

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RAPID MOBILE TECHNOLOGIES, INC.,
a Florida Corporation,

Plaintiff,

v.

MOTOROLA, INC.,
a Delaware Corporation,

Defendant.

COMPLAINT FOR WILLFUL PATENT INFRINGEMENT

Plaintiff, RAPID MOBILE TECHNOLOGIES, INC., a Florida corporation, by and through the undersigned, hereby files this Complaint for Willful Patent Infringement against MOTOROLA, INC., a Delaware Corporation, and, in so doing, states as follows:

JURISDICTION, VENUE AND THE PARTIES

1. This is an action brought pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et seq.*
2. This Court has original jurisdiction pursuant to Title 28, United States Code, Section 1331, as this case involves a federal question arising under the Constitution, laws or treaties of the United States.
3. At all times material hereto, RAPID MOBILE TECHNOLOGIES, INC., a Florida corporation (hereinafter "RAPID MOBILE"), had its principle address located in Palm Beach County, Florida.
4. At all times material hereto, MOTOROLA, INC., a Delaware Corporation (hereinafter "MOTOROLA"), was engaged in the conduct of interstate commerce, and regularly

conducted business in this judicial district and, indeed, was registered with the Florida Department of State, Division of Corporations, as a Foreign Profit Corporation. Further, MOTOROLA has a place of business located at 8000 West Sunrise Boulevard, Plantation, Florida 33322, in Broward County, Florida.

5. This action arises as a result of the infringing conduct of MOTOROLA, which implicates interstate commerce.

6. Venue is proper in the Southern District of Florida pursuant to Title 28, United States Code, Section 1391(b) and (c) as Defendant “resides” in this judicial district, as the term “reside” is interpreted under Chapter 87, United States Code, and because a substantial part of the events giving rise to the infringement claims at issue occurred within this judicial district. Venue is also appropriate pursuant to Title 28, United States Code, Section 1400(b), which provides, in part, that “[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides”.

7. All conditions precedent have been met, waived, or satisfied to bring this lawsuit.

GENERAL ALLEGATIONS

8. In 2002, Edwin A. Hernandez, PhD, the Chief Executive Officer and President of RAPID MOBILE, was a doctoral candidate graduate student at the University of Florida (hereinafter the “University”).

9. Leading up to 2002, and in that year, Dr. Hernandez was aware of the consuming and expensive tasks borne by mobile and wireless companies in connection with the testing and configurations of their respective mobile devices.

10. Intrigued by this reality, and studying the academic field of engineering in connection with his doctoral candidacy at the University, Dr. Hernandez began working on a

solution to this problem. Ultimately, through research efforts sponsored by the University, Dr. Hernandez conceived of a method and system that would utilize both hardware and software components to model and test various mobile network configurations and scenarios. Perfected, this invention significantly reduces the time and expense previously expended by mobile and wireless companies in connection with the testing and configurations of their respective mobile devices.

11. Thereafter, on or about August 12, 2002, Dr. Hernandez presented his conceived of invention to the University's patent office. Together with Abdelsalam A. Helal, then an employee of the University, Dr. Hernandez continued to perfect the characteristics of his invention.

12. On July 31, 2003, Dr. Hernandez, through the University's patent office, filed a provisional patent application with the United States Patent and Trademark Office ("USPTO").

13. On August 2, 2004, Dr. Hernandez, again through the University, filed a formal patent application with the USPTO, under application number 10/909,588, in which he and Dr. Helal were identified as co-inventors of the invention in suit.

14. Meanwhile, in and around November 2003, after successfully completing his doctoral program at the University, Dr. Hernandez was hired by MOTOROLA as an engineer. Dr. Hernandez worked for MOTOROLA at its Plantation, Florida office.

15. On or about November 17, 2003, prior to commencing his employment with MOTOROLA, Dr. Hernandez entered into a written employment agreement through which he disclosed the 10/909,588 patent application that was then pending before the USPTO. A copy of the referenced employment agreement is attached hereto as **Exhibit "A"**.

16. In response to an apparent high level of interest in his invention, following the commencement of his employment there were several instances in which Dr. Hernandez disclosed the nature and substance of his invention to MOTOROLA.

17. Indeed, in mid-October 2006, Dr. Hernandez exchanged correspondences with MOTOROLA executives wherein he provided MOTOROLA with an actual copy of his pending patent application. Conversations between MOTOROLA and Dr. Hernandez regarding Dr. Hernandez's invention continued following this exchange.

18. Ultimately, on June 12, 2007, the United States of America issued the patent over Dr. Hernandez's invention under United States Patent No. 7,231,330 ("the '330 Patent"). As a result of an assignment from Dr. Hernandez and Dr. Helal, the '330 Patent was issued to the University. A copy of the '330 Patent is attached hereto as **Exhibit "B"**.

19. Dr. Hernandez thereafter advised MOTOROLA of the issued '330 Patent.

20. On December 14, 2009, Dr. Hernandez, acting as the CEO and President of RAPID MOBILE, entered into an exclusive licensing agreement relative to the '330 Patent with the University. Amongst other privileges, said exclusive licensing agreement provides RAPID MOBILE with the exclusive right to practice, market and license the invention claimed through the '330 Patent. The exclusive licensing agreement also provides RAPID MOBILE with the right to police and enforce the parameters of the '330 Patent through any legal means, including, but not limited to, though the filing of a patent infringement lawsuit such as the instant one.

21. During Dr. Hernandez's employment, MOTOROLA was made aware of his relationship with RAPID MOBILE and the exclusive rights to the '330 Patent held by RAPID MOBILE.

22. On January 26, 2010, following additional discussions between Dr. Hernandez and MOTOROLA executives concerning the subject matter of the '330 Patent, MOTOROLA Director Chin P. Wong advised Dr. Hernandez that MOTOROLA was using the invention claimed in the '330 Patent. Mr. Wong invited Dr. Hernandez to view the system implemented by MOTOROLA at its Plantation, Florida office.

23. On January 28, 2010, Mr. Wong escorted Dr. Hernandez to the location where the subject system was implemented, and provided Dr. Hernandez access to the same. During the meeting, Dr. Hernandez was able to conclude that the system established by MOTOROLA was that which he invented and is claimed in the '330 Patent. At that same time, Mr. Wong advised Dr. Hernandez that the invention had proven successful to MOTOROLA.

24. Following the January 28, 2010 meeting with Mr. Wong, Dr. Hernandez again advised MOTOROLA of RAPID MOBILE's rights to the '330 Patent, and notified MOTOROLA that he considered their conduct (*i.e.*, using the system shown to him by Mr. Wong) to constitute literal infringement of the claims of the '330 Patent.

25. Additionally, on February 17, 2010, RAPID MOBILE corresponded in written fashion with MOTOROLA and offered a license to use the invention claimed in the '330 Patent. A copy of said correspondence is attached hereto as **Exhibit "C"**.

26. On March 1, 2010, RAPID MOBILE also engaged in a telephone conference with Edward Jay Fung and Chang Chu, both MOTOROLA executives, concerning a potential license of the '330 Patent to MOTOROLA. Dr. Hernandez was not a party to this particular communication. In connection with this meeting, RAPID MOBILE forwarded a copy of the actual '330 Patent document, along with an informational pamphlet describing the invention, to Fung and Chu.

27. Amongst other things, during the March 1, 2010 telephone conference, Mr. Chu acknowledged that MOTOROLA implemented a system that effectively performs in the manner described in the '330 Patent, but denied infringement. It was also alleged by MOTOROLA at this juncture that "several companies" were using the technology claimed in the '330 Patent; MOTOROLA to date has not identified any of the "several companies."

28. Following the March 1, 2010 telephone conference, Fung and Chu immediately confronted Dr. Hernandez at MOTOROLA offices in Plantation, Florida, and accused Dr. Hernandez of trying to sue the company. Mr. Fung asked that Dr. Hernandez not sue the company, and promised that a licensing deal of the '330 Patent would be worked out between MOTOROLA and RAPID MOBILE.

29. Sometime thereafter, upon following up with Fung and Chu concerning the March 1, 2010 conversation, Dr. Hernandez was instructed to direct all communications to MOTOROLA's legal department.

30. Accordingly, on April 12, 2010, having received no substantive follow-up communication from MOTOROLA on the issue, RAPID MOBILE communicated with MOTOROLA's Senior Intellectual Property Attorney. A copy of said correspondence is attached hereto as **Exhibit "D"**.

31. Through the April 12, 2010 correspondence, RAPID MOBILE again advised MOTOROLA of its infringing conduct, and again offered it a license of the '330 Patent.

32. On April 30, 2010, MOTOROLA responded to RAPID MOBILE advising that it was not interested in licensing the '330 Patent.

33. On June 11, 2010, MOTOROLA having failed to address its actions, and choosing, instead, to ignore the claims of the '330 Patent, Dr. Hernandez communicated directly

with MOTOROLA's Senior Intellectual Property Attorney. In this instance, demand was made again that MOTOROLA recognize the rights under the '330 Patent and either cease using the aforementioned infringing or enter into a licensing agreement with RAPID MOBILE so that its use would be permitted and authorized.

34. By July 1, 2010, in response to the June 11, 2010 correspondence, Dr. Hernandez was placed on administrative leave by MOTOROLA and advised that he was under internal "investigation." On that same date Dr. Hernandez was abruptly stripped of his access to MOTOROLA offices, files and computers.

35. On July 15, 2010, Dr. Hernandez was terminated from his employment with MOTOROLA.

36. Following its termination of Dr. Hernandez, MOTOROLA has continued to blatantly, intentionally and willfully refuse to respond to the charges of infringement.

37. Thus, being unable to convince MOTOROLA to cease its infringing conduct, RAPID MOBILE was thereafter required to retain the undersigned counsel to pursue its interests in this matter, and is obligated to pay the undersigned a reasonable attorneys' fee for their services, and to reimburse the undersigned for any costs incurred in connection with said representation.

38. This lawsuit followed.

COUNT I:
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

39. Plaintiff realleges and revers paragraphs one (1) through thirty-eight (38) as if fully set forth herein.

40. This is an action for temporary and permanent injunctive relief pursuant to Title 35, United States Code, Section 283, of the United States Patent Act.

41. Said section provides that this Court may “grant injunctions in accordance with the principles of equity to prevent the violations of any right secured by patent, on such terms as the court deems reasonable.”

42. As alluded to in more detail above, MOTOROLA has infringed, and continues to infringe, on the ‘330 Patent.

43. Despite repeated demands, MOTOROLA continues to infringe the claims of the ‘330 Patent.

44. Such refusal to honor Plaintiff’s exclusive patent rights has caused, and will continue to cause, irreparable harm. Each day that Plaintiff is deprived of its earned intellectual property rights causes irreparable injury.

45. Plaintiff has no adequate remedy at law, especially because the property at issue is intellectual property and patented work that is being deprived.

46. There is no remedy at law that can fully compensate Plaintiff for the deprivation of said patent rights, and, in light of the facts of this case, there is a substantial likelihood that Plaintiff will succeed on the merits of the instant case.

WHEREFORE, Plaintiff RAPID MOBILE TECHNOLOGIES, INC., a Florida corporation, by and through the undersigned, hereby respectfully requests that the Court enter a temporary and permanent injunction enjoining Defendant MOTOROLA, INC., a Delaware Corporation, and all those in active concert and participation with MOTOROLA, INC., from using, making, selling, marketing, distributing, transferring, or otherwise infringing on the claims of the ‘330 Patent as more fully set forth above, together with costs, attorneys’ fees, and such other and further relief as this Court deems just and proper.

COUNT II:
WILLFUL PATENT INFRINGEMENT

47. Plaintiff realleges and revers paragraphs one (1) through thirty-eight (38) as if fully set forth herein.

48. This is an action for patent infringement pursuant to Title 35, United States Code, Section 271, of the United States Patent Act.

49. As more fully set forth above, MOTOROLA has infringed, and continues to infringe, the claims of the '330 Patent by, *at least*, making and using infringing technology.

50. All such infringing conduct of MOTOROLA has occurred and was committed by MOTOROLA in a willful manner, irrespective of and despite repeated demands that MOTOROLA immediately cease its infringing conduct and recognize the rights under the '330 Patent.

51. MOTOROLA's actions have been committed and performed in a willful, knowing and bad faith manner.

52. MOTOROLA's actions have caused, and continue to cause, irreparable harm to Plaintiff to which there is no adequate remedy at law.

WHEREFORE, Plaintiff RAPID MOBILE TECHNOLOGIES, INC., a Florida corporation, by and through the undersigned, hereby respectfully demands judgment against Defendant MOTOROLA, INC., a Delaware Corporation, for the full amount of damages sustained, including, but not limited to, any and all remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*, which included, but are not limited to, a reasonable royalty award, disgorgement of the profits received by Defendants, treble damages, costs, pre and post judgment interest at the maximum allowable rate, attorneys' fees, and such other and further relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff RAPID MOBILE TECHNOLOGIES, INC., a Florida corporation, hereby demands trial by jury of all issues so triable as a matter of law.

Dated this 23rd day of December, 2010.

Respectfully Submitted,

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