

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

MARSHALL PATENT HOLDINGS, L.L.C.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	CIVIL ACTION NO. 6:08-cv-222
	§	
INCOMM HOLDINGS, INC. AND	§	
U.S. SOUTH COMMUNICATIONS, INC.	§	PATENT CASE
	§	
Defendants.	§	JURY DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Marshall Patent Holdings, L.L.C. (“Marshall”) complains of Defendants InComm Holdings, Inc. (“InComm”) and U.S. South Communications, Inc. (“US South”), and as claim for relief shows as follows:

Introduction

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338(a).

Parties

2. Plaintiff Marshall is a Texas limited liability company having an address of 4610 Karnack Highway, Marshall, Texas, 75672.

3. Defendant InComm is a Georgia corporation having a principal place of business at 250 Williams Street NW, Suite M100, Atlanta, Georgia 30303-1032.

4. Defendant US South is a Georgia corporation having a principal place of business at 250 Williams Street NW, Suite M100, Atlanta, Georgia 30303-1032.

The Marshall Patents

5. Plaintiff Marshall owns all right, title and interest and therefore has standing to sue for past, current and future infringement of U.S. Patent No. 5,790,636, issued August 4, 1998 (the “636 patent”), and U.S. Patent No. 6,295,344, issued September 25, 2001 (the “344 patent”) (collectively “the Marshall Patents”), copies of which are attached hereto as Exhibits “A” and “B” respectively, under 35 U.S.C. § 271. The Marshall Patents concern technology relating to the use of prepaid telephone cards, and describe and claim methods and systems for using telephony switching systems to monitor the use of such cards.

The Infringement

6. Defendants InComm and US South provide a switching station with a switch processor (the US South DMS-500, for example), as well as an InComm voice platform, for example, which processes call data (including ANI and PIN information), enabling the use of prepaid telephone calling cards and related services that provide call monitoring, authentication and billing features to consumers in the United States. Accordingly, defendants InComm and US South commit direct and/or contributory infringement, and/or induce infringement, of the Marshall Patents pursuant to 35 U.S.C. §§ 271(a)-(c).

Venue

7. Venue is, therefore, proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(d) and 1400(b).

Relief Requested

8. Infringement by the defendants has injured Plaintiff Marshall and Marshall is entitled to recover damages adequate to compensate it for infringement of the Marshall Patents,

pursuant to 35 U.S.C. §§ 284, 285. If the infringement is found to be intentional and willful, then Marshall will seek treble damages pursuant to 35 U.S.C. § 284.

9. Infringement by the defendants will continue to injure Marshall until this Court enters an injunction prohibiting further infringement, and specifically enjoins further manufacture, sale, use and/or offer for sale of the infringing equipment and services recited in Paragraph 5, above, pursuant to 35 U.S.C. §§ 283.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marshall asks this Court to enter judgment against each of Defendants InComm and US South, and their subsidiaries, agents, servants, employees, attorneys and all persons in active concert or participation with the defendants, granting Marshall the following relief:

A. a judgment that each defendant has directly and/or contributorily infringed and/or induced the infringement of the '344 and '636 Marshall Patents;

B. an award to Marshall of such damages pursuant to 35 U.S.C. § 284 that are adequate to compensate it for the defendants' infringement, the damages to be no less than a reasonable royalty;

C. a permanent injunction pursuant to 35 U.S.C. § 283 prohibiting further infringement of the Marshall Patents;

D. an award of treble damages pursuant to 35 U.S.C. § 284 to the extent that the defendants' infringement, or any thereof, is ultimately found to be willful;

E. an award to Marshall of its reasonable attorney fees pursuant to 35 U.S.C. § 285 upon a determination that this is an exceptional case justifying such fees;

F. that the Court award prejudgment and post judgment interest on all damages;

- G. that Marshall recover all its costs of action; and
- H. for such other and further relief as this Court and/or a jury may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands that all issues be determined by a jury.

DATED: June 4, 2008

Respectfully submitted,

/s/ Andy Tindel

Andy Tindel
Texas Bar No. 20054500

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