

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DATASCAPE, INC.,)
 a Georgia Corporation,)
)
 Plaintiff,)
)
 v.)
)
 UTSTARCOM, INC.)
 A Delaware Corporation,)
)
 and)
)
 PERSONAL COMMUNICATIONS)
 DEVICES, LLC)
)
 Defendants.)
 _____)

Civil Action File No.:
1:05-CV-3164-CC

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff, Datascape, Inc., states its Second Amended Complaint as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.
2. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391(b) and (c).

THE PARTIES

4. Plaintiff, Datascape, Inc. (“Datascape”) is a Georgia Corporation, with its principal place of business at 8613 Roswell Road, Suite 202, Atlanta, Georgia 30350.

5. Datascape is the owner, by assignment, of all right, title, and interest in and to United States Patent No. 5,742,845 (Exhibit “A”), United States Patent No. 5,905,908 (Exhibit “B”), United States Patent No. 6,366,967 (Exhibit “C”), United States Patent No. 6,684,269 (Exhibit “D”), United States Patent No. 6,745,259 (Exhibit “E”), and United States Patent No. 6,907,476 (Exhibit “F”), including the right to bring suit for patent infringement. The above-listed Datascape patents are hereinafter collectively referred to as the “Datascape patents-in-suit.”

6. Defendant, UTStarcom, Inc. (“UTS”), is a Delaware Corporation with a principal place of business at 1275 Harbor Bay Parkway, Alameda, California 94502. UTS’ registered agent in the State of Georgia is CT Corporation, 1201 Peachtree Street, N.E., Atlanta, Georgia 30361.

7. Upon information and belief, Defendant, Personal Communications Devices, LLC (PCD) (collectively with UTS “Defendants”), is a Delaware

corporation with its principal place of business at 555 Wireless Blvd, Hauppauge, New York. Upon information and belief, PCD's registered agent in the State of New York is C/O Corporation Service Co., 80 State Street, Albany, New York.

8. Upon information and belief, UTS sold off its telephone communications division to PCD on or around July 1, 2008.

9. Upon information and belief, UTS designs, manufactures or provides PCD with Internet-based hand held devices to be sold in the United States.

10. Upon information and belief, Defendants have and continue to infringe the Datascope patents-in-suit in the State of Georgia, within this judicial district, and elsewhere throughout the United States. Upon information and belief, Defendants are subject to the personal jurisdiction of this Court.

THE CONTROVERSY

11. The Datascope patents-in-suit are valid and enforceable.

12. The Datascope patents-in-suit have been licensed by Datascope.com, the American Express Company, Nokia Corporation, Samsung Electronics Company Limited, LG Electronics Inc., Sanyo Electric Co., Ltd., Matsushita Electric Industrial Co. Ltd., Motorola, Inc., Pantech & Curitel Communications, Inc., and others.

13. The Defendants have in the past or currently make, offer for sale, sell, import into the United States, and/or use one or more products and/or processes that

infringe each one of the six Datascape patents-in-suit. Datascape specifically refers to, and incorporates by reference, upon information and belief, its Patent Local Rule 4.1 Infringement Contentions, served on UTS on April 5, 2006, to more fully explain how and why Defendants infringe one or more claims of each of the six Datascape patents-in-suit.

14. In particular, the Defendants offer for sale, sell and/or sold Internet-enabled wireless handsets that infringe one or more claims of each of the six Datascape patents-in-suit. For example, upon information and belief, Defendants offer for sale, sell or have sold of one or more of Defendants' Internet-enabled wireless handsets having Model Nos. CDM1450M, CDM7075VW, CDM7126C, CDM7126M, CDM8074VM, CDM8932, CDM8964, GTX75, TXT8010, MP6900SP, PLS5800KTQ, CDM8450SP, CDM8600, CDM8600BA, CDM8900M, CDM8900VW, CDM8910M, CDM8910CS, CDM8910VW, CDM8940, CDM9950SP, PM8912, and PM8920KIT that infringe one or more claims of each of the six Datascape patents-in-suit. Additional infringing Internet-enabled wireless handsets are identified, upon information and belief, in Datascape's Patent Local Rule 4.1 Infringement Contentions, which are incorporated herein by reference.

15. In addition, Defendants' offer for sale and/or selling of Wi-Fi handsets also infringe one or more claims of each of the six Datascape patents-in-suit. For example, upon information and belief, Defendants' offers for sale and selling of one or more of Defendants' Wi-Fi handsets having Model Nos. F1000 and F3000 infringe one or more claims of each of the six Datascape patents-in-suit.

16. Datascape placed UTS on notice of its past, present, and future infringement of Datascape's United States Patent No. 5,742,845, United States Patent No. 5,905,908, and United States Patent No. 6,366,967 no later than December 2, 2003. UTS had knowledge of these three patents, and its infringement of these patents, since at least December 2, 2003.

17. Pursuant to 35 U.S.C. §154(d)(1), Datascape placed UTS on notice of its past, present, and future infringement of Datascape's then-pending U.S. Published Patent Application No. 10/213,959, which matured into U.S. Patent No. 6,684,269, and then-pending U.S. Published Patent Application No. 09/907,076, which matured into U.S. Patent No. 6,745,259, no later than December 2, 2003. UTS had knowledge of these two patent applications, and its infringement of the claims of these two patents, since at least December 2, 2003.

18. Datascape placed UTS on notice of its past, present, and future infringement of Datascape's United States Patent No. 6,907,476 no later than

December 15, 2005. Defendant had knowledge of this patent, and its infringement of this patent, since at least December 15, 2005.

19. Upon information and belief, PCD knew of its infringement before purchasing UTS' personal communications division because it reviewed UTS' documents during the due diligence process normally conducted when a company purchases corporate assets.

20. Upon information and belief, Defendants have directly infringed Datascape's U.S. Patent No. 6,684,269, U.S. Patent No. 6,745,259, and U.S. Patent No. 6,907,476, in violation of 35 U.S.C. §271(a), by making, selling, offering for sale, and/or importing Internet-enabled wireless handsets.

21. Upon information and belief, Defendants have also directly infringed at least Datascape's U.S. Patent No. 6,684,269, U.S. Patent No. 6,745,259, and U.S. Patent No. 6,907,476, in violation of 35 U.S.C. §271(a), by making, selling, offering for sale, and/or importing Wi-Fi handsets.

22. Upon information and belief, Defendants have knowingly contributed to the direct infringement of each of the six Datascape patents-in-suit by third parties, in violation of 35 U.S.C. §271(c). More specifically, the direct infringement of the Datascape patents-in-suit occurs when third party end users of

Defendants' Internet-enabled wireless handsets use Defendants' handsets to access information on the Internet.

23. Defendants' Internet-enabled wireless handsets are not staple articles of commerce. Indeed, upon information and belief, Defendants' Internet-enabled wireless handsets have been intentionally and deliberately especially made to infringe the Datascope patents-in-suit through the ability of the handsets to access the Internet.

24. Upon information and belief, Defendants have knowingly, intentionally, and actively induced the direct infringement of each of the six Datascope patents-in-suit by third parties, in violation of 35 U.S.C. §271(b). More specifically, the direct infringement of the Datascope patents-in-suit occurs when third party end users of Defendants' Internet-enabled wireless handsets use Defendants' handsets to access information on the Internet.

25. Upon information and belief, Defendants have in the past and continue to actively and intentionally induce third party end users of their Internet-enabled wireless handsets to directly infringe the Datascope patents-in-suit by encouraging and instructing these third party users to use Defendants' Internet-enabled wireless handsets to access the Internet. For example, through at least its Internet Web site and printed publications, such as user manuals, UTS

has intentionally and actively induced third party end users of its handsets to infringe the Datascape patents-in-suit.

26. Upon information and belief, Defendants have specifically intended that these third party end users of their Internet-enabled wireless handsets directly infringe the Datascape patents-in-suit.

27. Upon information and belief, Defendants have knowingly contributed to the direct infringement of Datascape's U.S. Patent No. 5,905,908, U.S. Patent No. 6,366,967, U.S. Patent No. 6,684,269, U.S. Patent No. 6,745,259, and U.S. Patent No. 6,907,476 by third parties, in violation of 35 U.S.C. §271(c), for another reason. More specifically, the direct infringement of these five Datascape patents occurs when third party end users of Defendants' Wi-Fi handsets use Defendants' handsets to communicate over the Internet.

28. Defendants' Wi-Fi handsets are not staple articles of commerce. Indeed, upon information and belief, Defendants' Wi-Fi handsets have been intentionally and deliberately especially made to infringe the five Datascape patents mentioned in paragraph 27 through the ability of the handsets to communicate over the Internet.

29. Upon information and belief, Defendants have knowingly, intentionally, and actively induced the direct infringement of Datascape's U.S.

Patent No. 5,905,908, U.S. Patent No. 6,366,967, U.S. Patent No. 6,684,269, U.S. Patent No. 6,745,259, and U.S. Patent No. 6,907,476 by third parties, in violation of 35 U.S.C. §271(b). More specifically, the direct infringement of these five Datascape patents occurs when third party end users of Defendants' Wi-Fi handsets use Defendants' handsets to communicate over the Internet.

30. Upon information and belief, Defendants have in the past and continue to actively and intentionally induce third party end users of their Wi-Fi handsets to directly infringe the five Datascape patents identified in paragraph 27 by encouraging and instructing these third party users to use Defendant's Wi-Fi handsets to communicate over the Internet. For example, through at least its Internet Web site and printed publications, such as user manuals, UTS has intentionally and actively induced third party end users of its Wi-Fi handsets to infringe these five Datascape patents.

31. Upon information and belief, Defendants specifically intended that these third party end users of their Wi-Fi handsets directly infringe these five Datascape patents.

COUNT ONE: PATENT INFRINGEMENT

U.S. PATENT NO. 5,742,845

32. Datascape realleges and incorporates herein the allegations of paragraphs 1 through 31 of this Complaint as if fully set forth herein.

33. Upon information and belief, Defendants have engaged in the manufacture, offer for sale, sale, import, and/or use of products and/or processes that constitute contributory infringement and inducement to infringe one or more claims of U.S. Patent No. 5,742,845 in violation of 35 U.S.C. §271. The infringing products and/or processes made, offered for sale, sold, imported, and/or used by Defendants comprise at least Defendants' Internet-enabled wireless handsets and Defendants' Wi-Fi handsets.

34. Defendants' infringement of U.S. Patent No. 5,742,845 have been, and continue to be, deliberate and willful.

35. Datascape has and continues to suffer damages as a direct and proximate result of Defendants' infringement of U.S. Patent No. 5,742,845 and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing infringement. Datascape has no adequate remedy at law.

36. Datascape is entitled to: (1) damages adequate to compensate it for Defendants' infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorneys' fees and costs; and (4) a preliminary and permanent injunction.

COUNT TWO: PATENT INFRINGEMENT

U.S. PATENT NO. 5,905,908

37. Datascope realleges and incorporates herein the allegations of paragraphs 1 through 36 of this Complaint as if fully set forth herein.

38. Upon information and belief, Defendants have engaged in the manufacture, offer for sale, sale, import, and/or use of products and/or processes that constitute contributory infringement and inducement to infringe one or more claims of U.S. Patent No. 5,905,908 in violation of 35 U.S.C. §271. The infringing products and/or processes made, offered for sale, sold, imported, and/or used by Defendants comprise at least Defendants' Internet-enabled wireless handsets and Defendants' Wi-Fi handsets.

39. Defendants' infringement of U.S. Patent No. 5,905,908 have been, and continue to be, deliberate and willful.

40. Datascope has and continues to suffer damages as a direct and proximate result of Defendants' infringement of U.S. Patent No. 5,905,908 and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing infringement. Datascope has no adequate remedy at law.

41. Datascope is entitled to: (1) damages adequate to compensate it for Defendants' infringement, which amounts to, at a minimum, a reasonable royalty;

(2) treble damages; (3) its attorneys' fees and costs; and (4) a preliminary and permanent injunction.

COUNT THREE: PATENT INFRINGEMENT

U.S. PATENT NO. 6,366,967

42. Datascope realleges and incorporates herein the allegations of paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Upon information and belief, Defendants have engaged in the manufacture, offer for sale, sale, import, and/or use of products and/or processes that constitute contributory infringement and inducement to infringe one or more claims of U.S. Patent No. 6,366,967 in violation of 35 U.S.C. §271. The infringing products and/or processes made, offered for sale, sold, imported, and/or used by Defendants comprise at least Defendants' Internet-enabled wireless handsets and Defendants' Wi-Fi handsets.

44. Defendants' infringement of U.S. Patent No. 6,366,967 have been, and continue to be, deliberate and willful.

45. Datascope has and continues to suffer damages as a direct and proximate result of Defendants' infringement of U.S. Patent No. 6,366,967 and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing infringement. Datascope has no adequate remedy at law.

46. Datascope is entitled to: (1) damages adequate to compensate it for Defendant's infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorneys' fees and costs; and (4) a preliminary and permanent injunction.

COUNT FOUR: PATENT INFRINGEMENT

U.S. PATENT NO. 6,684,269

47. Datascope realleges and incorporates herein the allegations of paragraphs 1 through 46 of this Complaint as if fully set forth herein.

48. Upon information and belief, Defendants have engaged in the manufacture, offer for sale, sale, import, and/or use of products and/or processes that constitute direct infringement, contributory infringement, and inducement to infringe one or more claims of U.S. Patent No. 6,684,269 in violation of 35 U.S.C. §271. The infringing products and/or processes made, offered for sale, sold, imported, and/or used by Defendants comprise at least Defendants' Internet-enabled wireless handsets and Defendants' Wi-Fi handsets.

49. Defendants' infringement of U.S. Patent No. 6,684,269 have been, and continue to be, deliberate and willful.

50. Datascope has and continues to suffer damages as a direct and proximate result of Defendant's infringement of U.S. Patent No. 6,684,269 and will suffer additional and irreparable damages unless Defendants are permanently

enjoined by this Court from continuing infringement. Datascape has no adequate remedy at law.

51. Datascape is entitled to: (1) damages adequate to compensate it for Defendant's infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorneys' fees and costs; and (4) a preliminary and permanent injunction.

COUNT FIVE: PATENT INFRINGEMENT

U.S. PATENT NO. 6,745,259

52. Datascape realleges and incorporates herein the allegations of paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. Upon information and belief, Defendants have engaged in the manufacture, offer for sale, sale, import, and/or use of products and/or processes that constitute direct infringement, contributory infringement, and inducement to infringe one or more claims of U.S. Patent No. 6,745,259 in violation of 35 U.S.C. §271. The infringing products and/or processes made, offered for sale, sold, imported, and/or used by Defendants comprise at least Defendants' Internet-enabled wireless handsets and Defendants' Wi-Fi handsets.

54. Defendants' infringement of U.S. Patent No. 6,745,259 have been, and continue to be, deliberate and willful.

55. Datascope has and continues to suffer damages as a direct and proximate result of Defendant's infringement of U.S. Patent No. 6,745,259 and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing infringement. Datascope has no adequate remedy at law.

56. Datascope is entitled to: (1) damages adequate to compensate it for Defendant's infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorneys' fees and costs; and (4) a preliminary and permanent injunction.

COUNT SIX: PATENT INFRINGEMENT

U.S. PATENT NO. 6,907,476

57. Datascope realleges and incorporates herein the allegations of paragraphs 1 through 56 of this Complaint as if fully set forth herein.

58. Upon information and belief, Defendants have engaged in the manufacture, offer for sale, sale, import, and/or use of products and/or processes that constitute direct infringement, contributory infringement, and inducement to infringe one or more claims of U.S. Patent No. 6,907,476 in violation of 35 U.S.C. §271. The infringing products and/or processes made, offered for sale, sold, imported, and/or used by Defendants comprise at least Defendants' Internet-enabled wireless handsets and Defendants' Wi-Fi handsets.

59. Defendants' infringement of U.S. Patent No. 6,907,476 have been, and continue to be, deliberate and willful.

60. Datascope has and continues to suffer damages as a direct and proximate result of Defendant's infringement of U.S. Patent No. 6,907,476 and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing infringement. Datascope has no adequate remedy at law.

61. Datascope is entitled to: (1) damages adequate to compensate it for Defendant's infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorneys' fees and costs; and (4) a preliminary and permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Datascope, Inc. seeks the following relief:

a. That Defendants be ordered to pay damages adequate to compensate Datascope for Defendants' infringement of the Datascope patents-in-suit pursuant to 35 U.S.C. §284;

b. That Defendants be ordered to pay treble damages and attorneys' fees pursuant to 35 U.S.C. §§284 and 285;

- c. That Defendants be enjoined from further infringement of the Datascope patents-in-suit pursuant to 35 U.S.C. §283;
 - d. That Defendants be ordered to pay prejudgment interest;
 - e. That Defendants be ordered to pay all costs associated with this action;
- and
- f. That Datascope be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Datascope demands a trial by jury of all issues triable of right by a jury.

THIS 8th day of April, 2009.

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

/s/ Heidi H. Raschke

A. James Anderson
Georgia Bar No. 016300
J. Scott Culpepper
Georgia Bar No. 200950
Heidi H. Raschke
Georgia Bar No. 594937
2600 One Atlanta Plaza
950 East Paces Ferry Road, N.E.
Atlanta, GA 30326-1119
Telephone: 404.760.4300
Facsimile: 404.233.1267
Email: ajanderson@rkmc.com
Email: jsculpepper@rkmc.com

Email: hraschke@rkmc.com

William J. Rocha, admitted *pro hac vice*
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
800 Boylston Street, 25th Floor
Boston, MA 02199
Telephone: 617.859.2769
Facsimile: 617.267.8288
Email: wjrocha@rkmc.com

Attorneys for Plaintiff, Datascape, Inc.

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UTSTARCOM, INC.)
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PERSONAL COMMUNICATIONS)
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JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2009, I electronically filed the **Second Amended Complaint** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Steven W. Hardy, Esq.
FRIEND, HUDAK & HARRIS, LLP
Three Ravinia Drive, Suite 1450
Atlanta, GA 30346

Richard F. Cauley, Esq.
WANG, HARTMANN, GIBBS &
CAULEY, P.C.
2750 West El Camino
Suite 440
Mountain View, California 94040

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

/s/ Heidi H. Raschke

A. James Anderson
Georgia Bar No. 016300
J. Scott Culpepper
Georgia Bar No. 200950
Heidi H. Raschke
Georgia Bar No. 594937
2600 One Atlanta Plaza
950 East Paces Ferry Road, N.E.
Atlanta, GA 30326-1119
Telephone: 404.760.4300
Facsimile: 404.233.1267
Email: ajanderson@rkmc.com
Email: jsculpepper@rkmc.com
Email: hraschke@rkmc.com

William J. Rocha, admitted *pro hac vice*
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
800 Boylston Street, 25th Floor
Boston, MA 02199
Telephone: 617.859.2769
Facsimile: 617.267.8288
Email: wjrocha@rkmc.com

Attorneys for Plaintiff, Datascape, Inc.