

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

<b>CALYPSO WIRELESS, INC.,</b>	§	
<b>DRAGO DAIC,</b>	§	
<b>JIMMY WILLIAMSON P.C.</b>	§	<b>Case No. 2:12-cv-667 -JRG-RSP</b>
<b>Plaintiffs,</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>T-MOBILE USA, INC.</b>	§	<b>Jury Demanded</b>
<b>Defendant.</b>	§	

**PLAINTIFFS’ FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

CALYPSO WIRELESS INC. (“Calypso”), DRAGO DAIC (“Daic”), and JIMMY WILLIAMSON, P.C. (“Williamson”) (Collectively “Plaintiffs”) complain of T-MOBILE USA, INC. (“T-Mobile” or “Defendant”), and for cause of action would respectfully show the following:

**I. NATURE OF ACTION**

1. This is an action for infringement of United States Patent 6,680,923 (the “923 Patent”) by T-Mobile.

**II. PARTIES**

2. Plaintiff Calypso Wireless, Inc. is a Delaware corporation with its principal place of business in Wilmington, Delaware.

3. Plaintiff Drago Daic is an individual residing in Harris County, Texas.

4. Plaintiff Jimmy Williamson, P.C. is a professional corporation with its principal place of business in Harris County, Texas.

5. Defendant T-Mobile USA, Inc. is a Delaware corporation that has been served with process and has made its appearance in this action.

### **III. JURISDICTION AND VENUE**

6. This Court has jurisdiction over Plaintiffs' patent infringement claims pursuant to the patent laws of the United States, 35 U.S.C. §§ 1 *et. seq.*, and pursuant to 28 U.S.C. § 1338.

7. This Court has personal jurisdiction over T-Mobile because T-Mobile actively markets and conducts business in the Eastern District of Texas, such that T-Mobile's appearance in this case does not offend traditional notions of fair play and substantial justice. On information and belief, Defendant has committed and continues to commit acts of direct and/or indirect patent infringement, as alleged in this Complaint, in this district and elsewhere within the State of Texas. For example, on information and belief, T-Mobile has engaged in acts of infringement in this district by offering to sell and/or selling products or services that utilize technology for switching wireless communications between networks within the scope of one or more of the claims of the '923 patent-in-suit.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because certain of the acts complained of herein occurred in this judicial district. T-Mobile actively sells its infringing products and/or services within this judicial district.

### **IV. GENERAL ALLEGATIONS**

9. On January 20, 2004, the '923 Patent, titled "Communication System and Method" ("the '923 Patent"), was duly and legally issued to inventor Robert Leon.

10. Calypso, Daic and Williamson are co-owners of all right, title and interest in and to the '923 Patent.

11. The '923 Patent generally relates to technology for switching communications between, for example, a cellular network and Wi-Fi network, using, among other things, wireless routers or other wireless devices.

12. T-Mobile received disclosure of the invention of the '923 Patent from Calypso prior to issuance of the patent and pursuant to a confidentiality agreement of the parties. T-Mobile also received, from at least Calypso, actual notice of the '923 Patent before T-Mobile decided, in or about 2010-2011, to practice the '923 Patent, without Plaintiffs' authorization, *via* its products and services utilizing GAN-Lite and/or SIP-IMS technology, as described below, and especially adapted for switching wireless communications between networks, such as Wi-Fi and cellular networks, within the scope of one or more of the claims of the '923 Patent.

13. T-Mobile has infringed and continues to infringe the '923 Patent. The infringing acts include the manufacture, use, offering for sale, sale, or importation of software/firmware, hardware and/or services utilizing GAN-Lite and/or SIP-IMS technology and embodying the inventions described and claimed in the '923 Patent. T-Mobile is liable for infringement of the '923 Patent pursuant to 35 U.S.C. §§ 271 and 281. T-Mobile has been given notice of its infringement of the '923 Patent.

14. The products, software/firmware, hardware and/or services accused of infringement in this action are not the same as those accused of infringement in previously filed litigation styled *Calypso Wireless, Inc., et al v. T-Mobile USA, Inc.*, Case No. 2:08-cv-00441, in the U.S. District Court for the Eastern District of Texas. The products and/or services accused of infringement in the earlier case, which was filed in 2008, employ Unlicensed Mobile Access or UMA technology so as to allow a seamless "hand off" or "handover" of ongoing voice communications between cellular networks and wireless local area networks. In contrast, the products and/or services accused of infringement in this action employ different technology, which was implemented by T-Mobile in or about 2010-2011, is known as GAN-Lite and/or SIP-IMS technology, and differs

from UMA technology in that, among other things, it does not enable such a seamless “handover” of ongoing voice communications.

15. T-Mobile’s products and services utilizing such GAN-Lite and/or SIP-IMS technology comprise or otherwise enable services that allow for switching between Cellular and Internet or Wi-Fi networks without the “handover” of ongoing voice communications featured in services provided by T-Mobile using its older UMA technology. T-Mobile products utilizing such GAN-Lite and/or SIP-IMS technology comprise mobile communication devices including the following phones: HTC Wildfire, Huawei Summit, LG Optimus L9, MyTouch 4G, Samsung Galaxy S, Samsung Galaxy Exhibit, Samsung Galaxy Note, Samsung Galaxy Blaze, Samsung Galaxy S III, Samsung Galaxy S Relay, Samsung Gravity, T-Mobile G2, T-Mobile Prism.

16. T-Mobile’s “network switching” services (*i.e.*, services enabling products using GAN-Lite and/or SIP-IMS technology to switch between Cellular and Internet or Wi-Fi networks) are provided by T-Mobile to customers who use such services, in combination with products sold or provided by, or obtained from, T-Mobile, including phones such as those identified above, for switching communications between, for example, a cellular network and Wi-Fi network, using, among other things, wireless routers or other wireless devices.

17. Additionally or alternatively, T-Mobile business partners, including for example Starbucks, as well as other coffee houses, internet cafes, hotels, etc., use products, such as Wi-Fi routers, sold or provided by or obtained from or through, T-Mobile, to enable T-Mobile customers to use T-Mobile’s network switching services, at or near facilities operated by the business partners, in combination with products sold or provided by, or obtained from, T-Mobile, including phones such as those identified above, for switching communications between, for

example, a cellular network and Wi-Fi network, using, among other things, wireless routers or other wireless devices.

## **V. CLAIM FOR PATENT INFRINGEMENT**

18. Plaintiffs repeat and re-allege the allegations of paragraphs 1-17 above as if fully set forth herein.

19. The '923 Patent is valid and presumed valid under 35 U.S.C. § 282.

20. T-Mobile has been and is infringing, literally or under the doctrine of equivalents, one or more claims of the '923 Patent, pursuant to 35 U.S.C. § 271(a) by making, using, importing, selling, and/or offering for sale products and/or services that come within and/or are operated within the scope of one or more claims of the '923 Patent. Specifically, since in or about 2010 and/or 2011, T-Mobile has been making, using, importing, selling and/or offering for sale wireless devices, systems or services utilizing GAN-Lite and/or SIP-IMS technology, as described above, for switching wireless communications between networks, such as Wi-Fi and cellular networks, within the scope of one or more of the claims of the '923 Patent.

21. Additionally or alternatively, T-Mobile has been and/or is now indirectly infringing one or more claims of the '923 Patent by contributing, per 35 U.S.C. § 271(c), to the use, importation, sale and/or offering for sale of that which is the claimed subject matter of the '923 Patent, by its customers and/or business partners, which directly infringe one or more of the claims of the '923 Patent. As described in paragraphs 12-17 above, T-Mobile's customers and business partners, within this judicial district and elsewhere, use T-Mobile network switching services and/or products sold or provided by or obtained from or through T-Mobile for switching wireless communications between networks within the scope of one or more of the claims of

the '923 patent. On information and belief, such services or products comprise network switching functions or features that have no substantial non-infringing uses, are especially made or especially adapted for use in an infringement of the '923 patent, are not simply staple articles or commodities of commerce suitable for substantial non-infringing use, and/or were supplied or provided by T-Mobile with knowledge that the same were made, adapted, configured and/or used so as to infringe the '923 Patent.

22. Additionally or alternatively, T-Mobile has been and/or is now indirectly infringing one or more claims of the '923 Patent by inducing, per 35 U.S.C. § 271(b), the use, importation, sale and/or offering for sale of that which is the claimed subject matter of the '923 Patent, by its customers and/or business partners, which directly infringe one or more of the claims of the '923 Patent. As described in paragraphs 12-17 above, T-Mobile's customers and business partners, within this judicial district and elsewhere, use T-Mobile network switching services and/or products sold or provided by or obtained from or through T-Mobile for switching wireless communications between networks within the scope of one or more of the claims of the '923 Patent. On information and belief, and in view of T-Mobile's prior dealings with Calypso, prior knowledge of the '923 Patent and/or the previously filed litigation concerning T-Mobile's infringement of the '923 Patent *via* its services or products utilizing T-Mobile's older UMA technology for the "handover" of ongoing voice communications, T-Mobile knew that the use by T-Mobile's customers and/or business partners of its network switching services and products employing GAN-Lite and/or SIP-IMS technology would constitute infringement of one or more of the claims of the '923 Patent and specifically intended its customers and/or business partners to infringe the '923 Patent through the use of such network switching services and products.

23. Upon information and belief, T-Mobile's acts have been willful and with full knowledge of the '923 Patent, and Plaintiffs are accordingly entitled to enhanced damages pursuant 35 U.S.C. § 284.

24. Plaintiffs have been damaged by T-Mobile's infringement and, unless T-Mobile obtains a license for the '923 Patent, or is enjoined by the Court, T-Mobile will continue its infringing activity and Plaintiffs will continue to be damaged.

25. Plaintiffs contend that this is an exceptional case, under 35 U.S.C. § 285, for which Plaintiffs should be awarded attorney fees and the costs incurred in prosecuting this action.

26. T-Mobile's acts of infringement have caused irreparable harm to Plaintiffs for which there is no adequate remedy at law, and will continue to cause irreparable harm, unless T-Mobile is enjoined by this Court pursuant to 35 U.S.C. § 283.

#### **VI. JURY DEMANDED**

27. Pursuant to Fed. R. Civ. P. 38(b), Calypso, Daic, and Williamson demand a trial by jury of all issues that are so triable.

#### **PRAYER**

28. Calypso, Daic, and Williamson respectfully request the following relief:
- a. A preliminary and/or permanent injunction against T-Mobile, its officers, agents, servants, employees, attorneys, all parent and subsidiary companies, all assignees and successors in interest and those persons in active concert and participation with T-Mobile prohibiting acts of infringement of the '923 Patent;
  - b. A declaration that T-Mobile has infringed, directly or indirectly, the '923 Patent under all applicable provisions of 35 U.S.C § 271;

- c. All actual damages, including but not limited to damages adequate to compensate for T-Mobile's infringement, which can be no less than a reasonable royalty;
- d. Enhanced damages pursuant to 35 U.S.C. § 284;
- e. Attorneys' fees and expenses pursuant to § 285;
- f. All costs of court;
- g. Pre- and post-judgment interest; and
- h. Any other or further relief that the Court deems just and proper.

Respectfully submitted,

/s/ Guy E. Matthews

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on December 27, 2012.

/s/ Guy E. Matthews

Guy E. Matthews