

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

TELINIT TECHNOLOGIES, LLC

Plaintiff,

v.

**SHORETEL, INC.;
M5 NETWORKS, LLC; and
M5 NETWORKS, INC.**

Defendants.

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CIVIL ACTION NO. 2:12-cv-660

JURY TRIAL DEMANDED

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.”) to prevent and enjoin Defendants SHORETEL, INC., M5 Networks, LLC, and M5 Networks, Inc. (collectively “Defendants”) from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or consent from Telinit, from U.S. Patent No. 6,192,123 (the “123 patent”, attached hereto as Exhibit “A”) 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. Upon information and belief, Defendant SHORETEL, INC. (hereinafter “ShoreTel”) is a California corporation with a principal place of business at 960 Stewart Drive, Sunnyvale, California, 94089, and offices at 6500 River Place Boulevard, Building IV, Suite

200, Austin, TX 78730. Upon information and belief, ShoreTel maintains a registered agent at C T Corporation System, 350 North St. Paul St, Dallas, TX 75201.

4. Upon information and belief, Defendant M5 Networks, LLC (f/k/a Mets Acquisition II LLC and hereinafter “M5 Networks”) is a Delaware limited liability company with a principal place of business at 245 West 17th Street, New York, NY 10011. Upon information and belief, M5 Networks maintains a registered agent at Corporation Service Company, 2711 Centerville Rd, Suite 400, Wilmington, DE 19808.

5. Upon information and belief, M5 Networks is the surviving entity from an Agreement and Plan of Reorganization dated January 31, 2012 between ShoreTel, Mets Acquisition Corp, Mets Acquisition II LLC, M5 Networks, Inc and Fortis Advisors LLC.

6. Upon information and belief, Defendant M5 Networks, Inc. is a Delaware corporation with a principal place of business at 245 West 17th Street, New York, NY 10011. Upon information and belief, M5 Networks, Inc. maintains a registered agent at National Corporate Research, LTD, 615 S. DuPont Highway, Dover, DE, 19901.

7. Upon information and belief, Defendant M5 Networks, Inc. is claimed by ShoreTel as a subsidiary thereof.

JURISDICTION AND VENUE

8. The 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.*

9. 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 raised, as alleged herein.

10. Upon information and belief, 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.

11. Upon information and belief, 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.

12. 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 services for initiating telephony communications systems which include features that fall within the scope of at least one claim of the '123 Patent.

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

JOINDER

14. 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 network-based services for initiating telephony communications products.

15. 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 network-based services for initiating telephony communications products and services alleged to infringe have features that meet the limitations 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.

16. Upon information and belief, Defendants M5 Networks and M5 Networks, Inc. are wholly-owned subsidiaries of ShoreTel. *See* Exhibits "B" and "C", respectively. On or around March 26, 2012, ShoreTel announced that "Effective today, M5 is the ShoreTel Cloud Division" and that they "are thrilled to announce the completion of ShoreTel's acquisition of M5 Networks as of March 23, 2012." (*See* Exhibit "D"). Upon information and belief, all Defendants offer the same network-based services for initiating telephony communications that infringe on the '123 patent by virtue of ShoreTel's ownership of the aforementioned related subsidiary entities. Each Defendant offers these products and services under a variety of brands including, but not limited to, ShoreTel Sky.

FACTUAL ALLEGATIONS

17. 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”. Telinit is presently the owner of the 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. The ‘123 patent is valid and enforceable.

18. The ‘123 patent contains two independent claims and six dependent claims. Defendants use methods that perform one or more steps of the claims, and also make, use and sell or offer for sale products that encompass one or more of the claims.

19. The invention claimed in the ‘123 patent includes a system and process for initiating a telephone call using a data network request, that request signaling a switch, and that switch triggering a means of monitoring and providing status updates to a user of the telephone system.

20. The above described method and process of connecting and monitoring communication by telephony is often accomplished when a user of a computer encounters a web-based interface with a button that it can push in order to be connected with another person, such as another user of the service or a contact stored in a compatible computer application. Meanwhile, the status of their call is monitored for such things as quality and connectivity.

THE SHORETEL UNIFIED COMMUNICATIONS PLATFORM

21. The services provided by ShoreTel’s premise-based unified communications solution include distributing special-purpose server hardware and software to customers

(hereinafter “Server Products”) designed specifically to be installed on and/or connected with servers believed to be owned and/or controlled by such customers (“Subscriber Servers”) and designed to communicate with client applications believed to be owned and/or controlled by such customer’s subscribers (“Client Software”). An example of Server Products includes the hardware and software designed and sold to facilitate ShoreTel’s Unified Communications Platform.

22. Upon information and belief, the Subscriber Servers perform functions and include components consistent with the description below as a result of the Server Products.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

SHORETEL SKY

31. ShoreTel, M5 Networks and M5 Networks, Inc. (together “Defendants”) make up a network-based company that facilitates IP telephony-based communication advertised as “ShoreTel Sky”.

32. The ShoreTel Sky product and service is a system for initiating telephone calls on a voice network in response to requests from a data network.

33. ShoreTel Sky products facilitate communication between devices such as cellular phones and computers.

34. When deployed with such devices, the ShoreTel Sky products provide an interface that solicits generation of a network request to initiate telephone call connections based

on a user telephone number that it then connects with stored telephone numbers. Call status is monitored by ShoreTel Sky products and reported to users based on the status of such calls.

35. Defendants' ShoreTel Sky product uses methods and processes for network-based communication initiation systems which include features that fall within the scope of at least one claim of the '123 Patent.

DIRECT INFRINGEMENT

36. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 11-35.

THE SHORETEL UNIFIED COMMUNICATIONS PLATFORM

37. Taken together, either partially or entirely, the features included in Defendants' premise-based unified communications solution, including but not limited to, services branded under the name "Shoretel Unified Communications Platform" perform the process recited in one or more of Claims 1-4 of the '123 Patent.

38. Taken together, either partially or entirely, the features included in Defendants' premise-based unified communications solution, including but not limited to, services branded under the name "Shoretel Unified Communications Platform" use the system described in one or more of Claims 5-8 of the '123 Patent.

39. Upon information and belief Defendants directly infringes one or more of claims 1-8 of the '123 Patent by making, using, selling, offering to sell and/or importing the process and the system for premise-based unified communications solution in violation of 35 USC § 271(a).

SHORETEL SKY

40. Taken together, either partially or entirely, the features included in Defendants' services for initiating telephony communications, including but not limited to, services branded under the name "ShoreTel Sky" perform the process recited in one or more of Claims 1-4 of the '123 Patent.

41. Taken together, either partially or entirely, the features included in Defendants' services for initiating telephony communications, including but not limited to, services branded under the name "ShoreTel Sky" use the system described in one or more of Claims 5-8 of the '123 Patent.

42. Upon information and belief Defendants' directly infringe one or more of claims 1-8 of the '123 Patent by making, using, selling, offering to sell and/or importing the process and the system for initiating telephony communications in violation of 35 USC 271(a).

INDUCING INFRINGEMENT

43. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 11-42.

44. Defendants have had knowledge of its infringement at least as of service of the present complaint.

45. Furthermore, all 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.

46. 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).

47. Defendants indirectly infringes claims 1-8 of the '123 patent by actively inducing customers to use Defendants' Unified Communications Platform products and services in violation of 35 USC § 271(b).

48. Defendants indirectly infringe the apparatus claims of the '123 patent by actively inducing third-party manufacturers to produce products that enable and implement ShoreTel Unified Communications Platform in violation of 35 USC 271(b).

49. Defendants further indirectly infringe claims 1-8 of the '123 patent by actively inducing customers to use ShoreTel Sky products and services in violation of 35 USC 271(b).

50. Defendants further indirectly infringe the apparatus claims of the '123 patent by actively inducing third-party manufacturers to produce products that enable and implement ShoreTel Sky in violation of 35 USC 271(b).

CONTRIBUTORY INFRINGEMENT

51. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 11-50.

51. Products knowingly and intentionally sold by Defendants for implementation of ShoreTel Unified Communications Platform are components of a patented device covered by one or more of claims 1-8 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.

52. Defendants have known that devices that implement ShoreTel Unified Communications Platform are especially made or especially adapted for use in infringement of the '123 Patent at least as of service of the present complaint.

53. ShoreTel contributes to the infringement of one or more of claims 1-8 of the '123 Patent in violation of 35 USC § 271(c).

54. Products knowingly and intentionally sold by Defendants for implementation of ShoreTel Sky are components of a patented device covered by one or more of claims 1-8 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.

55. Defendants have known that devices that implement ShoreTel Sky are especially made or especially adapted for use in infringement of the '123 Patent at least as of service of the present complaint.

56. Defendants contribute to the infringement of one or more of claims 1-8 of the '123 Patent in violation of 35 USC 271(c).

DEMAND FOR JURY TRIAL

57. 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,

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