

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

INNOVATIVE COMMUNICATIONS,
LLC,

Plaintiff,

v.

TEXAS INSTRUMENTS
INCORPORATED

Defendant.

Civil Action No. 4:12-cv-725

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Innovative Communications, LLC (“Innovative Communications”), by way of its First Amended Complaint against Defendant Texas Instruments Incorporated (“Defendant” or “TI”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement of U.S. Patent No. 5,436,930; U.S. Patent No. 5,475,691; and U.S. Patent No. 5,475,713, arising under 35 U.S.C. §§ 1, *et seq.*

THE PARTIES

2. Plaintiff Innovative Communications is a limited liability company organized under the laws of Delaware with a place of business at 1209 Orange Street, Wilmington, Delaware 19801.

3. Defendant Texas Instruments Incorporated is a Delaware corporation with its principal place of business at 1500 TI Blvd, Dallas, Texas 75243, and who can be served by its registered

agent Joseph F. Hubach, 13588 North Central Expressway, Research East Building, M/S 3999, Dallas, Texas 75243.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

6. Upon information and belief, Defendant regularly conducts business in this judicial district and has committed acts of patent infringement in this judicial district including, *inter alia*, selling and offering to sell infringing products and services in this judicial district.

7. Upon information and belief, Defendant has ongoing and systematic contacts with this judicial district and the United States. In particular, Defendant is incorporated in Texas and Defendant sells and offers to sell products in this judicial district.

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

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,436,930

9. Innovative Communications repeats and realleges the allegations of paragraphs 1 through 8 as though fully set forth herein.

10. On July 25, 1995, United States Patent No. 5,436,930 (“the ‘930 Patent”), entitled “Simultaneous analog and digital communications with a selection of different signal point constellations based on signal energy,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘930 Patent is attached as Exhibit A to this First Amended Complaint.

11. Innovative Communications is the assignee and owner of the right, title, and interest in and to the '930 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

12. In violation of 35 U.S.C. § 271, Defendant has directly infringed, and continues to directly infringe, including under the doctrine of equivalents, the '930 Patent by making, using, selling, and/or offering for sale in the United States, including in this Judicial District, networking products capable of providing technology involving the simultaneous transmission of audio/voice and data signals, without the authority of Innovative Communications.

13. The '930 Accused Products and Services include, but are not limited to Texas Instruments Incorporated's "V.61 Modem Data Pump (C500 asm)," and its product family including, but not limited to, C54x DSP, C67x DSP, C647x DSP, AM389x ARM Cortex-A8, DaVinci DM81x SOC, DaVinci DM64x SOC, ARM9 GPP, TMS320C645x DSP, DaVinci DM3x SOC, C64x DSP, AM35x ARM Cortex-A8, AM1x ARM9, TMS320DM646x SOC, AM37x ARM Cortex-A8, DaVinci DM37x SOC, C62x DSP, DaVinci DM64x DSP, OMAP-L1x, C674x Low Power DSP, OMAP3525/30 SOC, TMS320DM814x SOC, TMS320DM643x DSP, TMS320C6A816x Processor, C66x DSP, C55x Dual MAC DSP, OMAP3503/15 ARM Cortex-A8, and the "V.61 Modem Data Pump (C code)," and its product family including, but not limited to, C55x Dual MAC DSP, including products and TI's support services which utilize those products and services.

14. Innovative Communications provided actual notice to Defendant of its infringement of the '930 Patent in a letter sent by certified mail on November 6, 2012.

15. Defendant has had actual knowledge of the '930 Patent and its infringement of the patent since at least the date that it received the November 6, 2012, letter.

16. Upon information and belief, Defendant has committed and continues to commit acts of contributory infringement of the '930 Patent under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing products including the '930 Accused Services and Products for the '930 Patent, knowing or willfully blind to the fact that these products and services constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '930 Patent, and have no substantial non-infringing uses.

17. In particular, the '930 Accused Services and Products for the '930 Patent constitute a material part of the claimed invention at least because the products include modem devices capable of the simultaneous transmission of audio/voice and data signals. The '930 Accused Services and Products for the '930 Patent were made or especially adapted for use in an infringement of the '930 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to implement receiving simultaneous audio/voice and data signals.

18. Upon information and belief, since at least the date it received the notice letter from Innovative Communications notifying Defendant that the receiving simultaneous audio/voice and data signals feature in its products and services infringed the '930 Patent, Defendant has induced and continues to induce others to infringe the '930 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent, actively and knowingly aiding and abetting others to infringe, including, but not limited to, Defendant's customers whose use of the '930 Accused Services and Products constitutes direct infringement of the '930 Patent. In particular, Defendant acted with specific intent to make others, such as its customers, infringe by advertising and selling the products and providing information and/or materials demonstrating infringing uses of the products or services. On information and belief, Defendant engaged in

such actions with specific intent to cause infringement, or with willful blindness to the resulting infringement, because Defendant has had actual knowledge of the '930 Patent and its acts were inducing its customers to infringe the '930 Patent since at least the date it received the notice letter from Innovative Communications notifying Defendant that the receiving function in its products and services infringed the '930 Patent.

19. Innovative Communications has been harmed by Defendant's infringing activities.

20. Innovative Communications has provided notice of infringement of the '930 Patent to Defendant, but Defendant thereafter continued to infringe the patent. On information and belief, Defendant's infringement has been, and continues to be, willful.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,475,691

21. Innovative Communications repeats and realleges the allegations of paragraphs 1 through 20 as though fully set forth herein.

22. On December 12, 1995, United States Patent No. 5,475,691 ("the '691 Patent"), entitled "Voice activated data rate change in simultaneous voice and data transmission," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '691 Patent is attached as Exhibit B to this First Amended Complaint.

23. Innovative Communications is the assignee and owner of the right, title, and interest in and to the '691 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

24. In violation of 35 U.S.C. § 271, Defendant has directly infringed and continues to directly infringe, including under the doctrine of equivalents, the '691 Patent by making, using, selling, and/or offering for sale in the United States, including in this Judicial District, networking

products capable of providing technology involving the simultaneous transmission of audio/voice and data signals, without the authority of Innovative Communications.

25. The '691 Accused Products and Services include, but are not limited to Texas Instruments Incorporated's "V.61 Modem Data Pump (C500 asm)," and its product family including, but not limited to, C54x DSP, C67x DSP, C647x DSP, AM389x ARM Cortex-A8, DaVinci DM81x SOC, DaVinci DM64x SOC, ARM9 GPP, TMS320C645x DSP, DaVinci DM3x SOC, C64x DSP, AM35x ARM Cortex-A8, AM1x ARM9, TMS320DM646x SOC, AM37x ARM Cortex-A8, DaVinci DM37x SOC, C62x DSP, DaVinci DM64x DSP, OMAP-L1x, C674x Low Power DSP, OMAP3525/30 SOC, TMS320DM814x SOC, TMS320DM643x DSP, TMS320C6A816x Processor, C66x DSP, C55x Dual MAC DSP, OMAP3503/15 ARM Cortex-A8, and the "V.61 Modem Data Pump (C code)," and its product family including, but not limited to, C55x Dual MAC DSP, including products and TI's support services which utilize those products and services.

26. Innovative Communications provided actual notice to Defendant of its infringement of the '691 Patent in a letter sent by certified mail on November 6, 2012.

27. Defendant has had actual knowledge of the '691 Patent and its infringement of the patent since at least the date that it received the November 6, 2012, letter.

28. Upon information and belief, Defendant has committed and continues to commit acts of contributory infringement of the '691 Patent under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing products including the '691 Accused Services and Products for the '691 Patent, knowing or willfully blind to the fact that these products and services constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '691 Patent, and have no substantial non-infringing uses.

29. In particular, the '691 Accused Services and Products for the '691 Patent constitute a material part of the claimed invention at least because the products include modem devices capable of the simultaneous transmission of audio/voice and data signals. The '691 Accused Services and Products for the '691 Patent were made or especially adapted for use in an infringement of the '691 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to implement receiving simultaneous audio/voice and data signals.

30. Upon information and belief, since at least the date it received the notice letter from Innovative Communications notifying Defendant that the receiving simultaneous audio/voice and data signals feature in its products and services infringed the '691 Patent, Defendant has induced and continues to induce others to infringe the '691 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent, actively and knowingly aiding and abetting others to infringe, including, but not limited to, Defendant's customers whose use of the '691 Accused Services and Products constitutes direct infringement of at least claim 1 of the '691 Patent. In particular, Defendant acted with specific intent to make others, such as its customers, infringe by advertising and selling the products and providing information and/or materials demonstrating infringing uses of the products or services. On information and belief, Defendant engaged in such actions with specific intent to cause infringement, or with willful blindness to the resulting infringement, because Defendant has had actual knowledge of the '691 Patent and its acts were inducing its customers to infringe the '691 Patent since at least the date it received the notice letter from Innovative Communications notifying Defendant that the receiving function in its products and services infringed the '691 Patent.

31. Innovative Communications has been harmed by Defendant's infringing activities.

32. Innovative Communications has provided notice of infringement of the '691 Patent to Defendant, but Defendant thereafter continued to infringe the patent. On information and belief, Defendant's infringement has been and continues to be willful.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 5,475,713

33. Innovative Communications repeats and realleges the allegations of paragraphs 1 through 32 as though fully set forth herein.

34. On December 12, 1995, United States Patent No. 5,475,713 ("the '713 Patent"), entitled "Shaped signal spaces in a simultaneous voice and data system," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '713 Patent is attached as Exhibit C to this First Amended Complaint.

35. Innovative Communications is the assignee and owner of the right, title, and interest in and to the '713 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

36. In violation of 35 U.S.C. § 271, Defendant has directly infringed and continues to directly infringe, including under the doctrine of equivalents, the '713 Patent by making, using, selling, and/or offering for sale in the United States, including in this Judicial District, networking products capable of providing technology involving the simultaneous transmission of audio/voice and data signals, without the authority of Innovative Communications.

37. The '713 Accused Products and Services include, but are not limited to Texas Instruments Incorporated's "V.61 Modem Data Pump (C500 asm)," and its product family including, but not limited to, C54x DSP, C67x DSP, C647x DSP, AM389x ARM Cortex-A8, DaVinci DM81x SOC, DaVinci DM64x SOC, ARM9 GPP, TMS320C645x DSP, DaVinci DM3x SOC, C64x DSP, AM35x ARM Cortex-A8, AM1x ARM9, TMS320DM646x SOC,

AM37x ARM Cortex-A8, DaVinci DM37x SOC, C62x DSP, DaVinci DM64x DSP, OMAP-L1x, C674x Low Power DSP, OMAP3525/30 SOC, TMS320DM814x SOC, TMS320DM643x DSP, TMS320C6A816x Processor, C66x DSP, C55x Dual MAC DSP, OMAP3503/15 ARM Cortex-A8, and the “V.61 Modem Data Pump (C code),” and its product family including, but not limited to, C55x Dual MAC DSP, including products and TI’s support services which utilize those products and services.

38. Innovative Communications provided actual notice to Defendant of its infringement of the ‘713 Patent in a letter sent by certified mail on November 6, 2012.

39. Defendant has had actual knowledge of the ‘713 Patent and its infringement of the patent since at least the date that it received the November 6, 2012, letter.

40. Upon information and belief, Defendant has committed and continues to commit acts of contributory infringement of the ‘713 Patent under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing products including the ‘713 Accused Services and Products, knowing or willfully blind to the fact that these products and services constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the ‘713 Patent, and have no substantial non-infringing uses.

41. In particular, the ‘713 Accused Services and Products for the ‘713 Patent constitute a material part of the claimed invention at least because the products include modem devices capable of the simultaneous transmission of audio/voice and data signals. The ‘713 Accused Services and Products for the ‘713 Patent were made or especially adapted for use in an infringement of the ‘713 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to implement receiving simultaneous audio/voice and data signals.

42. Upon information and belief, since at least the date it received the notice letter from Innovative Communications notifying Defendant that the receiving simultaneous audio/voice and data signals feature in its products and services infringed the '713 Patent, Defendant has induced and continues to induce others to infringe the '713 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent, actively and knowingly aiding and abetting others to infringe, including, but not limited to, Defendant's customers whose use of the '713 Accused Services and Products constitutes direct infringement of at least claim 1 of the '713 Patent. In particular, Defendant acted with specific intent to make others, such as its customers, infringe by advertising and selling the products and providing information and/or materials demonstrating infringing uses of the products or services. On information and belief, Defendant engaged in such actions with specific intent to cause infringement, or with willful blindness to the resulting infringement, because Defendant has had actual knowledge of the '713 Patent and its acts were inducing its customers to infringe the '713 Patent since at least the date it received the notice letter from Innovative Communications notifying Defendant that the receiving function in its products and services infringed the '713 Patent.

43. Innovative Communications has been harmed by Defendant's infringing activities.

44. Innovative Communications has provided notice of infringement of the '713 Patent to Defendant, but Defendant thereafter continued to infringe the patent. On information and belief, Defendant's infringement has been and continues to be willful.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Innovative Communications demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Innovative Communications respectfully demands judgment for itself and against Defendant as follows:

A. An adjudication that Defendant has infringed U.S. Patent No. 5,436,930; U.S. Patent No. 5,475,691; and U.S. Patent No. 5,475,713 (collectively “the IC Patents”);

B. An award of damages to be paid by Defendant adequate to compensate Innovative Communications for their past infringement of the IC Patents and any continuing or future infringement of the IC Patents through the date such judgment is entered, including pre-judgment and post-judgment interest, costs and expenses as justified under 35 U.S.C. § 284;

C. An injunction ordering Defendant to pay an ongoing royalty in an amount to be determined for any continued infringement after the date judgment is entered;

D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Innovative Communications' reasonable attorneys' fees;

E. An award of treble damages under 35 U.S.C. § 284; and

F. Such other and further relief at law or in equity as the Court deems just and proper.

Dated: December 3, 2012

Respectfully Submitted,

By: /s/ James C. Tidwell

James C. Tidwell

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