

James B. Hicks (JH7861)
Burke, Williams & Sorensen LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953
Tel.: (213) 236-0600

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 27 2006 ★

David Lazer (DL7441)
Lazer, Aptheker, Rosella & Yedid, P.C.
Melville Law Center, 225 Old Country Road
Melville, NY 11747-2712
Telephone: (631) 761-0800

LONG ISLAND OFFICE

Attorneys for Plaintiff Rates Technology Inc.

(SY)

CV - 06 5243

EXLER, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TOMLINSON, M

_____	X
RATES TECHNOLOGY INC.,	:
	:
Plaintiff,	:
v.	:
	:
TIME WARNER TELECOM INC.,	:
	:
Defendant.	:
_____	X

CASE NO.

**COMPLAINT FOR PATENT
INFRINGEMENT; DEMAND
FOR JURY TRIAL**

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, defendant Time Warner Telecom Inc. ("TWTC") is a corporation with a regular and established place of business at 10475 Park Meadows Drive, Littleton, CO 80124.
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. TWTC transacts business within the State of New York or contracts elsewhere to supply goods and/or services in the State of New York.

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

7. TWTC 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. TWTC 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 the routing of telephone calls based upon cost. 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, TWTC 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 packet switched technologies (using IP technology) and ethernet technology with internet access, to provide IP-based services, including using switched voice services and high-capacity digital end office switches in order to offer local and toll services to its customers; and including “soft switches” and related network equipment (such as media gateways, signaling gateways, and applications servers, and other converged network elements), to enable the switching and routing of voice calls over IP packet networks (also referred to as “VoIP”), as well as managing the related PSTN call traffic interface, and other VoIP services and related technologies and products to facilitate such services and technologies, in order to offer traditional voice telephony services across its VoIP platform and to enhance end user customers’ voice and data networking ability, and which infringe the ‘085 Patent (all collectively, the “Infringing ‘085 Products and Services”). RTI has a reasonable basis for making the allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche Inc. v. Invamed Inc.*, 213 F.3d 1359, 1364 (Fed. Cir. 2000); *Cambridge Prods. Ltd. v. Penn Nutrients, Inc.*, 962 F.2d 1048, 1050 (Fed. Cir. 1992).

14. Upon information and belief, TWTC 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 the Court. RTI has a reasonable basis for making the allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche, supra*, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

15. Upon information and belief, RTI was damaged by TWTC's infringing activities, and TWTC is liable for such damages, in an amount not known at this time, but not less than \$560 million. RTI has a reasonable basis for making the allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche, supra*, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

16. TWTC'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 TWTC and its agents, servants and employees, 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. RTI has a reasonable basis for making the allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche, supra*, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

17. RTI discussed with and gave TWTC notice of its infringement and tried to resolve this matter without litigation, but TWTC 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”), for inventions relating to a method for updating a data-base in a telephone call routing system. 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, TWTC 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 packet switched technologies (using IP technology) and ethernet technology with internet access, to provide IP-based services, including using switched voice services and high-capacity digital end office switches in order to offer local and toll services to its customers; and including “soft switches” and related network equipment (such as media gateways, signaling gateways, and applications servers, and other converged network elements), to enable the switching and routing of voice calls over IP packet networks (also referred to as “VoIP”), as well as managing the related PSTN call traffic interface, and other VoIP services and related technologies and products to facilitate such services and technologies, in order to offer traditional voice telephony services across its VoIP platform and to enhance end user customers’ voice and data networking ability, and which infringe the ‘769 Patent (all collectively, the “Infringing ‘769 Products and Services”). RTI has a reasonable basis for making the allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche, supra*, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

22. Upon information and belief, TWTC 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. RTI has a reasonable basis for making the allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche, supra*, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

23. Upon information and belief, RTI has been damaged by the infringing activities of defendants, and TWTC is liable for such damages, in an amount not known at this time, but not less than \$560 million. RTI has a reasonable basis for making the allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche, supra*, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

24. TWTC'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 TWTC and its agents, servants and employees, 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. RTI has a reasonable basis for making the

allegations contained in this paragraph, and believes they are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. *Hoffman-La Roche, supra*, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

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

PRAYER FOR RELIEF

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

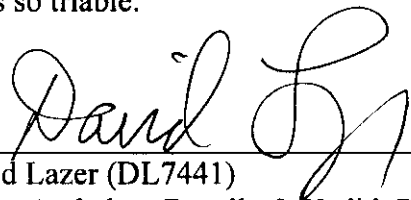
1. That the '085 Patent be determined enforceable for its life and duration;
2. That the '769 Patent be determined enforceable for its life and duration;
3. That TWTC has willfully infringed, actively induced the infringement of and/or knowingly contributorily infringed the '085 and '769 Patents;
4. That an accounting be had for the damages caused RTI by TWTC's infringing activities, and that such damages including damages for lost profits and/or a reasonable royalty in an amount not less than \$560 million, which should be trebled to \$1.68 billion under 35 U.S.C. §284, with interest, be awarded to RTI;
5. That RTI be granted preliminary and permanent injunctive relief restraining and enjoining TWTC and its agents, servants and employees, 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 TWTC 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 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 attorney fees, costs and expenses, under 35 U.S.C. §285;
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: September 26, 2006.



David Lazer (DL7441)
Lazer, Aptheker, Rosella & Yedid, P.C.
Melville Law Center
225 Old Country Road
Melville, New York 11747-2712
Telephone: (631) 761-0800

Attorneys for Plaintiff Rates Technology Inc.

OF COUNSEL:

James B. Hicks (JH7861)
Burke, Williams & Sorensen LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953
Tel.: (213) 236-0600