

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

BRANDYWINE COMMUNICATIONS
TECHNOLOGIES, LLC,

Plaintiff,

v.

TOSHIBA CORPORATION and
TOSHIBA AMERICA INFORMATION
SYSTEMS, INC.,

Defendant.

C.A. No. 6:11-cv-01856-35KRS

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Brandywine Communications Technologies, LLC (“Brandywine” or “Plaintiff”), for its First Amended Complaint against Defendants Toshiba Corporation and Toshiba America Information Systems, Inc. alleges the following:

INTRODUCTION

1. This is an action for infringement of United States Patent No. 5,881,142 (“the ‘142 patent”) under 35 U.S.C. § 271(a), (b), and (c).

PARTIES

2. Plaintiff Brandywine is a limited liability company with its principal place of business at 1612 Mt. Pleasant Road, Villanova, Pennsylvania 19085.

3. Upon information and belief, Toshiba Corporation is a corporation organized and existing under the laws of Japan, with its principal executive offices at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan. Upon information and belief, Toshiba Corporation sells and offers to sell products and services throughout the United States, including in this judicial

district and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

4. Upon information and belief, Toshiba America Information Systems, Inc. is a corporation organized and existing under the laws of the State of California, with its principal executive offices in Irvine, California. Upon information and belief, Toshiba America Information Systems, Inc. sells and offers to sell products and services throughout the United States, including in this judicial district and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

7. This Court has personal jurisdiction over Defendants. Upon information and belief, Defendants have transacted business in this judicial district directly or indirectly and have committed, contributed to, and/or induced acts of patent infringement in this judicial district including, among other things, through the sale of infringing products and/or products that perform infringing processes directly, or through retailers or other businesses located in Florida and this judicial jurisdiction.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

**FIRST CLAIM FOR RELIEF
PATENT INFRINGEMENT OF U.S. PATENT NO. 5,881,142
(35 U.S.C. § 271)**

9. The allegations set forth in the foregoing paragraphs 1 through 8 are incorporated into this First Claim for Relief.

10. On December 13, 1994, the ‘142 patent, entitled “Integrated Communications Control Device for a Small Office Configured for Coupling Within a Scalable Network,” was duly and legally issued by the United States Patent and Trademark Office to inventors David P. Frankel, Gregory E. Pounds, and William D. Strauss, and has been duly and legally assigned to Brandywine. At least as of the time of service of this Complaint, Defendants have had actual knowledge of the ‘142 Patent. A copy of the ‘142 patent is attached as Exhibit “A.”

11. Upon information and belief, Defendant Toshiba Corporation has infringed and continues to infringe one or more claims of the ‘142 patent in this judicial district and elsewhere by making, using, selling and offering for sale, services and products that infringe and/or perform processes that infringe one or more claims of the ‘142 patent (“Toshiba Accused Services and Products for the ‘142 patent”).

12. Toshiba Accused Services and Products for the ‘142 patent include, but are not limited to, the Strata CIX40, Strata CIX100, Strata CIX200, Strata CIX670, and Strata CIX1200 products.

13. Upon information and belief, Toshiba Corporation has committed and continues to commit acts of contributory infringement of one or more of the claims of the ‘142 patent under 35 U.S.C. § 271(c) in that Toshiba Corporation has made, used, sold, offered to sell, and/or imported, or continues to make, use, sell, offer to sell services and products including Toshiba Accused Services and Products for the ‘142 patent, which have no substantial non-

infringing uses, and provides such products to its customers, whose use of such products constitutes direct infringement of one or more claims of the '142 patent.

14. Upon information and belief, Toshiba Corporation has induced and continues to induce others to infringe one or more claims of the '142 patent under 35 U.S.C. § 271(b) by, among other things, actively and knowingly aiding and abetting others to infringe, including, but not limited to consumers whose use of such services and products constitutes direct infringement of one or more claims of the '142 patent.

15. Because of Toshiba Corporation's infringement, inducement of infringement, and contributory infringement of the '142 patent, Brandywine has suffered damages and will continue to suffer damages in the future.

16. Upon information and belief, Defendant Toshiba America Information Systems, Inc. has infringed and continues to infringe one or more claims of the '142 patent in this judicial district and elsewhere by making, using, selling and offering for sale, services and products that infringe and/or perform processes that infringe one or more claims of the '142 patent ("Toshiba America Accused Services and Products for the '142 patent").

17. Toshiba America Accused Services and Products for the '142 patent include, but are not limited to, the Strata CIX40, Strata CIX100, Strata CIX200, Strata CIX670, and Strata CIX1200 products.

18. Upon information and belief, Toshiba America Information Systems, Inc. has committed and continues to commit acts of contributory infringement of one or more of the claims of the '142 patent under 35 U.S.C. § 271(c) in that Toshiba America Information Systems, Inc. has made, used, sold, offered to sell, and/or imported, or continues to make, use, sell, offer to sell services and products including Toshiba America Accused Services and

Products for the '142 patent, which have no substantial non-infringing uses, and provides such products to its customers, whose use of such products constitutes direct infringement of one or more claims of the '142 patent.

19. Upon information and belief, Toshiba America Information Systems, Inc. has induced and continues to induce others to infringe one or more claims of the '142 patent under 35 U.S.C. § 271(b) by, among other things, actively and knowingly aiding and abetting others to infringe, including, but not limited to consumers whose use of such services and products constitutes direct infringement of one or more claims of the '142 patent.

20. Because of Toshiba America Information Systems, Inc.'s infringement, inducement of infringement, and contributory infringement of the '142 patent, Brandywine has suffered damages and will continue to suffer damages in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff Brandywine demands judgment against Defendants and against their respective subsidiaries, affiliates, agents, servants, employees, licensees, and all persons acting or attempting to act in active concert or participation with them or acting on their behalf, granting the following relief:

A. A judgment in favor of Brandywine that Defendants have infringed, directly and/or indirectly, and by way of inducing and/or contributing to the infringement of the '142 patent;

B. An award of damages adequate to compensate Brandywine for the infringement, inducement of infringement, and contributory infringement, together with pre- and post-judgment interest and an accounting;

C. Increased damages pursuant to 35 U.S.C. § 284;

D. A finding that this case is exceptional and an award to Brandywine of its attorneys' fees, expenses and costs pursuant to 35 U.S.C. § 285; and

E. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Brandywine demands a trial by jury.

Dated: January 4, 2012

/s/ Christopher T. Hill
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 4, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to the following: Thomas S. Cargill, Esquire, Foley & Lardner, LLP, 111 North Orange Avenue, Suite 1800, Orlando, FL 32801 and John J. Feldhaus, Esquire, Pavan K. Agarwal, Esquire & Ryan A. Schmid, Esquire, Foley & Lardner, LLP, 3000 K Street, N.W. Sixth Floor, Washington, DC 20007.

/s/ Christopher T. Hill
Christopher T. Hill, Esq.