

**FILED**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEB - 7 2005 WH

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

MLR, LLC, )  
)  
Plaintiff, )  
)  
v. )  
)  
KYOCERA WIRELESS CORPORATION, )  
NOVATEL WIRELESS, INC. and )  
SIERRA WIRELESS, INC. )  
)  
Defendants. )

Civil Action No. 04 C 7044

Judge John W. Darrah  
Magistrate Judge Michael T. Mason

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, MLR, LLC ("MLR"), complains of defendants, Kyocera Wireless Corporation ("Kyocera"), Novatel Wireless, Inc. ("Novatel") and Sierra Wireless, Inc. ("Sierra"), as follows:

**NATURE OF LAWSUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. § 1338(a).

**PARTIES**

2. MLR is a Virginia limited liability company with its place of business at 24 Laguna Terrace, Palm Beach Gardens, Florida 33418. MLR owns all right, title and interest in and has standing to sue for infringement of the following United States Patents: United States Patent No. 5,353,334 ("the '334 Patent"), entitled "Interface for Connecting Computers To Radio Telephone Networks"; United States Patent No. Re. 37,141 ("the '141 Patent"), entitled "Cellular Telephone Data Communication System And Method"; United States Patent No. 5,367,563 ("the '563 Patent"), entitled "Programmable Universal Modem System And Method For Using The Same"; United States

Patent No. Re. 34,034 ("the '034 Patent"), entitled "Cellular Telephone Data Communication System and Method"; United States Patent No. 5,249,218 ("the '218 Patent") entitled "Programmable Universal Interface System"; United States Patent No. 5,640,444 ("the '444 Patent"), entitled "Methods And Apparatus For Controlling Data Transmission Using Radio Devices"; United States Patent No. 5,854,985 ("the '985 Patent"), entitled "Adaptive Omni-Modal Radio Apparatus And Methods"; United States Patent No. 6,134,453 ("the '453 Patent"), entitled "Adaptive Omni-Modal Radio Apparatus And Methods" (a divisional of the '985 Patent); and United States Patent Re. 38,645 ("the '645 Patent"), entitled "Portable Hybrid Communication System and Methods" (a divisional reissue of the United States Patent 4,972,457) (collectively the "MLR Patents"). Roughly one-half of the entire cellular telephone industry has accepted a license under the MLR Patents.

3. Defendant Kyocera is a Delaware corporation with a principal place of business at 10300 Campus Point Drive, San Diego, California 92121. Kyocera has committed acts of infringement in this judicial district and does regular business in this judicial district, including importing into the United States and selling, directly or indirectly, the cellular telephones and wireless products accused of infringement in this judicial district.

4. Defendant Novatel is a Delaware corporation having a principal place of business at 9360 Towne Centre Drive, Ste. 110, San Diego, California 92121. Novatel Wireless has committed acts of infringement in this judicial district and does regular business in this judicial district. Novatel, for example, markets services and products throughout the United States and this judicial district using its website. Novatel also sells its products through vendors and distribution channels with presences in and throughout this judicial district.

5. Defendant Sierra is a Canadian corporation having a principal place of business at 13811 Wireless Way, Richmond, British Columbia, Canada V6V 3A4. Sierra has committed acts of infringement in this judicial district and does regular business in this judicial district. Sierra, for example, markets services and products throughout the United States and this judicial district using its website. Sierra has attended and presented products at trade shows in Chicago, such as, for example, at the annual Comdex trade shows.

#### **JURISDICTION AND VENUE**

6. Each defendant transacts business in this district, including the importation into the United States, sale and/or offer for sale of infringing products in this judicial district and throughout Illinois and the United States.

7. This Court has personal jurisdiction over each defendant by virtue of each defendant's tortious acts of patent infringement, which have been committed in Illinois, and each defendant's transaction of business in Illinois.

8. MLR was previously engaged in litigation with multiple parties (including defendant Sierra and involving many of the same patents at issue in this case) in District Courts across the country. Pursuant to a hearing before the Judicial Panel for Multi-District Litigation, an order was entered on July 1, 2003, finding that "the Northern District of Illinois is an appropriate transferee forum for this litigation" and that the "Illinois forum is a central and easily accessible location for all parties." Accordingly, all of the actions were transferred for coordinated or consolidated proceedings in the Northern District of Illinois, before the Honorable Judge Amy J. St. Eve.

9. Venue is proper in this district under 28 U.S.C. §§ 1391(c)-(d) and 1400(b).

**DEFENDANTS' ACTS OF PATENT INFRINGEMENT**

10. Kyocera has infringed five of the MLR Patents through, among other activities, the manufacture, use, importation, sale and/or offer for sale of cellular telephones. Kyocera has also knowingly and intentionally induced others to infringe (such as its customers and end-users in this judicial district and throughout the United States) by willfully and intentionally aiding, assisting and encouraging their infringement.

11. For example, Kyocera's manufacture, use, importation, offer for sale and/or sale of the QCP 6035 cellular telephone, the PDQ-800, or the 7135 Smartphone constitute infringement of at least the following: claim 36 of the '444 Patent; claim 26 of the '141 Patent; claim 1 of the '453 Patent; claim 1 of the '985 Patent; and claim 25 of the '645 Patent.

12. Kyocera's infringement has injured MLR and MLR is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

13. Novatel has infringed three of the MLR patents through, among other activities, its manufacture, sale, offer for sale, use and/or importation of its wireless modem products. Novatel has also knowingly and intentionally induced others to infringe (such as its customers and end users in this judicial district and throughout the United States) by willfully and intentionally aiding, assisting and encouraging their infringement.

14. For example, Novatel's manufacture, use, importation, offer for sale and/or sale of the Novatel Wireless Merlin G301 wireless modem constitutes infringement of at least the following: claim 29 of the '141 Patent; claim 3 of the '334 Patent; and claim 36 of the '444 Patent.

15. Novatel's infringement has injured MLR and MLR is entitled to recover damages adequate to compensate it, but in no event less than a reasonable royalty.

16. Sierra has infringed three of the MLR patents through, among other activities, its manufacture, sale, offer for sale, use and/or importation of cellular telephones. Sierra has also knowingly and intentionally induced others to infringe (such as its customers and end users in this judicial district and throughout the United States) by willfully and intentionally aiding, assisting and encouraging their infringement.

17. For example, Sierra's manufacture, use, importation, offer for sale and/or sale of the "Voq Professional Phone" cellular telephones constitutes infringement of at least the following: claim 1 of the '453 Patent; claim 1 of the '985 Patent; and claim 25 of the '645 Patent.

18. Sierra's infringement has injured MLR and MLR is entitled to recover damages adequate to compensate it, but in no event less than a reasonable royalty.

#### **NOTICE AND WILLFULNESS**

19. MLR has given each defendant actual and/or constructive notice of each defendant's infringement of the MLR Patents and, in each instance, has provided detailed claim charts showing why infringement has occurred. With notice and knowledge of MLR's patents, each defendant has deliberately and willfully infringement the MLR Patents.

20. Each defendant's infringement has been willful in violation of 35 U.S.C. § 284, and has injured and will continue to injure MLR, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, importation, offers for sale and/or sale of cellular telephones and/or wireless products that fall within the scope of any of the MLR Patents.

**PRAYER FOR RELIEF**

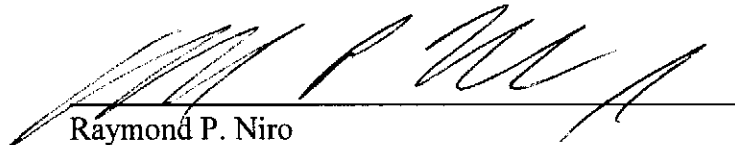
WHEREFORE, Plaintiff, MLR, asks this Court to enter judgment against each defendant and against their respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. An award of damages adequate to compensate MLR for the infringement that has occurred, together with prejudgment interest from the date infringement of the MLR Patents began;
- B. An award to MLR of all remedies available under 35 U.S.C. § 284;
- C. An award to MLR of all remedies available under 35 U.S.C. § 285;
- D. A permanent injunction prohibiting further infringement, inducement and contributory infringement of the MLR Patents; and,
- E. Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

MLR demands a trial by jury on all issues so triable.

MLR, LLC



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT** was served upon the below listed counsel of record on this 7 day of February, 2005:

on counsel for Kyocera:

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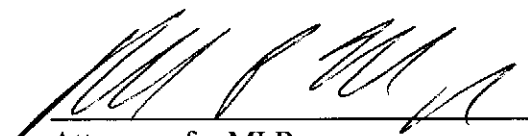
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