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Attorneys for Plaintiff Rates Technology Inc.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

<hr/>		X	CASE NO. CV 06-3604 (JS) (AKT)
RATES TECHNOLOGY INC.,		:	
		:	
Plaintiff,		:	<b>FIRST AMENDED COMPLAINT</b>
		:	<b>FOR PATENT INFRINGEMENT;</b>
v.		:	<b>DEMAND FOR JURY TRIAL</b>
		:	
NET2PHONE, INC. a corporation; IDT, INC., a		:	
corporation; and NET2PHONE CORPORATION,		:	
a corporation,		:	
		:	
Defendants.		:	
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Plaintiff Rates Technology Inc. ("RTI") alleges as follows:

1. RTI is a corporation duly organized pursuant to the laws of the State of Delaware, having its principal place of business at 50 Route 111, Suite 210, Smithtown, NY 11787.
2. Upon information and belief, defendants Net2Phone, Inc.; Net2Phone Corporation and IDT, Inc. are affiliated corporations, all of which have a regular and established place of business at 520 Broad Street, Newark, New Jersey 07102. Such defendants are hereinafter collectively referenced as "Net2Phone."
3. This case is an action for patent infringement arising under the Patent Laws of the United States, as set forth in 35 U.S.C. §§271 and 280 through 285.

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

5. Net2Phone transacts business within the State of New York or contracts elsewhere to supply goods and/or services in the State of New York.

6. Net2Phone committed tortious acts outside the State, causing injury to the Plaintiff herein within the State of New York.

7. Net2Phone regularly conducts and solicits business, and engages in other persistent course of action and derives substantial revenue from goods used within the State of New York, and derives substantial revenue from interstate or international commerce.

8. Net2Phone expected or should reasonably have expected its acts committed to have consequences in the State of New York.

9. Venue is proper before this Court under 28 U.S.C. §§1391(a), 1391(c) and 1400(b).

#### **FIRST CAUSE OF ACTION FOR PATENT INFRINGEMENT**

10. RTI repeats and realleges the allegations contained in paragraphs 1 through 9 above, inclusive, as if fully repeated and restated herein.

11. The United States government has duly and legally issued United States Patent number 5,425,085 (the “ ‘085 Patent”), for inventions relating to minimizing the cost of placing long distance telephone calls. A copy of the ‘085 Patent is attached as Exhibit “1”, and the ‘085 Patent remains valid and enforceable.

12. At all relevant times, RTI has been the lawful owner of the ‘085 Patent, and has had the right to sue and to recover for any and all infringement(s) of such patent.

13. Upon information and belief, within the past six years, Net2Phone has infringed, actively induced the infringement of, and/or contributorily infringed the ‘085 Patent within the

United States, including without limitation through advertising, marketing, selling, and/or offering to sell various VoIP products, services and related technologies, including without limitation its BCM telephone products, and other products and services to provide and support cable voice solutions for cable service companies, all of which infringe the '085 Patent (collectively, the "Infringing '085 Products and Services").

14. Upon information and belief, Net2Phone has therefore infringed, actively induced the infringement of, and/or contributorily infringed the '085 Patent within the United States by advertising, marketing, selling, and/or offering to sell such infringing products and services; and that its infringement, active inducement of infringement, and/or contributory infringement of the '085 Patent has been willful and will continue unless rectified by this Court.

15. Upon information and belief, RTI was damaged by Net2Phone's infringing activities, and Net2Phone is liable for such damages, in an amount not known at this time, but which is not less than \$452 million.

16. Net2Phone's wrongful acts have damaged and will continue to damage RTI irreparably, and RTI has no adequate remedy at law for those wrongs and injuries. The damage to RTI includes harm to it and its products' goodwill and reputation in the marketplace that money cannot compensate. In addition to its actual damages, RTI is therefore entitled to a preliminary and permanent injunction restraining and enjoining Net2Phone and its agents, servants, employees, subsidiaries and affiliates, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '085 Patent, including without limitation restraining and enjoining the advertising, marketing, selling, and/or offering to sell the Infringing '085 Products and Services within the United States, which infringe the '085 Patent.

17. RTI discussed with and gave Net2Phone notice of its infringement and tried to resolve this matter without litigation, but Net2Phone refused to do so, thereby forcing RTI to file this suit.

**SECOND CAUSE OF ACTION FOR PATENT INFRINGEMENT**

18. RTI repeats and realleges the allegations contained in paragraphs 1 through 17 above, inclusive, as if fully repeated and restated herein.

19. The United States Government has also duly and legally issued United States Patent Number 5,519,769 (the “‘769 Patent”), also for inventions relating to minimizing the cost of placing long distance telephone calls. A copy of the ‘769 Patent is attached as Exhibit “2”, and the ‘769 Patent remains valid and enforceable.

20. At all relevant times, RTI has been the lawful owner of the ‘769 Patent, and has had the right to sue and to recover for any and all infringement(s) of such patent.

21. Upon information and belief, Net2Phone has infringed, actively induced the infringement of, and/or contributorily infringed the ‘769 Patent within the United States, including without limitation through advertising, marketing, selling, and/or offering to sell various VoIP products, services and related technologies, including without limitation its BCM telephone products, and other products and services to provide and support cable voice solutions for cable service companies, all of which infringe the ‘769 Patent (collectively, the “Infringing ‘769 Products and Services”).

22. Upon information and belief, Net2Phone has therefore infringed, actively induced the infringement of and/or contributorily infringed the ‘769 Patent within the United States by advertising, marketing, selling and/or offering for sale infringing products, services, and technologies; and that its infringement, active inducement of infringement and/or contributory infringement of the ‘769 Patent has been willful and will continue unless rectified by this Court.

23. Upon information and belief, RTI has been damaged by the infringing activities of defendants, and Net2Phone is liable for such damages, in an amount not known at this time, but which is not less than \$452 million.

24. Net2Phone's wrongful acts have damaged and will continue to damage RTI irreparably, and RTI has no adequate remedy at law for those wrongs and injuries. The damage

to RTI includes harm to it and its products' goodwill and reputation in the marketplace that money cannot compensate. In addition to its actual damages, RTI is therefore entitled to a preliminary and permanent injunction restraining and enjoining Net2Phone and its agents, servants, employees, subsidiaries and affiliates, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '769 Patent, including without limitation restraining and enjoining the advertising, marketing, selling, and/or offering to sell the Infringing '769 Products and Services within the United States, which infringe the '769 Patent.

25. As noted above, RTI discussed with and gave Net2Phone notice of its infringement, and tried to resolve this matter without litigation, but Net2Phone refused to do so. Thus, Net2Phone forced RTI to file this lawsuit.

#### **PRAYER FOR RELIEF**

WHEREFORE, RTI prays for judgment against Net2Phone, as follows:

1. That the '085 Patent be determined enforceable for its life and duration;
2. That the '769 Patent be determined enforceable for its life and duration;
3. That Net2Phone has willfully infringed, actively induced the infringement of, and/or knowingly contributorily infringed the '085 and '769 Patents;
4. That an accounting be had for the damages caused RTI by the infringing activities of Net2Phone, and that such damages including damages for lost profits and/or a reasonable royalty, in a sum not less than \$452,000,000.00, which sum should be trebled to not less than \$1,356,000,000.00 pursuant to 35 U.S.C. §284, with interest thereon, be awarded to RTI;
5. That RTI be granted preliminary and permanent injunctive relief restraining and enjoining Net2Phone and its agents, servants, employees, subsidiaries and affiliates, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '085 and '769 Patents, including without limitation restraining and enjoining the advertising, marketing, selling, and/or offering to sell the

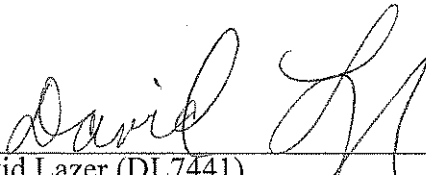
Infringing '085 Products and Services and the Infringing '769 Products and Services within the United States, which infringe RTI's '085 and '769 Patents;

6. That RTI be granted further injunctive relief directing Net2Phone to recall all examples of the Infringing '085 Products and Services and of the Infringing '769 Products and Services which it has sold within the United States, which infringe the '085 and '769 Patents, to the extent possible; and also to provide RTI with names and contact information for all persons who purchased any of the Infringing '085 Products and Services and of the Infringing '769 Products and Services within the United States, for which such recall is not possible, and to notify each such person that such products and services have been found to be illegal and infringing;
7. That RTI be awarded its attorneys' fees, costs and expenses in this action, pursuant to 35 U.S.C. §285; and
8. That RTI be awarded such further necessary and proper relief as the Court may deem equitable and just.

**JURY TRIAL DEMANDED**

RTI hereby demands a trial by jury of all issues so triable.

Dated: August 17, 2006.

  
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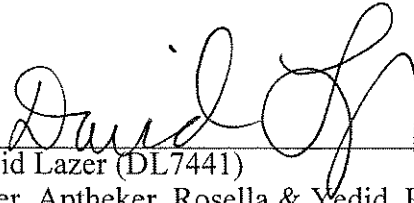
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Certificate of Service

I hereby certify that on August 17, 2006, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service upon the following parties and participants:

Net2Phone, Inc.  
Net2Phone Corporation  
IDT, Inc.  
520 Broad Street  
Newark, New Jersey 07102

A handwritten signature in black ink, appearing to read "David Lazer", is written over a horizontal line.

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