

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

**DOWNUNDER WIRELESS, LLC,**

Plaintiff,

v.

**(1) SAMSUNG ELECTRONICS CO., LTD.;**  
**(2) SAMSUNG TELECOMMUNICATIONS**  
**AMERICA, LLC; and**  
**(3) CAL-COMP ELECTRONICS AND**  
**COMMUNICATIONS CO., LTD.**

Defendants.

**CIVIL ACTION NO. 2:09-cv-365-DF-CE**

**JURY TRIAL REQUESTED**

**FOURTH AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

1. This is an action for patent infringement in which DownUnder Wireless, LLC, makes the following allegations against Samsung Electronics Co., Ltd., Samsung Telecommunications America, LLC and Cal-Comp Electronics and Communications Co., Ltd. (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 Samsung Electronics Co., Ltd. (“SEC”) is a corporation organized under the laws of South Korea with its principal place of business located at 416 Maetan-3dong, Yeongtong-gu, Suwon-city, Gyeonggi-do, Korea 443-742.

4. On information and belief, Defendant Samsung Telecommunications America, LLC (“STA”) is a Delaware limited liability corporation with its principal place of business at

1301 Lookout Drive, Richardson, Texas 75082. STA's registered agent in Texas is Corporation Service Company d/b/a CSC – Lawyers Inco, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

5. On information and belief, Defendant Cal-Comp Electronics and Communications Company Ltd. (“Cal-Comp”) is a foreign corporation with its principal place of business at A Bldg., No. 147, Sec. 3, Beishen Rd., Wanshuen Tsuen, Shengkeng Shiang, Taipei, Taiwan 222, R.O.C.

### **JURISDICTION AND VENUE**

6. 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).

7. 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.

8. On information and belief, Defendant SEC 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.

9. On information and belief, Defendant STA 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.

10. On information and belief, Defendant Cal-Comp 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**

11. 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.

12. The ‘215 Patent is directed to a versatile system for designing or providing wireless communication devices that significantly reduce the intensity of electromagnetic radiation that a user is exposed to while using such a device. In the past several years concerns over the potential health threats, especially to children, have continued to escalate. In recent months, a great deal of attention has been focused on a growing number of studies that show potentially detrimental effects to users from long-term exposure to electromagnetic radiation from wireless communication devices and indicate a link between cell phone usage and cancer. *See, e.g.*, “Analysis of cell phone studies finds tumor risk,” *latimes.com*, October 14, 2009 (<http://articles.latimes.com/2009/oct/14/science/sci-cell-phones14>); and “Study: Cell phone cancer link,” *nypost.com*, October 24, 2009 ([http://www.nypost.com/p/news/national/study\\_cell\\_phone\\_cancer\\_link\\_D1uu62C2zscTFCnzQTeZwO](http://www.nypost.com/p/news/national/study_cell_phone_cancer_link_D1uu62C2zscTFCnzQTeZwO)). One of the most common measurements of electromagnetic radiation from wireless communication devices is referred to as specific absorption rate (SAR), which is usually denoted in units of watts per kilogram (W/kg). Interestingly enough, publicly available SAR data seems to indicate that wireless communication devices that utilize the teachings of the ‘215 Patent are capable of operating at very low SAR levels without sacrificing form or function.

13. Upon information and belief, Defendants SEC and STA 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 SEC and STA are marketing, distributing, using, selling, or offering to sell wireless communication devices including, but not limited to, its: Propel Pro i627; T301g; A777; Propel A767; Sway U650; Slash M310; T819; R610; G600; Mysto; A737 /A736; Rant; Juke U470; T429; E840; Blast T729; M330; M520; Reclaim M560; Highnote; Ultra Edition 10.9 / U600; T629; D900 / Black Carbon; D520; t819; T809/D820; E635/E630; T659; Exclaim M550; A877; T239; U490; and H559 phones. Defendants SEC and STA are thus liable for infringement of the '215 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

14. Upon information and belief, Defendant Cal-Comp 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 Cal-Comp is marketing, distributing, using, selling, or offering to sell wireless communication devices including, but not limited to, the: Cal-Comp A100. Defendant Cal-Comp 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: July 19, 2010

By: /s/ Papool S. Chaudhari

Papool S. Chaudhari

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**ATTORNEYS 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/ Papool S. Chaudhari

Papool S. Chaudhari