

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

**FRACTUS, S.A.**

**Plaintiff,**

**VS.**

**LG ELECTRONICS MOBILECOMM  
U.S.A., INC.; UTSTARCOM TELECOM  
CO., LTD.,**

## Defendants.



**Civil Action No. 6:09cv205**

## JURY TRIAL DEMANDED

## COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff FRACTUS, S.A. for its Complaint against Defendants LG Electronics Mobilecomm U.S.A., Inc., and UTStarcom Telecom Co., Ltd., alleges:

## THE PARTIES

1. Fractus, S.A. ("Fractus") is a foreign corporation duly organized and existing under the laws of Spain with its principal place of business in Barcelona, Spain.

2. Fractus is informed and believes, and on that basis alleges, that Defendant LG Electronics Mobilecomm U.S.A., Inc. (“LG”) is a corporation organized under the laws of the State of California, with its principal place of business located at 10101 Old Grove Rd., San Diego, California 92131.

3. Fractus is informed and believes, and on that basis alleges, that Defendant UTStarcom Telecom Co., Ltd. (“UTStarcom”) is a corporation organized and existing under the laws of China, with its principal place of business at No. 368, Liuhe Road, Binjiang District, Hangzhou 310052, China.

## JURISDICTION AND VENUE

4. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et*

*seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) in that Defendants have done business in this District, have committed acts of infringement in this District, and continue to commit acts of infringement in this District, entitling Fractus to relief. There is also no clearly more convenient venue.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,015,868**

5. On March 21, 2006, United States Patent No. 7,015,868 (the “868 patent”) was duly and legally issued for an invention entitled “Multilevel Antennae.” Fractus was assigned the '868 patent and continues to hold all rights and interest in the '868 patent. A true and correct copy of the '868 patent is attached hereto as Exhibit A.

6. LG has infringed and continues to infringe the '868 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '868 patent pursuant to 35 U.S.C. § 271.

7. UTStarcom has infringed and continues to infringe the '868 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. UTStarcom is liable for its infringement of the '868 patent pursuant to 35 U.S.C. § 271.

8. Defendants LG and UTStarcom’s acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendants the damages sustained by Fractus as a result of Defendants’ wrongful acts in an amount subject to proof at trial. Defendants’ infringement of Fractus's exclusive rights under the '868 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**INFRINGEMENT OF U.S. PATENT NO. 7,123,208**

9. On October 17, 2006, United States Patent No. 7,123,208 (the “208 patent”) was duly and legally issued for an invention entitled “Multilevel Antennae.” Fractus was assigned the '208 patent and continues to hold all rights and interest in the '208 patent. A true and correct copy of the '208 patent is attached hereto as Exhibit B.

10. LG has infringed and continues to infringe the '208 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '208 patent pursuant to 35 U.S.C. § 271.

11. UTStarcom has infringed and continues to infringe the '208 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. UTStarcom is liable for its infringement of the '208 patent pursuant to 35 U.S.C. § 271.

12. Defendants LG and UTStarcom’s acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendants the damages sustained by Fractus as a result of Defendants’ wrongful acts in an amount subject to proof at trial. Defendants’ infringement of Fractus's exclusive rights under the '208 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**INFRINGEMENT OF U.S. PATENT NO. 7,148,850**

13. On December 12, 2006, United States Patent No. 7,148,850 (the “850 patent”) was duly and legally issued for an invention entitled “Space-Filling Miniature Antennas.” Fractus was assigned the '850 patent and continues to hold all rights and interest in the '850 patent. A true and correct copy of the '850 patent is attached hereto as Exhibit C.

14. LG has infringed and continues to infringe the '850 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '850 patent pursuant to 35 U.S.C. § 271.

15. UTStarcom has infringed and continues to infringe the '850 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. UTStarcom is liable for its infringement of the '850 patent pursuant to 35 U.S.C. § 271.

16. Defendants LG and UTStarcom's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendants the damages sustained by Fractus as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of Fractus's exclusive rights under the '850 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,202,822**

17. On April 10, 2007, United States Patent No. 7,202,822 (the "822 patent") was duly and legally issued for an invention entitled "Space-Filling Miniature Antennas." Fractus was assigned the '822 patent and continues to hold all rights and interest in the '822 patent. A true and correct copy of the '822 patent is attached hereto as Exhibit D.

18. LG has infringed and continues to infringe the '822 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '822 patent pursuant to 35 U.S.C. § 271.

19. UTStarcom has infringed and continues to infringe the '822 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. UTStarcom is liable for its infringement of the '822 patent pursuant to 35 U.S.C. § 271.

20. Defendants LG and UTStarcom's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendants the damages sustained by Fractus as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of Fractus's exclusive rights under the '822 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,312,762**

21. On December 25, 2007, United States Patent No. 7,312,762 (the "762 patent") was duly and legally issued for an invention entitled "Loaded Antenna." Fractus was assigned the '762 patent and continues to hold all rights and interest in the '762 patent. A true and correct copy of the '762 patent is attached hereto as Exhibit E.

22. LG has infringed and continues to infringe the '762 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '762 patent pursuant to 35 U.S.C. § 271.

23. Defendant LG's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendant the damages sustained by Fractus as a result of Defendant's wrongful acts in an amount subject to proof at trial. Defendant's infringement of Fractus's exclusive rights under the '762 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**INFRINGEMENT OF U.S. PATENT NO. 7,394,432**

24. On July 1, 2008, United States Patent No. 7,394,432 (the “432 patent”) was duly and legally issued for an invention entitled “Multilevel Antenna.” Fractus was assigned the '432 patent and continues to hold all rights and interest in the '432 patent. A true and correct copy of the '432 patent is attached hereto as Exhibit F.

25. LG has infringed and continues to infringe the '432 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '432 patent pursuant to 35 U.S.C. § 271.

26. UTStarcom has infringed and continues to infringe the '432 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. UTStarcom is liable for its infringement of the '432 patent pursuant to 35 U.S.C. § 271.

27. Defendants LG and UTStarcom’s acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendants the damages sustained by Fractus as a result of Defendants’ wrongful acts in an amount subject to proof at trial. Defendants’ infringement of Fractus's exclusive rights under the '432 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**INFRINGEMENT OF U.S. PATENT NO. 7,397,431**

28. On July 8, 2008, United States Patent No. 7,397,431 (the “431 patent”) was duly and legally issued for an invention entitled “Multilevel Antennae.” Fractus was assigned the '431 patent and continues to hold all rights and interest in the '431 patent. A true and correct copy of the '431 patent is attached hereto as Exhibit G.

29. LG has infringed and continues to infringe the '431 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '431 patent pursuant to 35 U.S.C. § 271.

30. UTStarcom has infringed and continues to infringe the '431 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. UTStarcom is liable for its infringement of the '431 patent pursuant to 35 U.S.C. § 271.

31. Defendants LG and UTStarcom's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendants the damages sustained by Fractus as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of Fractus's exclusive rights under the '431 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,411,556**

32. On August 12, 2008, United States Patent No. 7,411,556 (the "556 patent") was duly and legally issued for an invention entitled "Multi-Band Monopole Antenna For a Mobile Communications Device." Fractus was assigned the '556 patent and continues to hold all rights and interest in the '556 patent. A true and correct copy of the '556 patent is attached hereto as Exhibit H.

33. LG has infringed and continues to infringe the '556 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '556 patent pursuant to 35 U.S.C. § 271.

34. Defendant LG's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendant the damages sustained by Fractus as a result of Defendant's wrongful acts in an amount subject to proof at trial. Defendant's infringement of Fractus's exclusive rights under the '556 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**INFRINGEMENT OF U.S. PATENT NO. 7,528,782**

35. On May 5, 2009, United States Patent No. 7,528,782 (the "782 patent") was duly and legally issued for an invention entitled "Multilevel Antennae." Fractus was assigned the '782 patent and continues to hold all rights and interest in the '782 patent. A true and correct copy of the '782 patent is attached hereto as Exhibit I.

36. LG has infringed and continues to infringe the '782 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. LG is liable for its infringement of the '782 patent pursuant to 35 U.S.C. § 271.

37. UTStarcom has infringed and continues to infringe the '782 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. UTStarcom is liable for its infringement of the '782 patent pursuant to 35 U.S.C. § 271.

38. Defendants LG and UTStarcom's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Defendants the damages sustained by Fractus as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of Fractus's exclusive rights under the '782 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.



## **WILLFUL INFRINGEMENT**

39. Upon information and belief, LG's infringement of any or all of the above-named patents is willful and deliberate, entitling Fractus to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

## **JURY DEMAND**

40. Fractus demands a trial by jury on all issues.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Fractus S.A., requests entry of judgment in its favor and against Defendants LG and UTStarcom as follows:

a) Declaration that LG has infringed U.S. Patent Nos. 7,015,868; 7,123,208; 7,148,850; 7,202,822; 7,312,762; 7,394,432; 7,397,431; 7,411,556; and 7,528,782;

b) Declaration that UTStarcom has infringed U.S. Patent Nos. 7,015,868; 7,123,208; 7,148,850; 7,202,822; 7,394,432; 7,397,431; and 7,528,782;

c) Permanently enjoining LG and its respective officers, agents, employees, and those acting in privity with it, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent Nos. 7,015,868; 7,123,208; 7,148,850; 7,202,822; 7,312,762; 7,394,432; 7,397,431; 7,411,556; and 7,528,782;

d) Permanently enjoining UTStarcom and its respective officers, agents, employees, and those acting in privity with it, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent Nos. 7,015,868; 7,123,208; 7,148,850; 7,202,822; 7,394,432; 7,397,431; and 7,528,782;

e) Awarding the damages arising out of LG and UTStarcom's infringement of U.S. Patent Nos. 7,015,868; 7,123,208; 7,148,850; 7,202,822; 7,312,762; 7,394,432; 7,397,431; 7,411,556; and/or 7,528,782, including, with respect to LG, enhanced damages pursuant to 35 U.S.C. § 284, to Fractus S.A., together with prejudgment and post-judgment interest, in an amount according to proof;

- f) An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- g) For such other costs and further relief as the Court may deem just and proper.

DATED: May 6, 2009

Respectfully submitted,

By:   
T. John Ward, Jr.  
State Bar No. 00794818  
WARD AND SMITH LAW FIRM  
111 W. Tyler St.  
Longview, Texas 75601  
Telephone (903) 757-6400  
Facsimile (903) 757-2323  
E-mail: jw@jwfirm.com

Max L. Tribble, Jr. – Lead Counsel  
State Bar No. 20213950  
mtribble@susmangodfrey.com  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002  
Telephone: (713) 651-9366  
Facsimile: (713) 654-6666

Justin A. Nelson  
State Bar No. 24034766  
jnelson@susmangodfrey.com  
Genevieve Vose  
WA Bar No. 38422  
gvose@susmangodfrey.com  
SUSMAN GODFREY L.L.P.  
1201 Third Ave, Suite 3800  
Seattle, WA 98101  
Telephone: (206) 516-3880  
Facsimile: (206) 516-3883

Michael F. Heim  
State Bar No. 09380923  
mheim@hpcllp.com  
Fiona A. Bell  
State Bar No. 24052288  
fbell@hpcllp.com  
HEIM, PAYNE & CHORUSH, L.L.P.  
600 Travis Street  
Suite 6710  
Houston, Texas 77002

Telephone: (713) 221-2001  
Facsimile: (713) 221-2021

S. Calvin Capshaw, State Bar No. 03783900  
Elizabeth L. DeRieux, State Bar No. 05770585  
CAPSHAW DERIEUX, LLP  
1127 Judson Road, Suite 220  
P. O. Box 3999  
Longview, Texas 75601-5157  
Telephone: (903) 236-9800  
Facsimile: (903) 236-8787  
ccapshaw@capshawlaw.com  
ederieux@capshawlaw.com

Attorneys for FRACTUS S.A.