

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

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U.S. DISTRICT COURT
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TX EASTERN-MARSHALL

NOKIA CORPORATION,

Plaintiff,

v.

KYOCERA WIRELESS CORP.,

Defendant.

Civil Action No.: 2:04-CV-~~87~~-TJW

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff, Nokia Corporation ("Nokia"), for its complaint of patent infringement against Defendant, Kyocera Wireless Corp. ("Kyocera"), alleges as follows:

THE PARTIES

1. Nokia is a corporation organized under the laws of Finland, having its principal place of business at Keilalahdentie 4, FIN-02150 Espoo, Finland. Nokia operates throughout the United States through its wholly-owned indirect subsidiary Nokia Inc., having its principal place of business at 6000 Connection Drive, Irving, Texas 75039. Nokia Mobile Phones Ltd., along with other business entities, was merged into Nokia. Nokia is the successor to all right, title, and interest in and to Nokia Mobile Phones Ltd. relating to the Patents-in-Suit as defined herein.

2. On information and belief, Kyocera is a corporation organized under the laws of the State of Delaware, having its principal place of business at 10300 Campus Point Drive, San Diego, California 92121.

JURISDICTION AND VENUE

3. This Complaint arises under the patent laws of the United States (35 U.S.C. § 1 et seq.). Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1338(a).

4. Kyocera, through various consumer retailers, sells and offers to sell mobile phones in Marshall, Tyler, and Beaumont Texas, including high-speed wireless data service mobile phones, such as the Kyocera phone model 2325. Kyocera's activities in Texas subject it to personal jurisdiction in this District.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

BACKGROUND

6. Nokia is engaged in the manufacture and sale of high quality telecommunication equipment, embodied in products such as wireless telephone equipment and other related equipment. As part of its business, Nokia devotes a substantial portion of its financial resources to the research and development of new products, as well as to the improvement of existing products. As a result, Nokia owns or has rights to various intellectual properties.

7. On July 9, 1996, United States Patent No. 5,534,878 ("the '878 Patent") was duly and legally issued to Nokia Mobile Phones Ltd. for an invention entitled "RADIO WITH RETRACTABLE ANTENNA." Attached as Exhibit A is a true and correct copy of the '878 Patent.

8. On November 21, 2000, United States Patent No. 6,151,485 ("the '485 Patent") was duly and legally issued to Nokia Mobile Phones Ltd. for an invention entitled "RADIO TELEPHONE." Attached as Exhibit B is a true and correct copy of the '485 Patent.

9. On August 28, 2001, United States Patent No. 6,282,436 B1 (“the ‘436 Patent”) was duly and legally issued to Nokia Mobile Phones Ltd. for an invention entitled “PORTABLE TELEPHONE.” Attached as Exhibit C is a true and correct copy of the ‘436 Patent.

10. On March 28, 2000, United States Patent No. 6,043,760 (“the ‘760 Patent”) was duly and legally issued to Nokia Mobile Phones Ltd. for an invention entitled “LANGUAGE-DEPENDENT LETTER INPUT BY MEANS OF NUMBER KEYS.” Attached as Exhibit D is a true and correct copy of the ‘760 Patent.

11. On February 9, 1999, United States Patent No. 5,870,683 (“the ‘683 Patent”) was duly and legally issued to Nokia Mobile Phones Ltd. for an invention entitled “MOBILE STATION HAVING METHOD AND APPARATUS FOR DISPLAYING USER-SELECTABLE ANIMATION SEQUENCE.” Attached as Exhibit E is a true and correct copy of the ‘683 Patent.

12. Nokia, as the successor-in-interest of Nokia Mobile Phones Ltd., is the owner by assignment of all right, title, and interest in and to the ‘878 Patent, the ‘485 Patent, the ‘436 Patent, the ‘760 Patent, and the ‘683 Patent (collectively “the Patents-in-Suit”).

13. The Patents-in-Suit cover implementation specific software and hardware features, which are associated, in part, with mobile phones.

**KYOCERA’S INFRINGEMENT OF
THE PATENTS-IN-SUIT**

14. The following counts relate to Kyocera’s infringement of each of the Patents-in-Suit.

15. On information and belief, Kyocera’s infringement of each of the Patents-in-Suit has been willful and deliberate.

COUNT I
KYOCERA'S INFRINGEMENT OF
UNITED STATES PATENT NO. 5,534,878

16. Paragraphs 1-15 are incorporated by reference herein, as if fully set forth in their entirety.

17. On information and belief, Kyocera has made, used, sold, and offered to sell, and does make, use, sell, and offer to sell, certain wireless telephone products (referred to as "the Kyocera Set I Phones"), including at least the Kyocera phone models 1135, 1155, 2119, 2135, 2235, 2255, 2325, 5135, and SE47, in this District, and elsewhere throughout the United States, without license from Nokia.

18. On information and belief, by making, using, selling, and offering to sell the Kyocera Set I Phones, Kyocera has infringed, contributorily infringed, and induced infringement of, and will continue to infringe, contributorily infringe, and induce infringement of, one or more claims of the '878 Patent under one or more of 35 U.S.C. § 271(a), (b), (c), and (f).

19. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '878 Patent, Nokia has been, is being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights.

20. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '878 Patent, Nokia has suffered, is suffering, and will continue to suffer injury and damages, for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

21. By reason of the acts and practices of Kyocera, Kyocera has also caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate

and irreparable harm to Nokia for which there is no adequate remedy at law, and for which Nokia is entitled to injunctive relief under 35 U.S.C. § 283.

COUNT II
KYOCERA'S INFRINGEMENT OF
UNITED STATES PATENT NO. 6,151,485

22. Paragraphs 1-15 are incorporated by reference herein, as if fully set forth in their entirety.

23. On information and belief, Kyocera has made, used, sold, and offered to sell, and does make, use, sell, and offer to sell, certain wireless telephone products (referred to as "the Kyocera Set II Phones"), including at least the Kyocera phone model SE47, in this District, and elsewhere throughout the United States, without license from Nokia.

24. On information and belief, by making, using, selling, and offering to sell the Kyocera Set II Phones, Kyocera has infringed, contributorily infringed, and induced infringement of, and will continue to infringe, contributorily infringe, and induce infringement of, one or more claims of the '485 Patent under one or more of the following sections 35 U.S.C. § 271(a), (b), (c), and (f).

25. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '485 Patent, Nokia has been, is being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights.

26. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '485 Patent, Nokia has suffered, is suffering, and will continue to suffer injury and damages, for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

27. By reason of the acts and practices of Kyocera, Kyocera has also caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Nokia for which there is no adequate remedy at law, and for which Nokia is entitled to injunctive relief under 35 U.S.C. § 283.

COUNT III
KYOCERA'S INFRINGEMENT OF
UNITED STATES PATENT NO. 6,282,436 B1

28. Paragraphs 1-15 are incorporated by reference herein, as if fully set forth in their entirety.

29. On information and belief, Kyocera has made, used, sold, and offered to sell, and does make, use, sell and offer to sell, certain wireless telephone products (referred to as "the Kyocera Set III Phones"), including at least the Kyocera phone model SE47, in this District, and elsewhere throughout the United States, without license from Nokia.

30. On information and belief, by making, using, selling, and offering to sell the Kyocera Set III Phones, Kyocera has infringed, contributorily infringed, and induced infringement of, and will continue to infringe, contributorily infringe, and induce infringement of, one or more claims of the '436 Patent under one or more of 35 U.S.C. § 271(a), (b), (c), and (f).

31. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '436 Patent, Nokia has been, is being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights.

32. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '436 Patent, Nokia has suffered, is suffering, and will

continue to suffer injury and damages, for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

33. By reason of the acts and practices of Kyocera, Kyocera has also caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Nokia for which there is no adequate remedy at law, and for which Nokia is entitled to injunctive relief under 35 U.S.C. § 283.

COUNT IV
KYOCERA'S INFRINGEMENT OF
UNITED STATES PATENT NO. 6,043,760

34. Paragraphs 1-15 are incorporated by reference herein, as if fully set forth in their entirety.

35. On information and belief, Kyocera has made, used, sold, and offered to sell, and does make, use, sell, and offer to sell, certain wireless telephone products (referred to as "the Kyocera Set IV Phones"), including at least the Kyocera phone models 1135, 1155, 2119, 2135, 2235, 2255, 2325, 3225, 3250, 5135, S14, KE413, KE413C, KE414, KE414C, KX413, KX414, KE433, KE433C, KE434, KX433, KX434, and SE47, in this District, and elsewhere throughout the United States, without license from Nokia.

36. On information and belief, by making, using, selling, and offering to sell the Kyocera Set IV Phones, Kyocera has infringed, contributorily infringed, and induced infringement of, and will continue to infringe, contributorily infringe, and induce infringement of one or more claims of the '760 Patent under one or more of 35 U.S.C. § 271(a), (b), (c), and (f).

37. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '760 Patent, Nokia has been, is being, and, unless such acts

and practices are enjoined by the Court, will continue to be injured in its business and property rights.

38. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '760 Patent, Nokia has suffered, is suffering, and will continue to suffer injury and damages, for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

39. By reason of the acts and practices of Kyocera, Kyocera has also caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Nokia for which there is no adequate remedy at law, and for which Nokia is entitled to injunctive relief under 35 U.S.C. § 283.

COUNT V
KYOCERA'S INFRINGEMENT OF
UNITED STATES PATENT NO. 5,870,683

40. Paragraphs 1-15 are incorporated by reference herein, as if fully set forth in their entirety.

41. On information and belief, Kyocera has made, used, sold, and offered to sell, and does make, use, sell and offer to sell, certain wireless telephone products (referred to as "the Kyocera Set V Phones"), including at least the Kyocera phone models 1135, 1155, 2235, 2255, 2325, 3225, 3250, KE413, KE413C, KE414, KE414C, KX413, KX414, KE433, KE433C, KE434, KX433, KX434, and SE47, in this District, and elsewhere throughout the United States, without license from Nokia.

42. On information and belief, by making, using, selling, and offering to sell the Kyocera Set V Phones, Kyocera has infringed, contributorily infringed, and induced infringement of, and

will continue to infringe, contributorily infringe, and induce infringement of one or more claims of the '683 Patent under one, or all, of the following sections 35 U.S.C. § 271(a), (b), (c), and (f).

43. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '683 Patent, Nokia has been, is being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights.

44. As a direct and proximate consequence of the acts and practices of Kyocera in infringing one or more claims of the '683 Patent, Nokia has suffered, is suffering, and will continue to suffer injury and damages, for which it is entitled to relief under 35 U.S.C. § 284, in an amount to be determined at trial.

45. By reason of the acts and practices of Kyocera, Kyocera has also caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Nokia for which there is no adequate remedy at law, and for which Nokia is entitled to injunctive relief under 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, NOKIA prays for the entry of a judgment from this Court:

- (a) Declaring that Kyocera has directly infringed, contributorily infringed, and induced infringement of the Patents-in-Suit;
- (b) Awarding Nokia damages for Kyocera's infringement of the Patents-in-Suit, together with interest;
- (c) Declaring that Kyocera's infringement of the Patents-in-Suit has been and is willful;

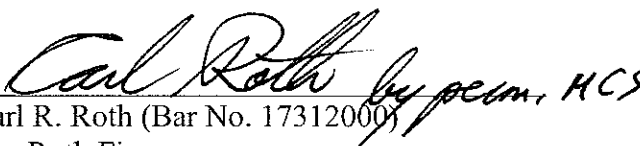
(d) Awarding Nokia multiple damages including potential treble damages pursuant to 35 U.S.C. § 284 for willful infringement of the Patents-in-Suit;

(e) Declaring this to be an “exceptional” case within the meaning of 35 U.S.C. § 285, entitling Nokia to an award of its reasonable attorney fees, expenses, and costs in this action;

(f) Preliminarily and permanently enjoining Kyocera from further infringement of the Patents-in-Suit; and

(g) Awarding Nokia such other and further relief as this Court may deem to be just and proper.

April 14, 2004


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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on the following counsel of record on this 14th day of April, 2004 as follows:

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EXHIBITS NOT SCANNED

ORIGINALS ARE IN THE

CLERK'S OFFICE