

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

IPVX PATENT HOLDINGS, INC.,

Plaintiff,

vs.

CASE NO. 6:11-cv-00575-LED

BROADVOX, INC.; BROADVOX, LLC;  
BROADVOXGO!, LLC; CYPRESS  
COMMUNICATIONS, INC.; CYPRESS  
COMMUNICATIONS OPERATING  
COMPANY, LLC; and CYPRESS  
COMMUNICATIONS, LLC.,

Defendants.

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

On November 1, 2011, then plaintiff Klausner Technologies, Inc. (“Klausner”) brought the initial Complaint for Patent Infringement in this action against The Broadvox Holding Company, LLC alleging that The Broadvox Holding Company, LLC had infringed United States Patent No. 5,572,576 entitled “Telephone Answering Device Linking Displayed Data with Recorded Audio Message” (the “’576 Patent”). On May 17, 2012, Klausner assigned to IPVX Patent Holdings, Inc. (“IPVX”) all right, title and interest in, inter alia, the patent-in-suit, i.e., the ’576 Patent, including the right to enforce the ’576 Patent and to recover for past infringement as to The Broadvox Holding Company, LLC. On June 6, 2012, the Court ordered that Plaintiff IPVX be substituted for Klausner Technologies as plaintiff in this action. On September 26, 2012, the Court also ordered Plaintiff to file an amended complaint

By this First Amended Complaint, Plaintiff IPVX sues Defendants Broadvox, Inc.; Broadvox, LLC; BroadvoxGo!, LLC; Cypress Communications, Inc.; Cypress Communications Operating Company, LLC; and Cypress Communications, LLC (“Defendants”) and on information and belief, alleges as follows:

### **Introduction**

1. Plaintiff IPVX owns the inventions described and claimed in the ‘576 Patent and Defendants (a) have used Plaintiff’s patented technology in products that they made, used, sold, and offered to sell, without Plaintiff’s authorization, and (b) have contributed to or induced others to infringe the ‘576 Patent. Plaintiff IPVX seeks damages for patent infringement.

### **Jurisdiction and Venue**

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, et seq. The Court has original jurisdiction over this patent infringement action under 28 U.S.C. §§ 1338(a).

3. Venue is proper in this Court because the Defendants are responsible for acts of infringement occurring in the Eastern District of Texas as alleged in this Complaint, and have delivered or caused to be delivered their infringing products in the Eastern District of Texas.

4. Upon information and belief, Defendants sell infringing products within the Eastern District of Texas through, and to, at least, Conextgen, Inc., a reseller located in Plano, Texas, which is within the Eastern District of Texas.

5. Upon information and belief, Defendants make use of the building located at 4975 Preston Park South, Plano, TX, which is referred to as a Unified

Communications Powered Building on the “Broadvox” branded website and as a Cypress Communications Lit Building on the “Cypress Communications” branded website, and which is located within the Eastern District of Texas, to sell, and offer to sell, certain of the accused visual voicemail products to customers within the Eastern District of Texas.

6. Upon information and belief, Defendants have installed equipment at the Unified Communications Powered Building or Cypress Communications Lit Building at 4975 Preston Park South, Plano, TX, which is located within the Eastern District of Texas.

**Plaintiff IPVX Technologies**

7. Plaintiff IPVX is a corporation existing under and by virtue of the laws of the State of Delaware.

**The ‘576 Patent**

8. The United States Patent and Trademark Office issued the ‘576 Patent on November 5, 1996. A copy of the ‘576 Patent is attached as Exhibit A. Through assignment, Plaintiff is the owner of all right, title, and interest, including rights for damages for past infringement, in the ‘576 Patent.

**Defendant Broadvox, Inc.**

9. Upon information and belief, Broadvox, Inc. is an Ohio corporation having a place of business in Dallas, TX.

10. Upon information and belief, Broadvox, Inc. is registered to do business in Texas with Incorp Services, Inc., located at 815 Brazos St., Ste. 500, Austin, TX 78701, as its registered agent within Texas.

**Broadvox, LLC**

11. Upon information and belief, Broadvox, LLC is a Delaware limited liability company having a place of business in Dallas, TX.

12. Upon information and belief, Broadvox, LLC is either directly or indirectly a wholly-owned subsidiary of Broadvox, Inc.

**BroadvoxGo!, LLC**

13. Upon information and belief, BroadvoxGO!, LLC is a Delaware limited liability company having a place of business in Dallas, TX.

14. Upon information and belief, BroadvoxGo!, LLC is either directly or indirectly a wholly-owned subsidiary of Broadvox, Inc.

15. Upon information and belief, BroadvoxGO!, LLC is registered to do business in Texas with Incorp Services, Inc., located at 815 Brazos St., Ste. 500, Austin, TX 78701, as its registered agent within Texas.

**Cypress Communications, Inc.**

16. Upon information and belief, Cypress Communications, Inc. is a Delaware corporation having a place of business in Atlanta, Georgia.

17. Upon information and belief, Cypress Communications, Inc. is either directly or indirectly a wholly-owned subsidiary of Broadvox, Inc.

18. Upon information and belief, Cypress Communications, Inc. is registered to do business in Texas with Incorp Services, Inc., located at 815 Brazos St., Ste. 500, Austin, TX 78701, as its registered agent within Texas.

**Cypress Communications Operating Company, LLC**

19. Upon information and belief, Cypress Communications Operating Company, LLC is a Delaware limited liability company having a place of business in Atlanta, Georgia.

20. Upon information and belief, Cypress Communications Operating Company, LLC is either directly or indirectly a wholly-owned subsidiary of Broadvox, Inc.

21. Upon information and belief, Cypress Communications Operating Company, LLC is registered to do business in Texas with Incorp Services, Inc., located at 815 Brazos St., Ste. 500, Austin, TX 78701, as its registered agent within Texas.

**Cypress Communications, LLC**

22. Upon information and belief, Cypress Communications, LLC is a Delaware limited liability company having a place of business in Atlanta, Georgia.

23. Upon information and belief, Cypress Communications, LLC is either directly or indirectly a wholly-owned subsidiary of Broadvox, Inc.

**First Claim for Patent Infringement ('576 Patent)**

24. On or about November 5, 1996, the '576 Patent, disclosing and claiming a "Telephone Answering Service Linking Displayed Data with Recorded Audio Message," was duly and legally issued by the United States Patent and Trademark Office.

25. Plaintiff IPVX is the owner of the '576 Patent with full rights to pursue recovery of royalties or damages for infringement of such patent, including full rights to recover past damages, including those damages accruing from the date of the filing of the initial Complaint.

26. The '576 Patent relates to what is known in the telecommunications and related industries as “visual voicemail”, i.e., the “visual identification of callers’ identities and selective access to their linked recorded voice messages.” ‘576 Patent at Col. 2 (Summary of Invention).

27. The ‘576 Patent and its previous assignee Klausner Patent Technologies have been virtually synonymous with “visual voicemail” functionality since the time when this feature rapidly entered the marketplace. At least as early as 2007, visual voicemail became widely publicized as a feature of Apple’s first iPhone. Coinciding with Apple’s release of its first iPhone, Klausner’s patent infringement suit against Apple and AT&T asserting the ‘576 Patent was heavily publicized, especially in publications directed toward telecommunications and related industries, including without limitation, VoIP Monitor, Reuters, PC World, and The Register. The identification of Klausner and its ‘576 Patent with visual voicemail capabilities is so widespread that it is included with the Wikipedia encyclopedia entry for the term “visual voicemail” available at [http://en.wikipedia.org/wiki/Visual\\_voicemail](http://en.wikipedia.org/wiki/Visual_voicemail). Since as early as September 18, 2009, Klausner and its ‘576 Patent were referenced in the Wikipedia encyclopedia entry for visual voicemail when the entry stated that “The patent for Visual Voicemail is owned by Klausner Technologies, Inc.” *See* Wikipedia Archive available at [http://en.wikipedia.org/w/index.php?title=Visual\\_voicemail&oldid=314720314](http://en.wikipedia.org/w/index.php?title=Visual_voicemail&oldid=314720314).

28. The patent infringement suit against Apple and AT&T was preceded by several other articles that were widely distributed across the telecommunications industry which publicized infringement suits, licenses, and settlements relating to the ‘576 patent, involving visual voicemail offerings by Time Warner AOL and Vonage Holdings. Klausner has also filed highly publicized suits for infringement of the ‘576 Patent against others in the industry,

including wireless services providers, mobile phone manufacturers, cable/VOIP providers, and other companies that offer visual voicemail services, such as Verizon, Cablevision, Google, Comcast, HTC Corporation, LG Electronics, Citrix, Panasonic, Avaya, Yahoo, Cisco, NEC, Siemens, Alcatel-Lucent, and Samsung.

29. Upon information and belief, those companies involved in offering voicemail products at the time of Apple's release of its first iPhone and popularization of visual voicemail capability knew about Klausner and its '576 Patent.

30. Upon information and belief, Defendants have been active in the telecommunications and related industries since at least as early as 2007.

31. Upon information and belief, Defendants were aware of the release of Apple's iPhone and its visual voicemail feature.

32. Upon information and belief, Defendants were aware of visual voicemail features offered by Defendants' competitors.

33. Upon information and belief, Defendants were aware of the fact that others who offered products with visual voicemail capabilities were sued by Klausner for infringement of the '576 Patent.

34. Upon information and belief, Defendants were aware that others in the telecommunications and related industries offering products with visual voicemail capabilities entered into licensing agreements and settled infringement suits with Klausner.

35. Defendants have infringed, contributed to the infringement of, and induced others to infringe the '576 Patent through the expiration date of the '576 patent.

36. Defendants have infringed, contributed to the infringement of, and induced others to infringe the '576 Patent by manufacturing, using, selling, offering for sale or

by using the method(s) claimed in the '576 Patent in conjunction with, or by contributing to or inducing others to manufacture, use, sell, offer to sale, or use the method(s) claimed in the '576 Patent in conjunction with voicemail products with visual voicemail capabilities, including GO!VBX Unified Messaging, GO!VBX Unified Messaging Voicemail To Text, GO!VBX Managed Unified Messaging, GO!VBX Managed Voicemail To Text, C4 IP, C3 IP & C2 Enhanced Voicemail Web Portal, C4 IP Unified Messaging Voicemail to Email, C4 IP Unified Messaging Voicemail-To-Text, Cypress Messaging Unified Messaging Webmail Application and other systems with similar functionality (hereinafter "Broadvox Voicemail Products").

37. Defendants infringed the Patents by manufacturing, using, selling, offering for sale or by using the method(s) claimed in the '576 Patent in conjunction with the Broadvox Voicemail Products, by contributing to the manufacture, use, sale, offer to sell, or use of the method(s) claimed in the '576 Patent in conjunction with the Broadvox Voicemail Products by others, including Defendants' customers, and inducing others, including Defendants' customers to infringe by manufacturing, using, selling, offering to sell or by using the method(s) claimed in the '576 Patent in conjunction with the Broadvox Voicemail Products.

38. The manufacture, use, sale, or offer to sell the Broadvox Voicemail Products, or use of the method(s) claimed in the '576 Patent in conjunction with the Broadvox Voicemail Products by Defendants and others, including Defendants' customers, infringes the '576 Patent because, upon information and belief, the Broadvox Voicemail Products contain visual voicemail capabilities or features that make voicemails accessible via e-mail boxes and/or through remote devices such as a computer, telephone, or Personal Digital Assistant (PDA).

39. Upon information and belief, users of Defendants' Broadvox Voicemail Products have used the method(s) claimed in the '576 Patent and infringed at least claim 3 of the '576 Patent. Upon information and belief, Defendants have induced such users of Defendants' Broadvox Voicemail Products to use the method(s) claimed in the '576 Patent and infringed at least claim 3 of the '576 Patent. Specifically, upon information and belief, Defendants' marketing materials identify users of the Broadvox Voicemail Products that Defendants have induced to use the method(s) claimed in the '576 Patent and infringe at least claim 3 of the '576 Patent. For example, upon information and belief, Defendants have issued press releases identifying customers who were induced to infringe and did infringe at least claim 3 of the '576 Patent. More particularly, for example, Defendants have issued press releases identifying users associated with the following entities who, upon information and belief, Defendants induced to infringe the '576 Patent: Calzone Case Company, Panitch Schwarze Belisario & Nadel LLP, and Ashworth & Sullivan Wealth Management Group, LLC.

40. Upon information and belief, Defendants had actual knowledge of the '576 Patent at least as of October 26, 2011 when The Broadvox Holding Company, LLC was served with a previous summons and complaint alleging infringement of the '576 Patent.

41. Upon information and belief, Defendants had actual knowledge of the '576 Patent before the filing of the Complaint in this action. Specifically, upon information and belief Defendants were aware of visual voicemail technology and, as a result of the association of Klausner and the '576 Patent with visual voicemail technology, were also aware of the '576 Patent when Defendants incorporated the visual voicemail features into the Broadvox Voicemail Products and induced their customers to use such features. Defendants therefore knew that use of

the Broadvox Voicemail Products by Defendants' customers infringed the '576 Patent and by offering and encouraging users to use the Broadvox Voicemail Products, Defendants intended that the users of the Broadvox Voicemail Products infringe the '576 Patent.

42. Upon information and belief, Defendants have also induced customers and users of the Broadvox Voicemail Products, particularly users of the visual voicemail features, to infringe the '576 Patent by promoting and instructing users to use the capability of retrieving voicemails using the visual voicemail feature of the Broadvox Voicemail Products. Defendants touted the visual voicemail feature as one that "makes communications easy," offers a "simpler and more efficient way to handle voicemail messages," and makes it "easier and faster to deal with voicemail when you can sort through a list of messages on your PC, rather than tediously listening to one after another on your telephone."

43. Upon information and belief, Defendants advertised at least their GO!VBX Unified Messaging product in a manner that demonstrated that the GO!VBX Unified Messaging product provides a telephone answering device with a memory that is coupled to a telephone for automatically answering telephone calls, as well as storing and retrieving information related to the telephone calls; receives first signals for each incoming call and then displays the first signals for the voicemail in the subject line of each voicemail message in the Voicemail Web Portal Inbox; that the GO!VBX Unified Messaging product receives and stores voice messages in its memory, and then attaches those incoming voice messages to a voicemail message in the Voicemail Web Portal Inbox; that the GO!VBX Unified Messaging product links each of said received first signals with a corresponding voice message by displaying the first signals for each voice message in the subject line of a voicemail message in the Voicemail Web Portal Inbox, and attaching the corresponding

voice message to the same voicemail message; that the GO!VBX Unified Messaging product transmits received first signals to a user remote access device, which is transmitted in the subject line of each voicemail message in the Voicemail Web Portal Inbox allowing a voicemail message to be viewed on a variety of remote devices such as a computer, a phone, or a PDA and allowing the first signals to be used as assistance in selectively retrieving voice messages; and that the GO!VBX Unified Messaging product transmits a specific voice message which is linked to the specific received first signal that is included in the subject line of each voicemail message, the specific voice message being transmitted to a user remote access device, such as a computer, phone or PDA in response to a selection of the stored voice message, which is attached to a voicemail message.

44. Upon information and belief, Defendants also contributed to the infringement of the '576 Patent by providing their customers with the infringing visual voicemail feature as part of their Broadvox Voicemail Products when such visual voicemail feature had no substantial non-infringing use.

45. Upon information and belief, Defendants each manufacture, use, sell, and/or offer for sale the same accused visual voicemail products, as well as other similar visual voicemail products. Thus, there are identical questions of fact common to all Defendants and joinder is appropriate.

46. More particularly, upon information and belief, for example, Defendants Cypress Communications, Inc. and Broadvox LLC both operate a website advertising certain Broadvox Voicemail Products, including the GO! VBX Unified Messaging Product. GO!VBX Unified Messaging is the namesake of Defendant BroadvoxGo!, LLC. Upon information and belief, the contracts under which Defendant Cypress Communications, Inc. offers its products

are contracts between Defendant Cypress Communications, LLC and users of the products, specifically, the master terms and conditions available on Cypress Communications, Inc.'s website. Upon information and belief, Defendant Cypress Communications Operating Company, LLC is the entity involved with operating the other Cypress entities and offering the Broadvox Voicemail Products including the GO! VBX Unified Messaging Product. Upon information and belief, Defendant Broadvox, Inc. is also offering and/or deriving profits from the sale of the GO! VBX Unified Messaging Product.

47. Plaintiff has been damaged by Defendants' infringement of the '576 Patent and has suffered additional irreparable damage and impairment of the value of its patents rights due to Defendants' infringement of the Patent, including due to Defendants' continued infringement of the Patent after the filing of the initial Complaint in this action.

48. Plaintiff demands trial by jury of all issues so triable.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Compensatory damages awarding Plaintiff damages caused by Defendants' infringement of the '576 Patent;
- B. For costs of suit and attorneys fees;
- C. For pre-judgment interest; and
- D. For such other relief as justice requires.

Dated: October 10, 2012

Respectfully submitted,

By: S. Calvin Capshaw

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ATTORNEYS FOR PLAINTIFF,  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document this 10th day of October, 2012, via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ S. Calvin Capshaw