

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

Digital CBT, LLC

Plaintiff,

v.

Southwestern Bell Telephone Co.;

Pacific Bell Telephone Co.;

Illinois Bell Telephone Co.;

Indiana Bell Telephone Co., Inc. (*d/b/a* AT&T
Indiana);

Michigan Bell Telephone Co.;

Nevada Bell Telephone Co.;

The Ohio Bell Telephone Co.;

Wisconsin Bell, Inc.;

The Southern New England Telephone Co.;

BellSouth Telecommunications, Inc.; and

Does 1-10;

Defendants.

C.A. No. 11-cv-00916 (LPS)

DEMAND FOR JURY TRIAL

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT,
PERMANENT INJUNCTION AND DAMAGES**

For its Complaint against Southwestern Bell Telephone Company, Pacific Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone

Company, BellSouth Telecommunications, Inc., and Does 1-10 (each individually and collectively referred to as “AT&T” or “Defendants”), Plaintiff Digital CBT LLC (“CBT”) alleges as follows:

THE PARTIES

1. Plaintiff CBT is a limited liability corporation duly organized and existing under the laws of California with its principal place of business at 4000 MacArthur Blvd, West Tower, Suite 1100, Newport Beach, CA 92660. As alleged below, CBT is the owner of all right, title, and interest in U.S. Patent No. 5,805,173.

2. Defendants Southwestern Bell Telephone Company, Pacific Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone Company, BellSouth Telecommunications, Inc. (“the Subsidiary Defendants”) are each wholly-owned subsidiaries of AT&T, Inc., and – on information and belief – are each currently headquartered at One AT&T Plaza, Dallas, TX. On information and belief, the Subsidiary Defendants are corporations duly organized and existing under the laws of the states listed below:

- Southwestern Bell Telephone Company: Missouri
- Pacific Bell Telephone Company: California
- Illinois Bell Telephone Company: Delaware
- Indiana Bell Telephone Company, Incorporated: Indiana
- Michigan Bell Telephone Company: Nevada
- Nevada Bell Telephone Company: Nevada
- The Ohio Bell Telephone Company: Connecticut
- Wisconsin Bell, Inc.: Wisconsin
- The Southern New England Telephone Company: Connecticut
- BellSouth Telecommunications, Inc.: Georgia

3. Plaintiff is ignorant of the true names and capacities of the defendants sued herein under the fictitious names Does 1-10, inclusive (the “Doe Defendants”). Plaintiff is informed and believes and, on that basis, alleges that the Doe Defendants, and each of them, are responsible in some manner, by their acts and omissions, for the matters alleged herein. Upon information and belief, the Doe Defendants are involved with the Subsidiary Defendants and/or the activities alleged herein, but Plaintiffs have been unable to identify the names of the Doe Defendants from public records or other information available to Plaintiff at this time. Accordingly, Plaintiff has sued the Doe Defendants by their fictitious names. Plaintiff will seek leave to amend this Complaint to allege the true names and capacities of the Doe Defendants when ascertained.

4. The Subsidiary Defendants and the Doe Defendants are in the business of, among other things, selling and distributing digital video recorders and digital video recording services to persons in the U.S. through physical and electronic channels, including the Internet.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. §§ 1 et seq. This court has subject matter jurisdiction of such federal question claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) in that the acts and transactions complained of herein were conceived, carried out, made effective, and had effect within the State of Delaware and within this district, among other places. Defendants reside in this judicial district by virtue of their state of incorporation and/or their business activities in this district and have committed acts of infringement in this judicial district.

U.S. PATENT NO. 5,805,173

7. On September 8, 1998, the United States Patent & Trademark Office duly and legally issued United States Letters Patent No. 5,805,173 (“the ‘173 Patent”), entitled “System and Method for Capturing and Transferring Selected Portions of a Video Stream in a Computer System.”

8. The '173 patent claims, among other things, a system for processing a video signal in accordance with instructions from application software. In certain of the claimed embodiments, the systems comprise a processing unit for executing the application software, a main memory associated with the processing unit, a peripheral memory, a bus system operatively coupling the main memory and the peripheral memory, and a video processing system associated with the peripheral memory for processing the video signal. The video processing system includes a circuit for sending a selected portion of the video signal to the peripheral memory for storage, a circuit for detecting when the selected portion of the video signal for a threshold number of frames has been stored in the peripheral memory, and a circuit for allowing the selected portion of the video signal to be transferred to the main memory for use by the application software.

FIRST CLAIM FOR RELIEF

**AGAINST DEFENDANT AT&T, INC. FOR DIRECT, CONTRIBUTORY AND
INDUCING INFRINGEMENT OF U.S. PATENT NO. 5,805,173**

9. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-6 of the Complaint as though fully set forth herein.

10. A true and correct copy of the '173 Patent is attached as Exhibit A and incorporated herein by reference. AT&T makes, uses, sells, offers for sale, and/or distributes digital video recorders, labeled the Total Home DVR, to residential and/or business customers. By doing so, AT&T generates subscription revenue from residential and/or business customers on a periodic basis through subscription plans that include, but are not limited to, U-Basic, U-Family, U100, U200, U200 Latino, U300, U450.

11. To obtain a Total Home DVR and one of the aforementioned subscription plans with AT&T, customers enter into a contract with AT&T, referred to the AT&T U-Verse TV and Voice Terms of Service ("AT&T TOS"), a true and accurate copy of which is attached here as Exhibit X. The AT&T TOS provides the terms of service between the customer "and one of the following AT&T companies, depending upon your service address: Southwestern Bell

Telephone Company, Pacific Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone Company, or BellSouth Telecommunications, Inc. (each individually and collectively referred to as “AT&T”). See <http://www.att.com/u-verse/att-terms-of-service.jsp>

12. By making, using, selling, and offering for sale the Total Home DVR, AT&T has directly infringed and continues to directly infringe the ‘173 Patent, including infringement under 35 U.S.C. § 271(a) and (f).

13. On information and belief, AT&T has also indirectly infringed and continues to indirectly infringe the ‘173 Patent by actively inducing direct infringement by other persons who operate methods and systems that embody or otherwise practice one or more of the claims of the ‘173 Patent when AT&T had knowledge of the ‘173 Patent and knew or should have known that their actions would induce direct infringement by others and intended that their actions would induce direct infringement by others.

14. On information and belief, AT&T has also indirectly infringed and continues to indirectly infringe the ‘173 Patent by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system or method with knowledge of the ‘173 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed invention of the ‘173 Patent.

15. On information and belief, AT&T will continue to infringe the ‘173 Patent unless enjoined by this Court.

16. On information and belief, AT&T’s infringement of the ‘173 Patent is, has been, and continues to be willful and deliberate.

17. As a direct and proximate result of AT&T’s infringement of the ‘173 Patent, CBT has been and continues to be damaged in an amount yet to be determined.

18. Unless a preliminary and permanent injunction are issued enjoining AT&T and its officers, agents, servants and employees, and all others acting on their behalf or in concert with AT&T, from infringing the '173 Patent, CBT will be greatly and irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CBT prays for judgment against Defendant AT&T as follows:

- (1) For a judicial determination and declaration that Defendants have directly infringed, and continue to directly infringe, United States Letters Patent No. 5,805,173;
- (2) For a judicial determination and declaration that Defendants have induced, and continues to induce, the infringement of United States Letters Patent No. 5,805,173;
- (3) For a judicial determination and declaration that Defendants have contributorily infringed, and continues to contributorily infringe, United States Letters Patent No. 5,805,173;
- (4) For a judicial determination and decree that Defendants' infringement of United States Letters Patent No. 5,805,173 has been, and continues to be, willful and deliberate;
- (5) For a judicial determination and decree that Defendants, their respective subsidiaries, officers, agents, servants, employees, licensees, and all other persons or entities acting or attempting to act in active concert or participation with it or acting on their behalf, be preliminarily and permanently enjoined from further infringement of the '173 Patent;
- (6) For a declaration that Defendants notify all of their customers and users of the infringing system and customers' participation in the infringement with Defendants' encouragement, and that Defendants encourage customers to cease all such infringing actions;
- (7) For a judicial decree that orders Defendants to account for and pay to CBT all damages caused to CBT by reason of Defendants infringement pursuant to 35 U.S.C. Section 284, including enhanced damages under 35 U.S.C. Section 285;
- (8) For an award of damages according to proof at trial;
- (9) For a judicial declaration that this case is exceptional under 35 U.S.C. Section 285 and that Defendants be ordered to pay CBT costs, expenses, and reasonable attorney's fees pursuant to 35 U.S.C. Sections 284 and 285;

(10) For a judicial order awarding to CBT pre-judgment and post-judgment interest on the damages caused to it by Defendants' infringement; and

(11) For any such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

Dated: January 30, 2012

By: /s/ Kenneth L. Dorsney
Kenneth L. Dorsney (I.D. #3726)
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801
Telephone: (302) 888-6800
kdorsney@morrisjames.com

Attorneys for Plaintiff Digital CBT LLC

Of Counsel:

Nathaniel L. Dilger (Bar No. 196203)
ndilger@onellp.com
Peter R. Afrasiabi (Bar No. 193336)
pafrasiabi@onellp.com
ONE LLP
4000 MacArthur Boulevard
West Tower, Suite 1100
Newport Beach, California 92660
Telephone: (949) 502-2870
Facsimile: (949) 258-5081

Attorneys for Plaintiff Digital CBT LLC.