Complaint included as an exhibit a true and correct copy of the '722 Patent.

29. By the end of March, 2011, on information and belief, each of the Defendants was

given a copy of the '722 Patent and the Complaint of the RCN Action, which included BCT's allegations of infringement.

30. On August 17, 2011, the Defendants were dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure.

31. There was an objectively high likelihood that Defendants were infringing the '722 Patent.

32. Upon information and belief, each of the Defendants knew of the high likelihood that it was infringing the '722 Patent.

33. Furthermore, the risk of infringement was so obvious that, even if Defendants did not know of the risk of infringement, each of the Defendants should have known of the risk that it was infringing the '722 Patent.

34. Upon information and belief, none of the Defendants has taken any action to end their infringement of the '722 Patent.

35. Upon information and belief, Defendants' infringement of the '722 Patent is continuing and will continue unless enjoined by this Court.

36. Upon information and belief, Defendants' continued infringement of the '722 Patent is willful and deliberate.

COUNT II
Induced Patent Infringement of U.S. Patent No. 7,889,722

37. BCT realleges the allegations of the above paragraphs 1 through 36 as if expressly set forth herein.

38. Upon information and belief, at least one of the Defendants' affiliates, third-party service providers, or customers is directly infringing the '722 Patent.

39. Upon information and belief, each of the Defendants has communicated, directly

or indirectly through an affiliate, with one or more certain affiliates, one or more third parties, and plural subscribers (“the Other Entities”), each regarding the VoIP Services subject to BCT’s claims in this action. The certain affiliates include affiliates of such Defendants (that may or may not be a party to this action); the third-parties include but are not limited to a third party with which at least one of the Defendants have contracted to install or test the VoIP Services for subscribers. The subscribers are subscribers of the VoIP Services.

40. Upon information and belief, each of the Defendants, directly or in concert with one or more of certain affiliates or third parties, arranged operations necessary for, devised and/or implemented a marketing plan to sell, planned for, carried out, and/or devised or adopted a business and revenue generating model, each involving the deployment and/or provision of the VoIP Services.

41. Upon information and belief, each of the Defendants has taken actions that have caused, urged, encouraged, and/or aided one or more of the Other Entities to infringe directly on the ’722 Patent.

42. Upon information and belief, at least as early as March 31, 2011 and since that time, each of the Defendants had actual knowledge of the ’722 Patent and, with such knowledge, has continued the above-mentioned actions to cause, urge, encourage, and/or aid the Other Entities to infringe directly on the ’722 Patent.

43. Upon information and belief, each of the Defendants has had knowledge, and/or has willfully remained blind to such knowledge, and/or has acted with deliberate indifference that its actions induced the conduct by the Other Entities that directly infringes on the ’722 Patent.

44. Upon information and belief, each of the Defendants acted with the specific intent

to induce one or more of the Other Entities to infringe the '722 Patent.

45. Upon information and belief, Defendants are inducing infringement of the '722 by the Other Entities in violation of 35 U.S.C. § 271(b).

46. Upon information and belief, Defendants' continued infringement of the '722 Patent is willful and deliberate.

47. Upon information and belief, the direct infringement by the one or more Other Entities involves infringement of at least claim 1 of the '722 Patent either literally or under the doctrine of equivalents.

COUNT III

Contributory Patent Infringement of U.S. Patent No. 7,889,722

48. BCT realleges the allegations of the above paragraphs 1 through 47 as if expressly set forth herein.

49. Upon information and belief, Defendants offer to sell within the United States, sell within the United States, or import into the United States a component of the infringing apparatus used in the VoIP Services ("the Component") to one or more of the Other Entities. The Component is one or a combination of an IP hardphone, an Analog Telephone Adaptor ("ATA"), a VoIP PBX, a VoIP gateway, a VoIP softswitch, a VoIP intermediary server, and a PSTN or Voice gateway.

50. Upon information and belief, the Component is a component of the infringing apparatus being used during the VoIP Services, including during such use direct infringement by one or more of the Other Entities.

51. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

52. Upon information and belief, each of the Defendants knows or should know or

has reason to know that the Component is made or especially adapted for use in the infringing apparatus, because, among other reasons, the Defendants had specific notice and knowledge of the '722 Patent and the infringement alleged either by them or by one or more of the Other Entities or acted with deliberate indifference to the possibility of such infringement despite knowing about the '722 Patent and the alleged infringement.

53. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

54. Upon information and belief, Defendants have communicated, directly or indirectly through an affiliate, with one or more of the Other Entities regarding the VoIP Services.

55. Upon information and belief, Defendants, directly or in concert with one or more of the Other Entities, arranged operations necessary for, devised and/or implemented a marketing plan to sell, planned for, carried out, and/or devised or adopted a business and revenue generating model, each involving the deployment and/or provision of the VoIP Services.

56. Upon information and belief, Defendants have taken actions, including but not limited to providing the Component, that have caused, urged, encouraged, and/or aided one or more of the Other Entities to infringe directly on the '722 Patent.

57. Upon information and belief, each of the Defendants had actual knowledge of the '722 Patent and, with such knowledge, has continued the above-mentioned actions to cause, urge, encourage, and/or aid the Other Entities to infringe directly on the '722 Patent.

58. Upon information and belief, each of the Defendants is contributing to the infringement of the '722 Patent by one or more of the Other Entities in violation of 35 U.S.C. § 271(c).

59. Upon information and belief, Defendants' continued infringement of the '722 Patent is willful and deliberate.

60. Upon information and belief, the direct infringement by the one or more Other Entities involves infringement of at least claim 1 of the '722 Patent either literally or under the doctrine of equivalents.

PRAYER FOR RELIEF

61. WHEREFORE, BCT respectfully requests entry of judgment in its favor and against Defendants as follows:

- a) Enter judgment that each of the Defendants has directly infringed the '722 Patent;
- b) Enter judgment that each of the Defendants has induced infringement of the '722 Patent;
- c) Enter judgment that each of the Defendants has contributed to the infringement of the '722 Patent;
- d) Enter a permanent injunction, pursuant to 35 U.S.C. § 283, restraining and enjoining Defendants and their respective officers, agents, servants, employees, attorneys, customers, and those in concert or participation with it from any further sales or use of their infringing products and services and any other infringement of the '722 Patent, whether direct or indirect;
- e) Enter judgment ordering Defendants to compensate BCT for infringement of the '722 Patent pursuant to 35 U.S.C. § 284;
- f) Enter judgment ordering Defendants to pay enhanced damages pursuant to 35 U.S.C. § 284;
- g) Enter a judgment for an award of pre-judgment and post-judgment interest and

costs to BCT pursuant to 35 U.S.C. § 284;

h) Enter a judgment for an award of BCT's reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

i) Grant to BCT such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

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By its attorneys,

/s/ Peter J. Faben

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