

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MOBILE TELECOMMUNICATIONS	§	
TECHNOLOGIES, LLC,	§	CIVIL ACTION NO. 2:12-cv-308-JRG
	§	
Plaintiff,	§	JURY TRIAL REQUESTED
v.	§	
	§	
CLEARWIRE CORPORATION,	§	
CLEAR WIRELESS, LLC	§	
CLEARWIRE US, LLC	§	
	§	
Defendants.	§	

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff Mobile Telecommunications Technologies, LLC (“MTEL”) files this Amended Complaint against Defendants Clearwire Corporation, Clear Wireless, LLC, and Clearwire US, LLC, (hereinafter “Clearwire” or “Defendants”) for infringement of U.S. Patent No. 5,590,403 (the “’403 Patent”) pursuant to 35 U.S.C. § 271 and alleges as follows.

THE PARTIES

1. Plaintiff MTEL is a Delaware corporation with its principal place of business at 1720 Lakepointe Drive, Suite 100 Lewisville, TX 75057.
2. MTEL is the holder of a portfolio of patents formerly held by Mobile Telecommunication Technologies Corp. (“MTEL Corp.”) and its related entities, such as Destineer and SkyTel Communications.
3. MTEL Corp. was a pioneer in wireless communications and is credited with launching the world’s first two-way wireless paging service, dubbed SkyTel 2-Way.
4. The paging operations are currently based out of Lewisville, Texas. And the business is currently operating out of Lewisville, TX.

5. Defendant Clearwire Corporation is a Delaware corporation with its corporate headquarters located at 4400 Carillon Point, Kirkland, Washington 98033. In addition to Clearwire Corporation continuously and systematically conducting business in Texas, the causes of action against Clearwire Corporation arose from or are connected with Clearwire Corporation's purposeful acts committed in Texas, including making, using, selling, offering for sell, and/or importing software, equipment, standards, and/or services that embody claims of the '403 Patent, including but not limited to LTE, WiMAX, and Wi-Fi networks. Clearwire Corporation operates a 4G mobile broadband network operating on WiMAX technology 802.16 standard. Clearwire Corporation operates its networks in 88 markets including Dallas, Houston, and San Antonio. *See* Exhibit B. Clearwire Corporation is launching a LTE Network in North America. *See* Exhibit C. Clearwire Corporation operates and controls a Wi-Fi local area network either directly or through its subsidiaries. *See* Exhibit D. Clearwire Corporation engages in business in but does not maintain a regular place of business in Texas and has not designated or maintained a resident agent for service of process. Accordingly, pursuant to Federal Rule of Civil Procedure 4, section 17.044 of the Texas Civil Practice and Remedies Code, and Articles 2.11 of the Texas Business Corporations Act, the Texas Secretary of State is designated as Clearwire's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Clearwire's home or home office, c/o Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington 98501.

6. Defendant Clear Wireless LLC is a Nevada corporation with its principal office located at 4400 Carillon Point, Kirkland, Washington 98033. Clear Wireless LLC is a subsidiary of Clearwire Corporation. In addition to Clear Wireless continuously and systematically conducting business in Texas, the causes of action against Clear Wireless arose from or are connected with Clear Wireless's purposeful acts committed in Texas, including making, using, selling, offering for sell, and/or importing software, equipment, standards, and/or services that embody claims of the '403 Patent, including but not limited to WiMAX networks. Clear Wireless operates in all 4G mobile markets. Clear Wireless operates its networks throughout Texas, including providing devices and services in the Texas cities of Abilene, Amarillo, Austin, Corpus Christi, Denton, Dallas, Houston, Killeen, Lewisville, Lubbock, Midland/Odessa, Plano, San Antonio, Waco, and Wichita Falls. Clear Wireless may be served with process through its registered agent, Corporation Service Company d/b/a CSC – Lawyering Incorporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701.

7. Defendant Clearwire US, LLC, was a Nevada corporation with its principal office located at 1475 120th Avenue NE, Bellevue, Washington 98005. Upon information and belief, liability persists in Clearwire US, LLC and/or its successors-in-interest and corporate affiliates, including Clearwire Corporation and/or Clear Wireless, LLC. In addition to Clearwire US (and Clearwire Corporation and/or Clear Wireless) continuously and systematically conducting business in Texas, the causes of action against Clearwire US arose from or are connected with Clearwire US' purposeful acts committed in Texas, including making, using, selling, offering for sell, and/or importing software, equipment, standards, and/or services that embody claims of the '403 Patent, including but not limited to Wi-Fi networks. Clearwire US provided wireless local area network broadband communications services and related services and features through

Clearwire Wi-Fi. *See* Exhibit D. Clearwire US engaged in business but did not maintain a regular place of business in Texas and did not designate or maintain a resident agent for service of process. Accordingly, pursuant to Federal Rule of Civil Procedure 4, section 17.044 of the Texas Civil Practice and Remedies Code, and Articles 2.11 of the Texas Business Corporations Act, the Texas Secretary of State is designated as Clearwire's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Clearwire's home or home office, c/o Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington 98501.

8. Defendants market their 4G service through their own brand called CLEAR as well as through their wholesale relationships with Sprint, Comcast and Time Warner Cable.

9. Defendants have several strategic investors including Intel Capital, Comcast, Sprint, Time Warner Cable, and Bright House Networks.

10. Defendants provide high-speed 4G mobile broadband service to over 130 million people in more than 70 cities across the U.S.

11. Defendants have built a brand new WiMAX network that covers entire cities with fast mobile internet.

12. Defendants have begun overlaying LTE technology over their WiMAX network.

13. Defendants intend to begin deploying LTE in high-density urban areas such as New York City.

14. Defendants offer for sale devices, such as CLEAR Modems with Wi-Fi, that allows customers to obtain wireless 4G internet for the home or office.

15. Defendants' offer communication services to its subscribers via standard Wi-Fi protocols.

16. Defendants' communication service is offered in cities throughout Texas, including Abilene, Amarillo, Athens, Austin, Corpus Christi, Denton, Dallas, Houston, Killeen, Lewisville, Lubbock, Lufkin, Marshall, Midland, Plano, San Antonio, Texarkana, Tyler, Waco, and Wichita Falls.

JURISDICTION AND VENUE

17. This is an action for patent infringement under the Patent Laws of the United States, Title 35 of the United States Code. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

18. This Court has personal jurisdiction over each Defendant under the laws of the State of Texas, including the Texas long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.042.

19. Plaintiff incorporates all statements of jurisdiction in the preceding paragraphs. The causes of action against Defendants in this Complaint arise from or are connected with purposeful acts committed by Defendants in Texas. Defendants have conducted and continue to conduct business within the State of Texas, directly or through intermediaries or agents, or offer for sale, sell, or advertise (including through the provision of interactive web pages) products or services, or use or induce others to use products or services in Texas that infringe the '403 Patent, or knowingly contribute to infringement of the '403 Patent.

THE PATENT-IN-SUIT

20. On December 31, 1996, the United States Patent and Trademark (“USPTO”) duly and legally issued United States Patent No. 5,590,403, titled “Method and System for Efficiently Providing Two Way Communication Between a Central Network and Mobile Unit,” after a full and fair examination. A true and correct copy of the ’403 Patent is attached hereto as Exhibit A. MTEL is the assignee of all right, title and interest in and to the ’403 Patent and possesses the exclusive right of recovery under the ’403 Patent, including the exclusive right to recover for infringement of the ’403 Patent. The ’403 Patent is valid and enforceable.

21. The ’403 Patent claims, *inter alia*, a two-way communications system for communication between a system network and a mobile unit.

22. The inventions described in the ’403 Patent present novel methods for, *inter alia*, dynamically assigning transmitters to different zones.

INFRINGEMENT OF THE PATENT-IN-SUIT

23. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1-22 as if those allegations have been fully set forth herein.

24. WiMAX (Worldwide Interoperability for Microwave Access) is a dedicated data network offering wider coverage and a higher capacity than Wi-Fi, while supporting a single standard for fixed and mobile usage. WiMAX service uses towers in markets, creating market-sized “hot zones” as opposed to Wi-Fi “hot spots” which have a very limited range. WiMAX circumvents service issues such as interference and noise that can be experienced when using Wi-Fi.

25. Defendants’ WiMAX network implements the mobile WiMAX Standard – sometimes referred to as the IEEE 802.16e Standard.

26. In particular, on information and belief, Defendants' WiMAX network implements the Macro Diversity Handover portions of the IEEE 802.16e-2005 Standard.

27. Defendants' 4G network operates in the FCC licensed 2.5 GHz spectrum.

28. Defendants sell devices, including but not limited to, Clear Spots, Clear Sticks, and Clear Hubs (collectively "Defendants' WiMAX Devices") that allow their customers access to Defendants' network.

29. Defendants' WiMAX Devices wirelessly communicate with Defendants' network, so Defendants' customers can easily move around with Defendants' WiMAX Devices and still communicate with Defendants' network.

30. For example, a Clear Spot Personal Hotspot device can be used in a car, camper, or boat as long as the device is in an area covered by the Clear wireless service.

31. Defendants charge their customers a monthly fee for access to Defendants' WiMAX Network.

32. Defendants, without authorization or license, have been and are now infringing multiple claims of the '403 Patent, in violation of 35 U.S.C. § 271(a), directly and/or indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents.

33. Defendants directly infringe by making, using, selling, offering for sell, and/or importing software, equipment, standards, and/or services that embody claims of the '403 Patent, including but not limited to WiMAX networks, LTE networks, Wi-Fi networks. Defendants' networks infringes the claims of the '403 Patent by, *inter alia*, dynamically reassigning and/or load balancing transmitters (e.g., base station transmitters) to achieve efficient coverage and/or capacity and by using Multiple Input/Multiple Output ("MIMO") systems and techniques.

34. Users of Defendants' networks are direct infringers of the '403 Patent.

35. Defendants encourage their customers to infringe the '403 Patent by offering for sale access to Defendants' networks, providing instructions on how to access Defendants' networks, and selling and offering for sale Defendants' WiMAX Devices which have no use other than to utilize Defendants' network.

36. Defendants have knowledge of the '403 Patent at least at the time of the filing of this action.

37. Defendants' infringement has been and continues to be deliberate and willful. Unless the Defendants stop using their WiMAX network in an infringing manner, their infringement of the '403 Patent continues to be willfull.

38. Plaintiff has no adequate remedy at law against Defendants' acts of infringement and Defendants' infringement will continue unless enjoined by this Court.

39. Plaintiff has suffered, and will continue to suffer, irreparable injury as a result of Defendants' infringement.

40. Plaintiff is in compliance with the requirements of 35 U.S.C. § 287.

41. Plaintiff has been damaged by Defendants' infringement, and will continue to be damaged until this Court enjoins Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. That Defendants be adjudged to have infringed the '403 Patent, directly and indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;

B. That Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the '403 Patent;

C. That Plaintiff be awarded damages sufficient to compensate Plaintiff for Defendant's infringement, pursuant to 35 U.S.C. § 284;

D. That Defendants be directed to pay Plaintiff pre-judgment and post-judgment interest and costs for Plaintiff bringing this lawsuit, in accordance with 35 U.S.C. § 284;

E. That Defendants be directed to pay enhanced damages, including Plaintiff's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

F. That Plaintiff receive such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury of any and all issues triable of right before a jury.

Dated: July 31, 2012

Respectfully Submitted,

/s/ Daniel R. Scardino

Daniel Scardino

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ATTORNEYS FOR PLAINTIFF

MOBILE TELECOMMUNICATIONS

TECHNOLOGIES, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2012, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to individuals who have consented in writing to accept this Notice as service of this document by electronic means, all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by first class mail today July 31, 2012.

/s/ Daniel R. Scardino

Daniel R. Scardino