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

TELINIT TECHNOLOGIES, LLC	§	
	§	
Plaintiff,	§	**CIVIL ACTION NO. 2:12-cv-662**
	§	
v.	§	**JURY TRIAL DEMANDED**
	§	
MICROSOFT CORPORATION;	§	
SKYPE COMMUNICATIONS S.A R.L.;	§	
and SKYPE INC.	§	
	§	
Defendants.	§	

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW, Plaintiff Telinit Technologies, LLC ("Telinit"), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 of the United States Code ("U.S.C."), involving U.S. Patent 6,192,123 (hereinafter the "'123 Patent", attached hereto as Exhibit "A") in which Plaintiff Telinit Technologies, LLC (hereinafter "Telinit") makes the following allegations against defendants Microsoft Corporation (hereinafter "Microsoft"), Skype Communications S.à. r.l. (hereinafter "Skype Communications") and Skype Inc. (hereinafter "Skype Inc.") (collectively "Defendants") to prevent and enjoin Defendants from infringing and profiting, in an illegal and unauthorized manner and without authorization or consent from the '123 Patent pursuant to 35 U.S.C. § 271, and to recover damages, attorneys fees, and costs.

THE PARTIES

2. Plaintiff Telinit is a Texas corporation with its principal place of business at 2500 Dallas Parkway, Suite 260, Plano, Texas 75093-4871.

3. Defendant Microsoft is a Washington corporation and maintains a place of business within this state at 7000 State Highway 161, Irving, TX 75039. Microsoft maintains a registered agent within this state at Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701.

4. Defendant Skype Communications is a Luxembourg limited liability partnership with a principal place of business at 23-29 Rives de Clausen, L-2165 Luxembourg, Luxembourg and may be served with process there by via an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.

5. Defendant Skype Inc. is a Delaware corporation with a place of business at 3210 Porter Drive, Palo Alto, CA 94304. Skype maintains a registered agent at Corporation Service Company, 2710 Gateway Oaks Dr., Suite 150 N, Sacramento, CA 95833.

6. On or around May 10, 2011, Microsoft issued a press release announcing an agreement with Skype Global S.à. r.l. under which Microsoft would "acquire Skype," and explaining that "Skype will become a new business division within Microsoft". (*See* Exhibit "B").

7. Skype Communications was a separately incorporated subsidiary of Microsoft, at least as recently as June 30, 2012, and may be served via an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. In the alternative, Skype Communications may be served at 23-29 Rives de Clausen, L-2165

Luxembourg, Luxembourg, via an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.

8. Defendants are in the business of manufacturing, distributing and/or selling network-based telephony initiation systems and/or services throughout the United States, including in this judicial jurisdiction.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq*.

10. This Court has personal jurisdiction over Defendants by virtue of their systematic and continuous contacts with this jurisdiction, as alleged herein, as well as because of the injury to Telinit, and the cause of action Telinit has risen, as alleged herein.

11. Each of the Defendants 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 its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (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 Judicial District.

12. Defendants have conducted and do conduct business within the state of Texas, including the geographic region within the Eastern District of Texas, directly or through intermediaries, resellers or agents, or offer for sale, sell, advertise (including the use of interactive web pages with promotional material) products or services, or use or induce others to use services or products in Texas that infringe the '123 Patent, knowingly induce others to

infringe and/or contribute to infringement of the ‘123 Patent occurring within Texas and elsewhere.

13. In addition to the Defendants’ continuously and systematically conducting business in Texas, the causes of action against Defendants are connected (but not limited) to Defendants’ purposeful acts committed in the state of Texas, including the geographic region within the Eastern District of Texas, including Defendants’ making, using, offering for sale, or selling network-based telephony initiation systems which include features that fall within the scope of at least one claim of the ‘123 Patent.

14. Venue lies in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b).

JOINDER

15. 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 transactions, occurrences, 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 ‘123 Patent with respect to a number of user-initiated web-based telephony products.

16. 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 user-initiated web-based telephony products alleged to infringe have features that meet the features of one or more claims of the ‘123 Patent, and what reasonable royalty will be adequate to compensate the owner of the ‘123 Patent for its infringement.

17. Defendant Skype Communications is a wholly-owned subsidiary of Defendant Microsoft. For example, certain regulatory filings from Microsoft claim, as recently as June 30, 2012, that Skype Communications is a material subsidiary of Microsoft.

18. Defendant Skype Inc. is similarly a wholly-owned subsidiary of Defendant Microsoft.

19. Each one of the Defendants' products and services use, among other shared features: a platform, a web-based interface, a data network, a switch and a monitoring system.

20. At least one right to relief is asserted against these parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process.

21. Each Defendant has either directly or indirectly infringed on the '123 Patent by making, using, selling or offering to sell one or more of the abovementioned products or services. Consequently, questions of fact common to all defendants will arise in the action.

FACTUAL ALLEGATIONS

BACKGROUND

22. On February 20, 2001, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '123 Patent, entitled "Method and apparatus for initiating telephone calls using a data network" after a full and fair examination. A true and correct copy of the '123 Patent is attached hereto as Exhibit "A".

23. Telinit is presently the owner by assignment of the '123 Patent, having received all right, title and interest in and to the '123 Patent from the previous assignee of record. Telinit

possesses all rights of recovery under the ‘123 Patent, including the exclusive right to recover for past infringement.

24. The ‘123 Patent contains two independent claims and six dependent claims.

25. The inventions described in the ‘123 Patent include a system and process for initiating a telephone call using a data network request, signaling a switch, and monitoring and providing status updates to a user of the telephone system.

26. The invention described in Independent Claim 1 of the ‘123 Patent includes a process for receiving a data network request to initiate a telephone call, the request including a user telephone number. The inventive process identifies a stored telephone number corresponding to the request, signals a switch to make a call on a voice network to an instrument identified by the stored telephone number. Finally, the process also monitors call status and provides a user with an indication if the status changes.

27. The invention described in Independent Claim 5 includes a system having an input component to receive a data request to initiate a telephone call, the request including a user telephone number. The system also includes a processing component that identifies a stored telephone number corresponding to the request, a signaling component that signals a switch to make a call on the voice network to an instrument identified by the stored telephone number. Finally, a monitoring component monitors call status, and a status component provides a user with an indication if the status changes.

28. Microsoft offers telephony initiation services to allow users of Microsoft Lync, Lync Online and/or Office 365 (“Microsoft Users”) to contact other Microsoft Users and third parties through the Lync, Lync Online and/or Office 365 interface.

29. Microsoft provides access to functionality to Microsoft Users designed

specifically to communicate with servers believed to be owned and/or controlled by Microsoft (hereinafter "Microsoft Servers").

30. The Microsoft Servers are accessible over a data network, and perform functions such as receiving data requests over the network enabling Microsoft Users to initiate telephony communications with other Microsoft Users and third parties. The requests include a user telephone number, such as telephone numbers identifying the Microsoft Users.

31. The Microsoft Servers also identify stored telephone numbers, such as by managing contact lists accessible via various instances of the Lync, Lync Online and/or Office 365 interface.

32. The Microsoft Servers signal a switch to call a voice network, such as signaling certain servers known for providing access to a PSTN, to other telephone devices identified by stored telephone numbers, such as by initiating telephone calls with a Microsoft User and/or other Microsoft Users or third parties.

33. The Microsoft Servers monitor call status and indications of status changes, including providing status indications to Microsoft Users.

34. The Microsoft Servers also include input components designed to receive data requests over the network enabling Microsoft Users to initiate telephony communications with other Microsoft Users and third parties. The requests include a user telephone number, such as telephone numbers identifying the Microsoft Users.

35. The Microsoft Servers include processing components designed to identify stored telephone numbers, such as by managing contact lists accessible via various instances of the Lync, Lync Online and/or Office 365 interface.

36. The Microsoft Servers include a signaling component for signaling a switch to

call a voice network, such as signaling certain servers known for providing access to a PSTN, to other telephone devices identified by stored telephone numbers, such as by initiating telephone calls with a Microsoft User and/or other Microsoft Users or third parties.

37. The Microsoft Servers include monitoring and status components to monitor call status and provide indications of status changes, including providing status indications to Microsoft Users.

MICROSOFT'S PRODUCTS AND SERVICES

38. Microsoft provides access to certain network-based services for initiating telephony communications, including services marketed under the trade names Microsoft Lync and Skype. Such services include both web-based services, including Lync-branded services known as Lync Online and/or Office 365 and Skype (hereinafter "Microsoft Web-based Products"), and private network-based software services, including Lync-branded services (hereinafter "Private Network-based Products").

39. The services provided by Microsoft Web-based Products include distributing special-purpose software applications to subscribers (hereinafter "Client Software") designed specifically to communicate with servers believed to be owned and/or controlled by Microsoft Servers. An example of Client Software includes Microsoft Lync 2010 and Skype-branded software.

40. The Microsoft Servers are accessible over a data network, and perform functions such as receiving data requests over the network enabling subscribers and third parties to initiate telephony communications with each other. The requests include a user telephone number, such as telephone numbers identifying the Client Software subscriber.

41. The Microsoft Servers further identify stored telephone numbers, such as by

maintaining contact lists that can be accessed from multiple Client Software installations, and by maintaining forwarding numbers associated with subscribers.

42. The Microsoft Servers signal a switch to call a voice network, such as a public switched telephone network (PSTN), to other telephone devices identified by stored telephone numbers, such as contact list phone numbers or alternate "forwarding" phone numbers designated by subscribers.

43. The Microsoft Servers additionally monitor call status and provide indications of status changes, including providing status indications to Client Software interfaces and/or administrative interfaces.

44. The Microsoft Servers have input components designed to receive data requests over the network enabling subscribers and third parties to initiate telephony communications with each other. Those requests include a user telephone number, such as telephone numbers identifying the Client Software subscriber.

45. The Microsoft Servers further include processing components designed to identify stored telephone numbers, such as by maintaining contact lists that can be accessed from multiple Client Software installations, and by maintaining forwarding numbers associated with subscribers.

46. The Microsoft Servers further include a signaling component for signaling a switch to call a voice network, such as a PSTN, to other telephone devices identified by stored telephone numbers, such as contact list phone numbers or alternate "forwarding" phone numbers designated by subscribers.

47. The Microsoft Servers have monitoring and status components to monitor call status and provide indications of status changes, including providing status indications to Client

Software interfaces and/or administrative interfaces.

48. The services provided by Microsoft Private Network-based Products include distributing special-purpose server software to subscribers (hereinafter "Server Software") designed specifically to be installed on servers believed to be owned and/or controlled by such subscribers ("Subscriber Servers") and designed to communicate with client applications believed to be owned and/or controlled by such subscribers ("Client Software"). An example of Server Software includes Microsoft Lync Server 2010.

49. The Subscriber Servers perform functions and include components consistent with the description below as a result of the Server Software.

50. The Subscriber Servers are accessible over a data network, and perform functions such as receiving data requests over the network enabling subscribers and third parties to initiate telephony communications with each other. The requests include a user telephone number, such as telephone numbers identifying the Client Software subscriber.

51. The Subscriber Servers further identify stored telephone numbers, such as by maintaining contact lists that can be accessed from multiple Client Software installations, and by maintaining forwarding numbers associated with subscribers.

52. The Subscriber Servers signal a switch to call a voice network, such as a PSTN, to other telephone devices identified by stored telephone numbers, such as contact list phone numbers or alternate "forwarding" phone numbers designated by subscribers.

53. The Subscriber Servers additionally monitor call status and provide indications of status changes, including providing status indications to Client Software interfaces and/or administrative interfaces.

54. The Subscriber Servers have input components designed to receive data requests

over the network enabling subscribers and third parties to initiate telephony communications with each other. Those requests include a user telephone number, such as telephone numbers identifying the Client Software subscriber.

55. The Subscriber Servers further include processing components designed to identify stored telephone numbers, such as by maintaining contact lists that can be accessed from multiple Client Software installations, and by maintaining forwarding numbers associated with subscribers.

56. The Subscriber Servers further include a signaling component for signaling a switch to call a voice network, such as a PSTN, to other telephone devices identified by stored telephone numbers, such as contact list phone numbers or alternate "forwarding" phone numbers designated by subscribers.

57. The Subscriber Servers have monitoring and status components to monitor call status and provide indications of status changes, including providing status indications to Client Software interfaces and/or administrative interfaces.

SKYPE'S PRODUCTS AND SERVICES

58. Skype, Inc. and Skype Communications provide access to certain network-based services for initiating telephony communications, including, but not limited to services marketed under the trade name Skype, such as Skype 5.10 (and previous versions), Skype Manager, and Skype Connect.

59. The services provided by Skype, Inc. and Skype Communications include distributing special-purpose, Skype-branded software applications to subscribers (hereinafter "Client Software") designed specifically to communicate with servers believed to be owned and/or controlled by Defendants (hereinafter "Skype Servers").

60. The Skype Servers are accessible over a data network, and perform functions such as receiving data requests over the network enabling subscribers and third parties to initiate telephony communications with each other. The requests include a user telephone number, such as telephone numbers identifying the Client Software subscriber.

61. The Skype Servers further identify stored telephone numbers, such as by maintaining contact lists that can be accessed from multiple Client Software installations, and by maintaining forwarding numbers associated with subscribers.

62. The Skype Servers signal a switch to call a voice network, such as a public switched telephone network (PSTN), to other telephone devices identified by stored telephone numbers, such as contact list phone numbers or alternate "forwarding" phone numbers designated by subscribers.

63. The Skype Servers additionally monitor call status and provide indications of status changes, including providing status indications to Client Software interfaces.

64. The Skype Servers have input components designed to receive data requests over the network enabling subscribers and third parties to initiate telephony communications with each other. Those requests include a user telephone number, such as telephone numbers identifying the Client Software subscriber.

65. The Skype Servers further include processing components designed to identify stored telephone numbers, such as by maintaining contact lists that can be accessed from multiple Client Software installations, and by maintaining forwarding numbers associated with subscribers.

66. The Skype Servers further include a signaling component for signaling a switch to call a voice network, such as a PSTN, to other telephone devices identified by stored telephone

numbers, such as contact list phone numbers or alternate "forwarding" phone numbers designated by subscribers.

67. The Skype Servers have monitoring and status components to monitor call status and provide indications of status changes, including providing status indications to Client Software interfaces.

DIRECT INFRINGEMENT

68. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-67.

69. Taken together, either partially or entirely, the features included in Microsoft's services for initiating telephony communications, including but not limited to, services branded under the name "Microsoft Lync, Lync Online and/or Office 365, and Skype" perform the process recited in one or more of Claims 1-4 of the '123 Patent.

70. Taken together, either partially or entirely, the features included in Microsoft's services for initiating telephony communications, including but not limited to, services branded under the name "Microsoft Lync, Lync Online and/or Office 365, and Skype" use the system described in one or more of Claims 5-8 of the '123 Patent.

71. Microsoft directly infringes one or more of claims 1-8 of the '123 Patent by using, selling, offering to sell and/or importing the process and the system for services for initiating telephony communications in violation of 35 USC § 271(a). For example, Microsoft offers its product, including Lync Online, on its website for U.S.A. subscribers.

72. Taken together, either partially or entirely, the features included in Skype Inc and Skype Communication's services for initiating telephony communications, including but not limited to, services branded under the name "Skype" perform the process recited in one or more

of Claims 1-4 of the ‘123 Patent.

73. Taken together, either partially or entirely, the features included in Skype Inc and Skype Communication’s services for initiating telephony communications, including but not limited to, services branded under the name “Skype” use the system described in one or more of Claims 5-8 of the ‘123 Patent.

74. Skype Inc directly infringes one or more of claims 1-8 of the ‘123 Patent by using, selling, offering to sell and/or importing the process and the system for services for initiating telephony communications in violation of 35 USC § 271(a) .

75. Skype Communications directly infringes one or more of claims 1-8 of the ‘123 Patent by using, selling, offering to sell and/or importing the process and the system for services for initiating telephony communications in violation of 35 USC § 271(a). For example, Skype offers its products through its website with specific pricing information of call rates for U.S.A. users.

INDIRECT INFRINGEMENT

INDUCING INFRINGEMENT

76. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-75.

77. Defendant Microsoft has had prior knowledge of infringement of the ‘123 Patent from one or more prior owners of the ‘123 Patent.

78. Defendants have had knowledge of infringement of the ‘123 Patent at least as of the service of the present complaint. At least one Defendant has had knowledge of the ‘123 Patent as least as of April 2004.

79. Furthermore, Defendants have had knowledge of the '123 Patent since public records show that the '123 Patent has been cited as "Prior Art" by at least thirty-eight patents issued by the United States Patent and Trademark Office in the past eleven years.

80. Defendants indirectly infringe one or more claims of the '123 Patent by actively inducing the infringement of their respective customers, users, subscribers and licensees who directly infringe by performing the patented process in violation of 35 USC § 271(b).

81. Defendant Microsoft actively induces others such as its customers, users, subscribers, and licensees, and third parties to provide access to functionality for initiating telephony communications by providing certain software as part of Microsoft's Private Network-based Products.

82. Such use by third parties of the software, including, without limitation, Microsoft's Private Network-based Products, performs the process identified in one or more of claims 1-4 of the '123 Patent. For example, Microsoft Lync Server's Product Guide instructs, among others, its customers, users, subscribers, and licensees to perform certain acts with Lync Server for its use on a private network; and Microsoft's customers, users, subscribers, and licensees perform those acts for certain uses of Lync Server's functionalities.

83. Such third party installations, including, without limitation, the installation of Microsoft's Private Network-based Products, make and use the system identified in one or more of claims 5-8 of the '123 Patent.

CONTRIBUTORY INFRINGEMENT

84. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-83.

85. With knowledge of the patent in suit, the Defendants indirectly infringe the ‘123 Patent by contributing to the direct infringement of a class of actors which includes the end-users of the software products, as well as customers, users, subscribers and licensees, by encouraging the class of actors to download, install, and operate products, aware of the fact that such acts amount to infringement of one or more claims of the ‘123 Patent.

86. Microsoft offers to sell and sells services, including, without limitation, the services branded as “Lync Server” that constitute components of a patented system covered by one or more of claims 5-8 of the '123 Patent, constitute a material part of the invention and are not a staple article or commodity of commerce suitable for substantial noninfringing use.

87. Microsoft has known such server software, including, without limitation, the server software branded as “Lync Server” was especially made or especially adapted for use in infringement of the ‘123 Patent subsequently to receiving notice from one or more prior owners of the ‘123 Patent.

88. Microsoft has known such server software, including, without limitation, the server software branded as “Lync Server” was especially made or especially adapted for use in infringement of the ‘123 Patent at least as of the service of the present complaint.

89. Skype Inc and Skype Communications offers to sell and sells services, including, without limitation, the services branded as “Skype” that constitute components of a patented system covered by one or more of claims 5-8 of the ‘123 Patent, constitute a material part of the invention and are not a staple article or commodity of commerce suitable for substantial noninfringing use.

90. Skype Inc and Skype Communications has known such services, including, without limitation, the services branded as "Skype" were especially made or especially adapted for use in infringement of the '123 Patent at least as of the service of the present complaint.

91. In sum, Defendants indirectly infringe the '123 Patent by contributing to the direct infringement of one or more of claims 5-8 of the '123 Patent in violation of 35 USC § 271(c).

DEMAND FOR JURY TRIAL

92. Telinit demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Telinit prays for the following relief:

1. That Defendants be adjudged to have infringed the '123 Patent, directly and/or indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;

2. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly and/or indirectly infringing the '123 Patent;

3. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Telinit for the Defendants' past infringement and any continuing or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;

4. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

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

6. That Telinit have such other and further relief as this Court may deem just and proper.

Dated: October 12, 2012

Respectfully Submitted,

By: /s/ William E. Davis, III
William E. Davis, III
Texas State Bar No. 24047416
The Davis Firm, PC
111 West Tyler Street
Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661
Email: bdavis@badavisfirm.com

Of Counsel

Eugenio J. Torres-Oyola
USDC No. 215505
Ferraiuoli LLC
221 Plaza, 5th Floor
221 Ponce de León Avenue
San Juan, PR 00917
Telephone: (787) 766-7000
Facsimile: (787) 766-7001

ATTORNEYS FOR PLAINTIFF
TELINIT TECHNOLOGIES, LLC