

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

GARNET DIGITAL, LLC

Plaintiff,

v.

- (1) AT&T INC.;
- (2) AT&T MOBILITY LLC;
- (3) DELL INC.;
- (4) PANTECH WIRELESS, INC.;
- (5) HTC AMERICA, INC.;
- (6) HEWLETT-PACKARD COMPANY;
- (7) MOTOROLA MOBILITY LLC;
- (8) SONY ERICSSON MOBILE
COMMUNICATIONS (USA) INC.;
- (9) GOOGLE INC.;
- (10) KYOCERA COMMUNICATIONS,
INC.;
- (11) VERIZON COMMUNICATIONS, INC.;
- (12) CELLCO PARTNERSHIP (DBA
VERIZON WIRELESS);
- (13) SPRINT SOLUTIONS, INC.;
- (14) SPRINT NEXTEL CORPORATION;
- (15) T-MOBILE USA, INC.;
- (16) BOOST MOBILE, LLC;
- (17) VIRGIN MOBILE USA, INC.;
- (18) VIRGIN MOBILE USA, L.P.;
- (19) METROPCS COMMUNICATIONS,
INC.;
- (20) LEAP WIRELESS INTERNATIONAL,
INC.;
- (21) STX WIRELESS OPERATIONS, LLC;
- (22) HUAWEI TECHNOLOGIES USA INC.;
- and
- (23) RADIOSHACK CORPORATION;

Defendants.

CIVIL ACTION NO. 6:11-cv-647

AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Garnet Digital, LLC (“Garnet”) files this amended complaint against the above-named defendants, alleging, based on its own knowledge with respect to itself and its own actions and based on information and belief as to all other matters, as follows:

PARTIES

1. Garnet is a limited liability corporation formed under the laws of the State of Texas, with a principal place of business in Plano, Texas.

2. Defendant AT&T Inc. is a corporation organized under the laws of the state of Delaware, with a principal place of business at 208 S. Akard Street; Dallas, TX 75202. AT&T Inc. can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul Street, Ste. 2900; Dallas, TX 75201.

3. Defendant AT&T Mobility LLC (“AT&T Mobility”) is a limited liability company organized under the laws of the state of Delaware, with a principal place of business at 5565 Glenridge Connector, Ste. 510; Atlanta, GA 30342. AT&T Mobility can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul Street, Ste. 2900; Dallas, TX 75201.

4. Defendant Dell Inc. (“Dell”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 1 Dell Way, Round Rock, TX 78682-7000. Dell can be served with process by serving its registered agent: Corporation Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

5. Defendant Pantech Wireless, Inc. (“Pantech”) is a corporation organized under the laws of the state of Georgia, with a principal place of business at 5607 Glenridge Drive, Ste. 500; Atlanta, GA 30342. Under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, Pantech can be served by serving the Secretary of State

because it is doing business in Texas but has not registered an agent for the service of process in Texas. The address of its home, home office, and principal office is 5607 Glenridge Drive, Ste. 500; Atlanta, GA 30342.

6. Defendant HTC America, Inc. (“HTC”) is a corporation organized under the laws of the state of Washington, with a principal place of business at 13920 SE Eastgate Way, Ste. 400; Bellevue, WA 98005. HTC can be served with process by serving its registered agent: National Registered Agents; 16055 Space Center, Ste. 235; Houston, TX 77062.

7. Defendant Hewlett-Packard Company (“HP”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 3000 Hanover Street; Palo Alto, CA 94304. HP can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul Street, Ste. 2900; Dallas, TX 75201.

8. Defendant Motorola Mobility, LLC (“Motorola”) is a limited liability company organized under the laws of the state of Delaware, with a principal place of business at 1303 East Algonquin Road; Schaumburg, IL 60196. Motorola can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul Street, Ste. 2900; Dallas, TX 75201.

9. Defendant Sony Ericsson Mobile Communications (USA) Inc. (“Sony Ericsson”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 7001 Development Drive; PO Box 13969; Research Triangle Park, NC 27709. Sony Ericsson can be served with process by serving its registered agent: Capitol Corporate Services, Inc.; 800 Brazos, Ste. 400; Austin, TX 78701.

10. Defendant Google Inc. (“Google”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 1600 Ampitheatre Parkway; Mountain View, CA 94043. Google can be served with process by serving its registered agent: Corporation Service Company dba CSC--Lawyers Incorporating Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

11. Defendant Kyocera Communications, Inc. (“Kyocera”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 10300 Campus Point Drive; San Diego, CA 92121. Kyocera can be served with process by serving its registered agent: Corporation Service Company dba CSC--Lawyers Incorporating Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

12. Defendant Verizon Communications, Inc. (“Verizon Communications”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 140 West Street; New York, NY 10007. Under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, Verizon Communications can be served by serving the Secretary of State because it is doing business in Texas but has not registered an agent for the service of process in Texas. The address of its home, home office, and principal office is 140 West Street; New York, NY 10007.

13. Defendant Cellco Partnership (dba Verizon Wireless) (“Cellco”) is a partnership organized under the laws of the state of Delaware, with a principal place of business at One Verizon Way; Basking Ridge, NJ 07920. Under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, Cellco can be served by serving the Secretary of State because it is doing business in Texas but has not registered an agent

for the service of process in Texas. The address of its home, home office, and principal office is One Verizon Way; Basking Ridge, NJ 07920.

14. Defendant Sprint Solutions, Inc. (“Sprint Solutions”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 701 Brazos St., Ste. 1050; Austin, TX 78701. Sprint Solutions can be served with process by serving its registered agent: Corporation Service Company dba CSC--Lawyers Incorporating Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

15. Defendant Sprint Nextel Corporation (“Sprint Nextel”) is a corporation organized under the laws of the state of Kansas, with a principal place of business at 6200 Sprint Parkway; Overland Park, KS 66251. Under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, Sprint Nextel can be served by serving the Secretary of State because it is doing business in Texas but has not registered an agent for the service of process in Texas. The address of its home, home office, and principal office is 6200 Sprint Parkway; Overland Park, KS 66251.

16. Defendant T-Mobile USA, Inc. (“T-Mobile”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 12920 SE 38th Street; Bellevue, WA 98006. T-Mobile can be served with process by serving its registered agent: Corporation Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

17. Defendant Boost Mobile, LLC (“Boost”) is a limited liability company organized under the laws of the state of Delaware, with a principal place of business at 6200 Sprint Parkway, KSOPHF0302-3B124; Overland Park, KS 66251. Boost can be served with process by serving its registered agent: Corporation Service Company dba

CSC--Lawyers Incorporating Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

18. Defendant Virgin Mobile USA, Inc. (“Virgin Mobile”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 10 Independence Blvd.; Warren, NJ 07059. Under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, Virgin Mobile can be served by serving the Secretary of State because it is doing business in Texas but has not registered an agent for the service of process in Texas. The address of its home, home office, and principal office is 10 Independence Blvd.; Warren, NJ 07059..

19. Defendant Virgin Mobile USA, L.P. (“Virgin Limited”) is a limited partnership organized under the laws of the state of Delaware, with a principal place of business at 10960 Wilshire Blvd., Ste. 600; Los Angeles, CA 90024. Virgin Limited can be served with process by serving its registered agent: Corporation Service Company dba CSC--Lawyers Incorporating Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

20. Defendant MetroPCS Communications, Inc. (“MetroPCS”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 2250 Lakeside Blvd.; Richardson, TX 75082. Under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, MetroPCS can be served by serving the Secretary of State because it is doing business in Texas but has not registered an agent for the service of process in Texas. The address of its home, home office, and principal office is 2250 Lakeside Blvd.; Richardson, TX 75082.

21. Defendant Leap Wireless International, Inc. (“Leap Wireless”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 5887 Copley Drive; San Diego, CA 92111. Under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, Leap Wireless can be served by serving the Secretary of State because it is doing business in Texas but has not registered an agent for the service of process in Texas. The address of its home, home office, and principal office is 5887 Copley Drive; San Diego, CA 92111.

22. Defendant STX Wireless Operations, LLC (“STX”) is a limited liability company organized under the laws of the state of Delaware, with a principal place of business at 5887 Copley Drive; San Diego, CA 92111. STX can be served with process by serving its registered agent: Corporation Service Company dba CSC--Lawyers Incorporating Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

23. Defendant Huawei Technologies USA Inc. (“Huawei”) is a corporation organized under the laws of the state of Texas, with a principal place of business at 5700 Tennyson Parkway; Ste. 500; Plano, Texas 75024. Huawei can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul Street, Ste. 2900; Dallas, TX 75201.

24. Defendant RadioShack Corporation (“RadioShack”) is a corporation organized under the laws of the state of Delaware, with a principal place of business at 300 RadioShack Circle, Fort Worth, Texas. RadioShack can be served with process by serving its registered agent: Corporation Service Company dba CSC--Lawyers Incorporating Service Company; 211 East 7th Street, Ste. 620; Austin, TX 78701-3218.

JURISDICTION AND VENUE

25. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §1331 and §1338(a).

26. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, each defendant has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

27. Each defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to each defendant's substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

JOINDER

28. Defendants are properly joined under 35 U.S.C. § 299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, and/or selling the same accused products. Specifically, as alleged in detail below, defendants are alleged to infringe the patent in suit with respect to a large number of overlapping smartphone products.

29. Defendants are properly joined under 35 U.S.C. § 299(a)(2). Questions of fact will arise that are common to all defendants, including for example, whether the

overlapping smartphone products alleged to infringe have features that meet the limitations of one or more claims of the patent-in-suit, and what reasonable royalty will be adequate to compensate the owner of the patent-in-suit for its infringement.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,379,421

30. On January 3, 1995, United States Patent No. 5,379,421 was duly and legally issued by the United States Patent and Trademark Office for an invention entitled “Interactive Terminal For The Access Of Remote Database Information.” On October 10, 1995, a certificate of correction of the 421 patent was duly and legally issued by the Patent Office. A true and correct copy of the 421 patent, along with its certificate of correction, is attached hereto as Exhibit A.

31. Garnet is the owner of the 421 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 421 patent against infringers, and to collect damages for all relevant times.

32. AT&T Inc. and AT&T Mobility (collectively “AT&T”) directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least the AT&T Impulse; the Dell Venue; the HTC HD7, Inspire, and Status; the Motorola Atrix; Palm Pixi; Pantech Crossover; and Sony Ericsson Xperia smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

33. Dell directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems

(including at least Dell Venue smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

34. Pantech directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Pantech Breakout and Crossover smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

35. HTC directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least HTC Amaze, 7 Pro, Arrive, Desire EVO HD7, Hero, Inspire Merge, Radar, Rhyme, Sensation, Status, Thunderbolt, Trophy, and Wildfire smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

36. HP directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least HP Veer, Palm Pixi, and Palm Pre2 smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

37. Motorola directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Motorola Admiral, Atrix, Citrus, Cliq, Droid, Electrify,

ES400S, XPRT, Photon, Titanium, and Triumph smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

38. Sony Ericsson directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Sony Ericsson Xperia smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

39. Google directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Google Nexus smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

40. Kyocera directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Milano, Sanyo Zio, and Sanyo Incognito smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

41. Verizon Communications and Cellco (collectively “Verizon”) directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least HTC Rhyme, Thunderbolt, and Trophy; Motorola Citrus and Droid; Palm Pre2; Pantech Breakout; and

Sony Ericsson Xperia smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

42. Sprint Solutions and Sprint Nextel (collectively “Spring”) directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Google Nexus; HTC Arrive and EVO; Kyocera Milano; and Motorola Admiral, ES400S, XPRT, Photon, and Titanium smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

43. T-Mobile directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least HTC Amaze, HD7, Radar, Sensation, and Wildfire; Motorola Cliq; and T-Mobile Comet, G2x, myTouch, and Sidekick smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

44. Boost directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Kyocera Sanyo Incognito smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

45. Virgin Mobile and Virgin Limited (collectively “Virgin”) directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed,

sold, and/or offered for sale products and/or systems (including at least HTC Wildfire; and Motorola Triumph and Intercept smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

46. MetroPCS directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Huawei M835 smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

47. Leap Wireless and STX (collectively “Leap”) directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Huawei Ascend; and Kyocera Sanyo Zio smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

48. Huawei directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Huawei Ascend and M835 smartphones) that infringed one or more claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

49. RadioShack directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least Motorola and HTC smartphones) that infringed one or more

claims of the 421 patent, and/or induced infringement and/or contributed to the infringement of one or more of the claims of the 421 patent by its customers.

ADDITIONAL ALLEGATIONS REGARDING INDIRECT INFRINGEMENT

50. Each defendant has indirectly infringed the 421 patent, both by inducement and by contributory infringement.

51. The direct infringement underlying each defendants' indirect infringement consists of the use of the accused smartphones by end-user customers.

52. Each defendant induces end-user customers to use the accused smartphones, and specifically to use them in a manner that infringes the patent-in-suit. They do so by (1) providing instructions, for example in their user manuals for the accused phones, to their customers that explain how to use the features of the accused devices that are accused of infringement (specifically those features that allow video to be downloaded and displayed by the smartphone as set forth in the infringement contentions that were served in this case, which are hereby incorporated by reference); and (2) by touting the accused features of the smartphones, including but not limited to advertisements and on their websites. Additionally, the carrier defendants maintain wireless networks that are designed to be accessed by the accused smartphones and that are designed to carry data such as video. The carrier defendants sell data plans to their customers that are designed for the accused smartphones' high use of data.

53. Each defendant has contributed to the infringement of the 421 patent by end-user customers by making and selling the accused smartphones. The accused features of the accused smartphones have no substantial use other than infringing the 421 patent. In particular, the accused features that allow video to be downloaded and displayed by the

smartphone, for example, to be displayed on the integrated display that is part of the smartphone or on an external display through a link such as an HDMI output, have no practical use other than uses that infringe the patent-in-suit, as detailed in the infringement contentions that have been served in this action, which are incorporated by reference. The use of these features of the accused smartphones for their intended purpose necessarily results in infringement of the 421 patent.

54. Each defendant has knowledge of the 421 patent, as well as the fact that its customers use of the accused products infringes the 421 patent, since at least as early as receiving notice of this lawsuit, when it was served with the complaint in this action. Additionally, when each defendant began making and/or selling the accused products it did so without taking adequate steps to determine whether it would be infringing the patent rights of others, and thus remained willfully blind to the existence of the 421 patent. Finally, some defendants (including at least AT&T and Sony) knew about the 421 patent because it was brought to their attention in connection with the filing of their own patents.

JURY DEMAND

Garnet hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

Garnet requests that the Court find in its favor and against defendants, and that the Court grant Garnet the following relief:

a. Judgment that one or more claims of the 421 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more defendants and/or by others to whose infringement defendants have contributed and/or by others whose infringement has been induced by defendants;

- b. A permanent injunction enjoining defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing infringement of, or contributing to infringement of the 421 patent;
- c. Judgment that defendants account for and pay to Garnet all damages to and costs incurred by Garnet because of defendants' infringing activities and other conduct complained of herein;
- d. That Garnet be granted pre-judgment and post-judgment interest on the damages caused by defendants' infringing activities and other conduct complained of herein;
- e. That this Court declare this an exceptional case and award Garnet its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- f. That Garnet be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: October 3, 2012

Respectfully submitted,

/s/ Matthew J. Antonelli
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Matthew J. Antonelli
Matthew J. Antonelli