

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Greenbelt Division

TELCOM NETWORK OPTIMIZATION, §  
LLC d/b/a WIDER NETWORKS, §  
881 Ponce de Leon Ave., NE, Suite 10 §  
Atlanta, GA 30306 §

Plaintiff, §

v. §

Civil Action No. \_\_\_\_\_

PC-TEL, INC., §  
20410 Observation Drive, Suite 200 §  
Germantown, MD 20876 §  
Montgomery County §

Serve: §  
The Corporation Trust Incorporated, §  
Resident Agent §  
300 E. Lombard St. §  
Baltimore, MD 21202 §

Defendant. §

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT  
AND DECLARATORY JUDGMENT**

Plaintiff Telcom Network Optimization, LLC d/b/a Wider Networks (“TNO”), by and through its counsel, files this Complaint for Patent Infringement and Declaratory Judgment against Defendant PC-TEL, Inc. (“PC-TEL”), seeking damages, injunctive relief, and other relief for the infringement of U.S. Patent No. 6,754,487, and seeking declaratory relief with respect to U.S. Patent No. 6,391,235, and hereby alleges as follows:

**THE PARTIES**

1. TNO is a Limited Liability Company organized and existing under the laws of the State of Georgia, with its principal place of business at 881 Ponce de Leon Avenue, N.E., Suite 10, Atlanta, Georgia 30306.

2. Upon information and belief, PC-TEL is a corporation organized and existing under the laws of the State of Delaware, having a corporate division with its principal place of business at 20410 Observation Drive, Suite 200, Germantown, Maryland 20876.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement and for declaratory relief arising under the United States Patent Act, 35 U.S.C. § 1, *et seq.*

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court may declare the rights and other legal relations of the parties pursuant to 28 U.S.C. §§ 2201 and 2202 because there is a case of actual controversy within this Court's jurisdiction.

6. This Court has personal jurisdiction over PC-TEL because, upon information and belief, it regularly and continuously conducts substantial business in Maryland and within this judicial district and division, and because PC-TEL has voluntarily availed itself of the laws and regulations of Maryland and this judicial district and division, including, without limitation, the initiation of a related lawsuit against an affiliate of TNO, Wider Networks, LLC, currently pending as Case No. 8:09-cv-654 RWT (the "PC-TEL lawsuit").

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

### **BACKGROUND**

8. TNO was formed as a Georgia Limited Liability Company in August, 2000. TNO is and always has been privately held and controlled by its founders, Alan David Sanders (“Sanders”) and Perry Simon Lewars Linder (“Linder”), who continue to serve as its principal officers. Since in or about 2003, TNO has done business as “Wider Networks,” which has become a recognized leader in the provision of certain wireless communication equipment and services.

9. Sanders and Linder are inventors of certain technology related to the development of what are known as drive test radiofrequency (“RF”) scanners. The purpose of such devices, among other things, is to detect, identify, and assess sources of co-channel interference that may adversely affect the signal quality in cellular and wireless networks. Sanders and Linder have been working in this field since at least 1995.

10. The commercialization of the Sanders and Linder inventions has been accomplished under the auspices of various business entities privately-held and controlled by Sanders and Linder. These include Netstart, Inc., which operated as a Georgia corporation from October 1994 until May 2003; TNO, the Plaintiff in the present action, which has been doing business as “Wider Networks” since on or about 2003; and, most recently, Wider Networks, LLC, the named defendant in the PC-TEL lawsuit pending in this Court, which is a Georgia Limited Liability Company formed by Sanders and Linder in March 2007, and which also refers to itself in marketing and promotional materials as “Wider Networks.”

11. These commercialization efforts regarding the Sanders and Linder inventions have led to what is now marketed and sold by TNO and by Wider Networks, LLC as the “WIND

3G” drive test RF scanner (“the WIND 3G product”). The WIND 3G product, among other things, can be used to measure and identify co-channel interference in a wireless network.

12. Upon information and belief, PC-TEL manufactures and sells its own drive test RF scanners. At least one such PC-TEL product is marketed by PC-TEL as the “CLARIFY Interference Management System” (the “CLARIFY product”), which purports to measure and identify co-channel interference in a wireless network.

13. TNO and PC-TEL are competitors insofar as each manufactures, offers to sell, and sells competing drive test RF scanners. The primary market for such products includes the various cellular and wireless network owners/operators such as Verizon Wireless and AT&T.

#### **THE PATENT-IN-SUIT OWNED BY TNO**

14. Sanders and Linder are the principal named inventors on U.S. Patent No. 6,754,487, issued on June 22, 2004, and entitled “Radio Network Test Analysis System” (“the ‘487 Patent”).<sup>1</sup> A true and accurate copy of the ‘487 Patent is attached hereto as Exhibit 1.

15. TNO is the owner of all right, title, and interest in and to the ‘487 Patent.

16. The WIND 3G product is protected by the ‘487 Patent.

17. Upon information and belief, PC-TEL’s CLARIFY product uses or comprises technology covered by at least one claim of the ‘487 Patent.

#### **THE PC-TEL LAWSUIT**

18. In the PC-TEL lawsuit, PC-TEL has asserted that it owns all right, title, and interest in and to U.S. Patent No. 6,931,235, issued on August 16, 2005, and entitled “Method and Apparatus for Co-Channel Interference Measurements and Base Station Color Code

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<sup>1</sup> The ‘487 Patent also includes Thomas Gregory Pratt, Anthony Jerome Dickherber, Timothy Scott Floyd, and Leslie Westhaver Pickering as named inventors.

Decoding for Drive Tests in TDMA, Cellular, and PCS Networks” (“the ‘235 Patent”). A true and accurate copy of the ‘235 Patent is attached hereto as Exhibit 2.

19. PC-TEL has asserted that the CLARIFY product is an embodiment of technology claimed in the ‘235 Patent.

20. In the PC-TEL lawsuit, PC-TEL has alleged that its alleged ownership of the ‘235 Patent derives from an assignment by its so-called predecessor in interest, Dynamic Telecommunications, Inc. (“DTI”), and that DTI obtained its alleged ownership of the ‘235 Patent by assignment from the named inventors, Paul A. Kline (“Kline”) and Sergey L. Dickey (“Dickey”). In the PC-TEL lawsuit, PC-TEL further asserts that its alleged ownership rights include the right to enforce the ‘235 Patent.

21. In the PC-TEL lawsuit, PC-TEL has alleged that the WIND 3G product infringes the ‘235 Patent, and, more specifically, that Wider Networks, LLC has infringed one or more claims of the ‘235 Patent, in violation of 35 U.S.C. § 271, by making, using, offering to sell, and/or selling the WIND 3G product.

22. In the PC-TEL lawsuit, Wider Networks, LLC has denied PC-TEL’s infringement allegations, and has specifically asserted that the making, using, offering to sell, and/or selling the WIND 3G product does not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the ‘235 Patent. In the PC-TEL lawsuit, Wider Networks, LLC has further asserted that, upon information and belief, one or more of the claims in the ‘235 Patent is invalid and that the ‘235 Patent is unenforceable at least because of laches and/or equitable estoppel.

**THE PRESENCE OF AN ACTUAL AND JUSTICIABLE CONTROVERSY  
BETWEEN TNO AND PC-TEL**

23. Upon information and belief, sometime in 2002, PC-TEL, and/or the principals of DTI, including at least Kline and Dickey, became aware of efforts by Sanders and Linder, and their related business entities, including at least TNO, to develop and sell drive test RF scanner technology in the cellular and wireless communication field.

24. Shortly thereafter, PC-TEL and/or the principals of DTI, including at least Kline and Dickey, engaged in limited discussions with Sanders and Linder, and their related business entities, including at least TNO, about the potential for working collaboratively to develop technology related to drive test RF scanners. No such collaborative arrangement was ever reached.

25. During and subsequent to those limited discussions, Sanders and Linder, by and through their related business entities, including at least TNO, continued their efforts to commercially develop the technology that has led to what is manufactured and sold by TNO and by Wider Networks, LLC as the WIND 3G product. Upon information and belief, at all relevant times, PC-TEL, and/or the principals of DTI, including at least Kline and Dickey, were aware of those commercial efforts.

26. The actions of PC-TEL, and/or the principals of DTI, including at least Kline and Dickey, with respect to the '235 Patent suggested or implied that PC-TEL did not intend to enforce the '235 Patent against Sanders and Linder and/or their various business entities, including at least TNO.

27. PC-TEL has not yet commenced an action for infringement of the '235 Patent against TNO. But PC-TEL did commence an action against TNO's affiliate company, Wider

Networks, LLC in the PC-TEL lawsuit on March 13, 2009. Upon information and belief, PC-TEL erroneously believes that TNO and Wider Networks, LLC are the same entity.

28. The patent-infringement allegations against Wider Networks, LLC in the PC-TEL lawsuit pertain to the making, using, offering to sell, and/or selling of the WIND 3G product, which is substantially the same as, or identical to, the product that has been sold and offered for sale by TNO.

29. Based upon the allegations in the PC-TEL lawsuit against Wider Networks, LLC, PC-TEL's mistaken belief that TNO and Wider Networks, LLC are the same entity, and the demonstrated litigious nature of PC-TEL's conduct with respect to the '235 Patent, TNO has a reasonable apprehension that it will be subject to a patent-infringement action by PC-TEL regarding the '235 Patent.

30. Upon information and belief, the making, using, offering to sell and/or selling the WIND 3G product does not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the '235 Patent.

31. Upon information and belief, one or more of the claims in the '235 Patent is invalid.

32. Upon information and belief, the '235 Patent is unenforceable at least because of laches and/or equitable estoppel.

33. Based on the foregoing, there is a substantial actual and justiciable controversy between TNO and PC-TEL at least over the non-infringement, invalidity, and/or unenforceability of the '235 Patent that is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

**COUNT ONE**

**Infringement of U.S. Patent No. 6,754,487**

34. TNO restates and incorporates by reference the allegations in Paragraphs 1-33 of its Complaint as if fully stated herein.

35. TNO owns all right, title, and interest in and to the '487 Patent.

36. Upon information and belief, PC-TEL has infringed and continues to infringe one or more claims of the '487 Patent, either directly or by contributory infringement or inducement of others to infringe, including, without limitation, by violating 35 U.S.C. §§ 271(a), (b), (c), or (f). The infringing acts include, without limitation, (i) manufacturing, using, offering for sale, and/or selling in the United States; (ii) importing into the United States; and/or (iii) supplying or causing to be supplied in or from the United States for use or combination abroad, products and/or services related to a drive test RF scanner for the measurement and identification of co-channel interference in a wireless network. Upon information and belief, at least one such infringing PC-TEL product is marketed by PC-TEL as the CLARIFY product.

37. PC-TEL's acts of infringement of TNO's exclusive rights under the '487 Patent have caused and continue to cause damage to TNO, and TNO is entitled to recover, under 35 U.S.C. § 284, its damages sustained by the wrongful acts of PC-TEL in an amount to be proven at trial.

38. The continued infringing acts of TNO's exclusive rights under the '487 Patent will continue to damage TNO's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.



39. Upon information and belief, PC-TEL's infringement of TNO's exclusive rights under the '487 Patent is and has been willful and deliberate, entitling TNO to increased damages under 35 U.S.C. § 284 and rendering this an exceptional case under 35 U.S.C. § 285.

## COUNT TWO

### **Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,931,235**

40. TNO restates and incorporates by reference the allegations in Paragraphs 1-39 of its Complaint as if fully stated herein.

41. PC-TEL claims to be the owner of all right, title, and interest in the '235 Patent, including the right to enforce the '235 Patent.

42. PC-TEL has asserted that the WIND 3G product infringes the '235 Patent.

43. TNO has not infringed and does not infringe, directly, contributorily, or by inducement, any valid and enforceable claim of the '235 Patent.

44. An actual and justiciable controversy exists between TNO and PC-TEL as to whether TNO infringes any valid and enforceable claim of the '235 Patent.

45. A judicial declaration is necessary and appropriate so that TNO may ascertain its rights regarding the '235 Patent.

46. PC-TEL's conduct renders this an exceptional case under 35 U.S.C. § 285.

## COUNT THREE

### **Declaratory Judgment of Invalidity of U.S. Patent No. 6,931,235**

47. TNO restates and incorporates by reference the allegations in Paragraphs 1-46 of its Complaint as if fully stated herein.

48. PC-TEL claims to be the owner of all right, title, and interest in the '235 Patent, including the right to enforce the '235 Patent.

49. PC-TEL has asserted that the WIND 3G product infringes the '235 Patent.

50. The claims of the '235 Patent are invalid for failure to satisfy one or more of the requirements of Title 35, United States Code, 35 U.S.C. § 100 *et seq.*, including, without limitation, §§ 101, 102, 103, and/or 112.

51. An actual justiciable controversy exists between TNO and PC-TEL as to whether the claims of the '235 Patent are invalid.

52. A judicial declaration is necessary and appropriate so that TNO may ascertain its rights as to whether the claims of the '235 Patent are invalid.

53. PC-TEL's conduct renders this an exceptional case under 35 U.S.C. § 285.

#### **COUNT FOUR**

##### **Declaratory Judgment of Unenforceability of U.S. Patent No. 6,931,235**

54. TNO restates and incorporates by reference the allegations in Paragraphs 1-53 of its Complaint as if fully stated herein.

55. The '235 Patent is unenforceable, in whole or in part, at least by the doctrines of laches and/or equitable estoppel.

56. To date, PC-TEL has not brought an action against TNO for infringing the '235 Patent, but has brought such an action against TNO's affiliate, Wider Networks, LLC. PC-TEL has been dilatory at least in delaying the filing of a lawsuit against TNO for an unreasonable and inexcusable length of time from the time PC-TEL, or its predecessors, knew or reasonably should have known of its alleged claims regarding TNO and the WIND 3G product.

57. The delay by PC-TEL, or its predecessors, in attempting to enforce the '235 Patent against TNO, if it is so allowed, will operate to the prejudice or injury of TNO.

58. The conduct of PC-TEL, or its predecessors, with respect to the '235 Patent has caused Sanders and Linder, the founders and current principal officers of TNO, and their related business entities, including at least TNO, to reasonably infer that PC-TEL does not intend to enforce the '235 Patent against TNO.

59. TNO, and its related business entities, at all times reasonably relied on the conduct of PC-TEL, or its predecessors, with respect to the '235 Patent in continuing to commercially develop the technology that has led to what is manufactured and sold as the WIND 3G product.

60. As a result of this reasonable reliance, TNO will be materially prejudiced if PC-TEL is allowed to assert that TNO infringes the '235 Patent.

61. An actual justiciable controversy exists between TNO and PC-TEL as to whether the '235 Patent is unenforceable at least due to laches and/or equitable estoppel.

62. A judicial declaration is necessary and appropriate so that TNO may ascertain its rights as to whether the '235 Patent is unenforceable.

63. PC-TEL's conduct renders this an exceptional case under 35 U.S.C. § 285.

#### **PRAYER FOR RELIEF**

WHEREFORE, TNO prays for judgment as follows:

- A. A judgment in favor of TNO on each of its claims against PC-TEL;
- B. A finding that PC-TEL infringes one or more of the claims of the '487 Patent;

C. An award granting TNO damages of at least a reasonable royalty for infringement of the '487 Patent, together with prejudgment interest as permitted by law;

D. A finding that PC-TEL's infringement of one or more of the claims of the '487 Patent is willful and deliberate, entitling TNO to increased damages under 35 U.S.C. § 284;

E. For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by PC-TEL, including, without limitation, its officers, agents, servants, employees, subsidiaries, and attorneys, and those persons acting in concert with them, including related individuals and entities, customers, representatives, dealers, and distributors;

F. A finding that PC-TEL's conduct renders this an exceptional case, entitling TNO to its reasonable attorneys' fees and costs under 35 U.S.C. § 285 or as otherwise permitted by law;

G. A declaration that TNO does not infringe any valid and enforceable claim of the '235 Patent;

H. A declaration that the claims of the '235 Patent are invalid;

I. A declaration that the '235 Patent is unenforceable at least due to laches and/or equitable estoppel; and

J. Such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

In accordance with Rule 38 of the Federal Rules of Civil Procedure, TNO respectfully demands a jury trial on all issues so triable.

Dated: June 18, 2009

Respectfully submitted,

/s/ **Richard E. Hagerty**

Richard E. Hagerty

Bar No. 05646

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