

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMBIT CORPORATION,)	
)	
Plaintiff,)	C. A. No. 09-11408-WGY
)	
v.)	
)	JURY TRIAL DEMANDED
DELTA AIR LINES, INC. and)	
AIRCELL LLC,)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

Plaintiff AMBIT Corporation (“AMBIT” or “Plaintiff”), by and through its attorneys, hereby demands a jury trial and complains of Defendants Delta Air Lines, Inc. (“Delta”) and Aircell LLC (“Aircell”), individually or collectively referred to as “Defendant” or “Defendants” as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement resulting from Defendants’ “Gogo[®] Inflight Internet” system and service, which allows passengers on Gogo[®]-equipped flights, including Delta flights as well as flights by other airlines, to use personal communication devices, such as a Blackberry[®], iPhone[®] or laptop computer, while in flight, including flights to and from Logan International Airport in Boston, Massachusetts. The Defendants’ system and service infringes one or more claims of United States Patent No. 7,580,733 (the “ ’733 Patent”), which issued on August 25, 2009, according to the United States Patent and Trademark Office (a copy of which is attached as Exhibit A).

THE PARTIES

2. AMBIT Corporation is a corporation organized and existing under the laws of Delaware with a place of business at Ashland Technology Laboratory, 72 Nickerson Road, Ashland, Massachusetts 01721.

3. Plaintiff AMBIT is the lawful assignee of all right, title and interest in and to the '733 Patent.

4. Upon information and belief, Defendant Delta Air Lines, Inc. is a corporation organized and existing under the laws of Delaware with a principal place of business in Atlanta, Georgia, and which regularly conducts business in this judicial district. Delta Air Lines, Inc. is a registered foreign corporation in this judicial district with a Registered Agent at Corporation Service Company, 84 State Street, Boston, Massachusetts 02109.

5. Upon information and belief, Defendant Aircell LLC is a limited liability company organized and existing under the laws of Delaware with a principal place of business in Itasca, Illinois, and which regularly conducts business in this judicial district.

JURISDICTION AND VENUE

6. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction pursuant to 35 U.S.C. §§ 271 *et seq.* and 28 U.S.C. §§ 1331 and 1338.

7. This Court has personal jurisdiction over Defendants because this action arises from (a) Defendants' infringing activity in Massachusetts; and (b) Defendants' causing injury in Massachusetts by reason of their infringing activity outside Massachusetts and because Defendants do or solicit business in Massachusetts or derive substantial revenue from the sale of services provided in Massachusetts.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

COUNT I

(Patent Infringement of United States Patent No. 7,580,733)

9. Paragraphs 1 through 8 are incorporated by reference as if fully restated herein.

10. Defendants, individually and/or collectively, make, use, sell, offer to sell and/or import into the United States products, services, methods or processes, including the “Gogo[®] Inflight Internet” system and service on Delta Air Lines, Inc.’s aircraft and, in the case of Aircell LLC, also on other airlines’ aircraft, in this judicial district and elsewhere that infringe the ’733 Patent directly and/or indirectly, under 35 U.S.C. §§ 271(a), (b) and (c).

11. Defendants individually and/or collectively have been and are infringing one or more of the claims of the ’733 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court.

12. Defendants’ infringement, individually and/or collectively, has caused Plaintiff to suffer irreparable harm.

13. Plaintiff has suffered and continues to suffer damages caused by Defendants’ individual and/or collective infringement.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, granting Plaintiff the following relief:

(A) that this Court adjudge and decree that the '733 Patent is valid and enforceable against the Defendants;

(B) that this Court adjudge and decree that the Defendants, individually and/or collectively, have infringed and continue to infringe the '733 Patent;

(C) that this Court enter an award to Plaintiff of such damages against Defendants together with prejudgment interest and costs;

(D) that this Court order an award to Plaintiff of damages and other relief as provided by 35 U.S.C. §§ 284 and 285; and

(E) that this Court grant to Plaintiff such other, further, and different relief as may be just and proper.

September 18, 2009

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

/s/ Brian T. Moriarty

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