

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

POWERLINE INNOVATIONS, LLC,
Plaintiff,

v.

ALPHA NETWORKS, INC.
Defendant.

Civil Action No. 6:12-cv-396

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

1. Powerline Innovations, LLC (“Plaintiff”), by and through its undersigned counsel, files this Original Complaint against Alpha Networks, Inc. (“Defendant”), as follows:

NATURE OF THE ACTION

2. This is an action for (i) patent infringement to stop Defendant’s infringement of Plaintiff’s United States Patent No. 5,471,190, titled “Method and Apparatus for Resource Allocation in a Communication Network System” ((the “’190 Patent”), a copy of which is attached hereto as Exhibit A); and (ii) breach of Patent In Suit Settlement Agreement, as entered into between Plaintiff and Defendant on or around January 9, 2012 (“Settlement Agreement”). Plaintiff seeks injunctive relief and monetary damages against Defendant.

PARTIES

3. Plaintiff is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff is principally located at 555 Republic Drive, Suite 200, Plano, TX 75074. Plaintiff is authorized to do business in Texas. Plaintiff is the assignee of the ’190 Patent, and possesses all rights in the patent, including the right to sue for infringement and recover past damages.

4. On information and belief, Defendant Alpha Networks, Inc. (“Alpha”) is a California corporation with its principal place of business at 2901 Tasman Drive, Suite 109, Santa Clara, CA 95054. Alpha has appointed Hander Hsing, at its principal place of business, as its agent for service of process.

JURISDICTION & VENUE

5. This Court has subject matter jurisdiction, as this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285, giving the Court subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has jurisdiction over the Settlement Agreement claim under 28 U.S.C. § 1367, as that claim and the patent infringement claim are so related that they form part of the same case and controversy.

7. In the alternative, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity between the parties, which are domiciled in different states, and the amount in controversy is in excess of \$75,000, exclusive of interest, fees, and costs.

8. This Court has personal jurisdiction over Defendant because it agreed that jurisdiction for enforcement of the Settlement Agreement would be in the Eastern District of Texas.

9. The Court also has personal jurisdiction over Defendant because of at least the following: Defendant has minimum contacts within the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of

Texas and within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas. More specifically, Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas, and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits and has solicited customers in the State of Texas and in the Eastern District of Texas. Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas, and who each use and have used the respective Defendant's products and services in the State of Texas and in the Eastern District of Texas.

10. Venue is proper as Defendant has submitted exclusively to the Eastern District of Texas, Tyler Division, for enforcement of actions arising with respect to the subject matter of the Settlement Agreement, and expressly waived any challenge to jurisdiction.

11. Venue is further proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT

12. The '190 Patent was duly and legally issued by the United States Patent and Trademark Office on November 28, 1995, after full and fair examination. Plaintiff is the assignee of the '190 Patent, and possesses all rights of recovery under the '190 Patent with respect to the Defendant, including the right to sue for infringement and recover past damages.

13. Upon information and belief, Defendant Alpha has infringed and continues to infringe one or more claims of the '190 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by making, using, providing, offering to sell, selling, and importing (directly or through intermediaries) products, including, without limitation, WD Livewire Powerline AV Network kit products, which employ methods for establishing control relationships between plural devices in a home electrical system covered by one or more claims of the '190 Patent to the injury of Plaintiff.

COUNT II – BREACH OF SETTLEMENT AGREEMENT

14. Plaintiff and Defendant entered into a Settlement Agreement on or around January 9, 2012.

15. By way of example only, Defendant breached the Settlement Agreement due to its failure to timely report and pay royalty fees, despite notifying Plaintiff in writing that otherwise infringing sales triggered Defendant's reporting and payment obligations thereunder.

16. Plaintiff has provided Defendant with multiple written notices and opportunities to cure Defendant's breaches of the Settlement Agreement, including as required thereunder.

17. Defendant has failed to timely cure its breaches of the Settlement Agreement, and, as a result, Plaintiff has terminated Defendant's license to the '190 Patent thereunder, as authorized by the Settlement Agreement.

JURY DEMAND

Plaintiff requests a trial by jury pursuant to its rights under Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against the Defendant, and that the Court grant Plaintiff the following relief:

A. An adjudication that one or more claims of the '190 Patent have been infringed, either literally and/or under the doctrine of equivalents, by the Defendant and/or by others to whose infringement the Defendant has contributed and/or by others whose infringement has been induced by the Defendant;

B. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together, which shall not be less than a reasonably royalty;

C. That the Defendant's acts of infringement be found to be willful from the time Defendant became aware of the infringing nature of its actions, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

D. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285;

E. A declaration that Defendant has breached the Settlement Agreement and is liable to Plaintiff for breach of contract;

F. An award of damages adequate to compensate Plaintiff for Defendant's breach of the Settlement Agreement;

G. An award to Plaintiff of its reasonable attorney's fees incurred with respect to enforcement of the Settlement Agreement and the '190 Patent;

H. Pre-judgment and post-judgment interest; and

I. Any further relief that this Court deems just and proper.

Respectfully submitted,

Dated: June 20, 2012

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