

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

ATWATER PARTNERS OF TEXAS LLC,

Plaintiff,

v.

AT&T, INC. *et al.*

Defendants.

Case No. 2:10-cv-00175-TJW

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1. This is an action for patent infringement in which Atwater Partners of Texas LLC (“Atwater” or “Plaintiff”) makes the following allegations against ADTRAN, Inc. and Eastex Telephone Cooperative, Inc. (“Defendants”).

PARTIES

2. Plaintiff Atwater is a Texas Limited Liability Company with its principal place of business at 911 N.W. Loop 281, Ste. 27, Longview, Texas, 75604.

3. On information and belief, ADTRAN, Inc. (“ADTRAN”) is a Delaware corporation with its principal place of business at 901 Explorer Blvd., Huntsville, AL 35806. ADTRAN may be served through its registered agent CT Corp. System, 350 N. St. Paul Street, Dallas, Texas 75201.

4. On information and belief, Eastex Telephone Cooperative, Inc. (“Eastex”) is a Texas corporation with its principal place of business at 3675 US Hwy. 79 S, Henderson, TX 75654-5760. Eastex may be served through its registered agent and CEO Allen Dorman at 3675 US HWY 79 S, Henderson, TX 75654-5760.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendants have transacted business in this district, and have committed and/or induced acts of patent infringement in this district.

7. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

COUNT I INFRINGEMENT OF U.S. PATENT NO. 6,490,296

8. Plaintiff is the owner by assignment of United States Patent No. 6,490,296 ("the '296 Patent") entitled "Multi-Link Segmentation and Reassembly for Bonding Multiple PVC's in an Inverse Multiplexing Arrangement" – including all rights to recover for past and future acts of infringement. The '296 Patent issued on December 3, 2002. A true and correct copy of the '296 Patent is attached as Exhibit A.

9. On information and belief, ADTRAN has been and now is directly infringing, and/or inducing infringement by others, including customers of ADTRAN, and/or contributing to the infringement by others, including customers of ADTRAN, of the '296 Patent in this judicial district, and elsewhere in the United States. Infringements by ADTRAN include, without

limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, including at least ADTRAN's Total Access 5000 ADSL2+ COMBO 24-Port Access Module, Total Access 1148A DSLAM, and Total Access 1248 GigE IP Mini-DSLAM, infringing one or more claims of the '296 Patent. ADTRAN has contributed to and induced the infringement of the '296 Patent by making, using, offering for sale and selling the Accused Products to its customers, knowing that they are specially adapted for performing one or more methods claimed in the '296 Patent, and do not have a substantial non-infringing use. ADTRAN is thus liable for infringement of the '296 Patent under 35 U.S.C. § 271(a), (b) & (c).

10. On April 6, 2001, ADTRAN issued a press release reporting that it has entered into a deal with Eastex whereby Eastex will employ the accused Total Access 5000 in a "major expansion project" to provide services "throughout its customer base of more than 30,000 subscribers." *See* ADTRAN's press release attached as Exhibit B. According to the press release, Eastex assistant manager Rusty Dorman is quoted as saying "ADTRAN's Total Access 5000 will allow Eastex to meet subscribers' demand for a wide variety of services for years to come." *See* Exhibit B, second paragraph.

11. On information and belief, Eastex has been and now is directly infringing, and/or inducing infringement by others, including customers of Eastex, and/or contributing to the infringement by others, including customers of Eastex, of the '296 Patent in this judicial district, and elsewhere in the United States. Infringements by Eastex include, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, including at least ADTRAN's Total Access 5000 ADSL2+ COMBO 24-Port Access Module, infringing one or more claims of the '296 Patent. Eastex has contributed to and induced

the infringement of the '296 Patent by making, using, offering for sale and selling the Accused Product to its customers, knowing that it is specially adapted for performing one or more methods claimed in the '296 Patent, and does not have a substantial non-infringing use. Eastex is thus liable for infringement of the '296 Patent under 35 U.S.C. § 271(a), (b) & (c).

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 7,161,953

12. Plaintiff is the owner by assignment of United States Patent No. 7,161,953 (“the '953 Patent”) entitled “Bonding Mutiple G.SHDSL Links” – including all rights to recover for past and future acts of infringement. The '953 Patent issued on January 9, 2007. A true and correct copy of the '953 Patent is attached as Exhibit B.

13. On information and belief, ADTRAN has been and now is directly infringing, and/or inducing infringement by others, including customers of ADTRAN, and/or contributing to the infringement by others, including customers of ADTRAN, of the '953 Patent in this judicial district, and elsewhere in the United States. Infringements by ADTRAN include, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, at least ADTRAN’s Total Access 3000 Hi-Cap 23-inch Chassis, infringing one or more claims of the '953 Patent. ADTRAN has contributed to and induced the infringement of the '953 Patent by making, using, offering for sale and selling the Accused Product to its customers, knowing that it is specially adapted for performing one or more methods claimed in the '953 Patent, and does not have a substantial non-infringing use. ADTRAN is thus liable for infringement of the '953 Patent under 35 U.S.C. § 271(a), (b) & (c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

1. A judgment in favor of Plaintiff that Defendants have infringed, directly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '296 Patent;

2. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '296 Patent;

3. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '296 Patent as provided under 35 U.S.C. § 284;

4. A judgment in favor of Plaintiff that Defendants have infringed, directly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '953 Patent;

5. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '953 Patent;

6. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '953 Patent as provided under 35 U.S.C. § 284;

7. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and

8. Any and all other relief to which Plaintiff may show itself to be entitled.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: April 14, 2011

Respectfully submitted,

/s/ Darrell G. Dotson

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