

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SOUTHWESTERN BELL TELEPHONE L.P.,
et al.,

Plaintiffs,

v.

ARTHUR A. COLLINS, INC.,

Defendant.

Civil Action No. 3:04-CV-0669-B
Consolidated Lead Case
Consolidated with Civil Action
Nos. 3:04-CV-0786-B and
3:04-CV-1855-B

**AMENDED COMPLAINT FOR DECLARATORY RELIEF
FOR PATENT NON-INFRINGEMENT AND INVALIDITY
AND BREACH OF SETTLEMENT AGREEMENT**

As and for its Complaint in this action, plaintiff SOUTHWESTERN BELL TELEPHONE L.P. (“SOUTHWESTERN BELL”) and SBC COMMUNICATIONS, INC. avers as follows:

THE PARTIES

1. SOUTHWESTERN BELL is a limited partnership duly organized and existing under the laws of the State of Texas, and its corporate headquarters is within the Northern District of Texas at One SBC Center, 208 South Akard Street, Dallas, Texas.

2. SBC COMMUNICATIONS, INC. is a Delaware corporation with a principal business address of 175 E. Houston, P.O. Box 2933, San Antonio, Texas 78299-2933.

3. SOUTHWESTERN BELL is informed and believes and, based thereon, alleges that defendant ARTHUR A. COLLINS, INC. ("COLLINS") is an Iowa corporation with a business address of 1303 Chickasaw Drive, Richardson, Texas; that Alan A. Collins is listed as the registered agent for service of process for COLLINS with a registered office at 13731 Danvers Drive, Dallas, Texas; that Alan A. Collins is President and a Director of COLLINS; that Michael M. Collins is COLLINS' Secretary and a Director of COLLINS; and that Alan A. Collins and Michael A. Collins have an address of 1303 Chickasaw Drive, Richardson, Texas.

JURISDICTION AND VENUE

4. This is an action under 28 U.S.C. § 2201(a) seeking a declaratory judgment of non-infringement and invalidity of United States patents, pursuant to 35 U.S.C. §§ 100, *et seq.*, and this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This is also an action seeking a declaration of SOUTHWESTERN BELL's and SBC COMMUNICATIONS, INC.'s explicit third party rights under a settlement agreement between COLLINS and former co-defendants Lucent Technologies, Inc. and AT&T Corporation involving the patents-in-suit and to enforce the terms of that settlement agreement. This Court has supplemental jurisdiction over the state law breach of contract claim pursuant to 28 U.S.C. §§ 1367.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §§ 1391(c) and 1400(b) and under 28 U.S.C. § 1391(a)(1) & (2) because SOUTHWESTERN BELL is resident of this judicial district and division, and a substantial part of the events giving rise to the breach of settlement agreement occurred in this judicial district and division.

FIRST CLAIM FOR RELIEF

(DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT AND INVALIDITY)

7. SOUTHWESTERN BELL incorporates herein by reference paragraphs 1 through 4, above.

8. SOUTHWESTERN BELL is informed and believes and, based thereon, alleges that COLLINS claims to be the owner by assignment of United States Patent Nos. 4,701,907 and 4,797,589 (collectively the “patents-in-suit”).

9. SOUTHWESTERN BELL is informed and believes and, based thereon, alleges that COLLINS asserted the patents-in-suit against Northern Telecom Ltd. and Northern Telecom, Inc. in the Eastern District of Virginia, claiming that the use of a Nortel SONET ADM in conjunction with a digital switch, either made by Nortel or other manufacturers, constituted infringement. Final judgment of non-infringement was entered in that action and subsequently affirmed by the United States Court of Appeals for the Federal Circuit on June 16, 2000.

10. COLLINS has asserted that SOUTHWESTERN BELL “TST central office switching systems and SONET ADMs and Digital Cross Connect switching systems” “when interconnected in SONET networks” infringe the patents-in-suit.

11. COLLINS has threatened suit against SOUTHWESTERN BELL for alleged infringement of the patents-in-suit unless SOUTHWESTERN BELL accedes to COLLINS’ payment demand for a license to the patents-in-suit. SOUTHWESTERN BELL will not comply with COLLINS’ demand and has never given COLLINS any objectively reasonable basis to believe that SOUTHWESTERN BELL will comply with COLLINS’ demand.

12. SOUTHWESTERN BELL has a reasonable apprehension that COLLINS will initiate an infringement action against SOUTHWESTERN BELL on the patents-in-suit if SOUTHWESTERN BELL does not comply with COLLINS' demand.

13. Neither SOUTHWESTERN BELL nor any of its products has infringed or infringes any valid claim of the patents-in-suit.

14. To the extent any claims of the patents-in-suit could be construed so as to read on any SOUTHWESTERN BELL products, those claims are invalid for failure to comply with the requirements and conditions of the patent laws, Title 35 of the United States Code, including, but not limited to, the requirements and conditions for patentability set forth in 35 U.S.C. §§ 102, 103, 112 and 305.

15. To the extent any claims of the patents-in-suit could be construed so as to read on any SOUTHWESTERN BELL products, COLLINS' infringement claims are barred or limited by the applicable statute of limitations (including, but not necessarily limited to, 35 U.S.C. § 286), by the statutory notice requirements (including, but not necessarily limited to, 35 U.S.C. § 287), by absolute and equitable intervening rights (including, but not limited to, as set forth in 35 U.S.C. §§ 252 and 307(b)), by laches and estoppel and by *res judicata* (including collateral estoppel).

16. An actual controversy exists between SOUTHWESTERN BELL and COLLINS, in that COLLINS alleges that the patents-in-suit are valid and infringed by SOUTHWESTERN BELL and SOUTHWESTERN BELL alleges that no claim of the patents-in-suit asserted by COLLINS is valid and/or infringed by SOUTHWESTERN BELL.

SECOND CLAIM FOR RELIEF
(BREACH OF SETTLEMENT AGREEMENT)

17. SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. incorporate herein by reference paragraphs 1 through 16, above.

18. SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. are informed and believe and, based thereon, allege that on or about February 4, 2005 COLLINS and former defendants Lucent Technologies, Inc. and AT&T Corp. entered into an enforceable agreement “to settle and resolve the pending lawsuits, captioned Lucent Technologies Inc., et al. v. Arthur A. Collins, Inc., Civil Action No. 3:04-CV-786-B and Arthur A. Collins, Inc. v. AT&T Corporation, Civil Action No. 3:04-CV-1855-B in the Northern District of Texas, Dallas Division, which have been consolidated with the suit involving SBC mentioned in paragraph 6 below...” (hereinafter “the Settlement Agreement”).

19. SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. are informed and believe and, based thereon, allege that they are intended third party beneficiaries to the Settlement Agreement.

20. SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. are informed and believe and, based thereon, allege that COLLINS breached the terms of the Settlement Agreement and therefore COLLINS’ claims of infringement are barred, in whole or in part, by virtue of a license to make have made, use, have used, sell(directly or indirectly), offer to sell (directly or indirectly), import, have imported and perform any other acts that would qualify as infringement under 35 U.S.C. section 271, by virtue of a release from all actions, causes of action, damages, claims and demands whatsoever, in law or equity, known and unknown, by virtue of a covenant not to sue, and by virtue of a covenant to amend existing claims.

21. Accordingly, an actual controversy exists between SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. concerning whether COLLINS' claims for relief are barred as alleged above.

PRAYER

Wherefore, SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. pray for a judgment as follows:

1. That the Court declare that SOUTHWESTERN BELL has not infringed any valid claim of the patents-in-suit;

2. That the Court declare that the claims of the patents-in-suit asserted by COLLINS against SOUTHWESTERN BELL are invalid;

3. That the Court declare that, to the extent any claims of the patents-in-suit could be construed so as to read on any SOUTHWESTERN BELL products, COLLINS' infringement claims are barred or limited by the applicable statute of limitations, by absolute and equitable intervening rights, by laches and estoppel and by *res judicata*;

4. That the Court declare that the terms of the settlement agreement have been breached and that SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. are licensed under the patents-in-suit and/or COLLINS is barred from bringing suit against SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. or any related entities by the terms of the settlement agreement;

5. That SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. be awarded its attorney's fees for breach of contract;

6. That SOUTHWESTERN BELL be awarded its costs for all actions; and

7. That SOUTHWESTERN BELL and SBC COMMUNICATIONS, INC. be awarded such other and further relief as the Court deems just and proper.

Dated: December 14, 2005

VINSON & ELKINS L.L.P.

By: /s/ H. Kenneth Prol

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CERTIFICATE OF SERVICE

I, Michael J. Smith, do hereby certify that on the 14th day of December, 2005, I served a true and correct copy of the foregoing pleading to all counsel listed below as so indicated:

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