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5 Attorneys for Plaintiff  
Brandywine Communications Technologies, LLC

6  
7 **UNITED STATES DISTRICT COURT**  
8 **FOR THE NORTHERN DISTRICT OF OKLAHOMA**  
9

10 1) Brandywine Communications  
Technologies, LLC,

11 Plaintiff,

12 v.

13 1) MBO Data, LLC d/b/a TulsaConnect,  
14 LLC,

15 Defendant.

**Case No.: 13-CV-45-GKF-FHM**

PLAINTIFF BRANDYWINE  
COMMUNICATIONS TECHNOLOGIES,  
LLC'S COMPLAINT FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

16 Plaintiff Brandywine Communications Technologies, LLC ("Brandywine" or  
17 "Plaintiff"), by way of Complaint against the above-named Defendant ("TulsaConnect" or  
18 "Defendant"), alleges the following:

19 **NATURE OF THE ACTION**

20 1. This is an action for patent infringement arising under the Patent Laws of the  
21 United States, 35 U.S.C. § 1 *et seq.*

22 **THE PARTIES**

23 2. Plaintiff Brandywine is a limited liability company organized under the laws  
24 of the State of Delaware with a place of business at 1612 Mt. Pleasant Road, Villanova,  
25 Pennsylvania 19085.  
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1 The '537 Patent has been duly and legally assigned to Brandywine. A copy of the '537  
2 Patent is attached as Exhibit 3.

3 11. On October 27, 1998, U.S. Patent No. 5,828,657 (the "'657 Patent"), entitled  
4 "Half-Duplex Echo Canceler Training Using a Pilot Signal," was duly and legally issued  
5 by the United States Patent and Trademark Office to inventors William Lewis Betts,  
6 Ramon B. Hazen, and Robert Earl Scott (collectively the "'657 Inventors"). The '657  
7 Patent has been duly and legally assigned to Brandywine. A copy of the '657 Patent is  
8 attached as Exhibit 4.

9 12. On November 29, 2005, U.S. Patent No. 6,970,501 (the "'501 Patent"),  
10 entitled "Method and Apparatus For Automatic Selection and Operation of a Subscriber  
11 Line Spectrum Class Technology," was duly and legally issued by the United States Patent  
12 and Trademark Office to inventors Gordon Bremer and Philip J. Kyees (collectively the  
13 "'501 Inventors"). The '501 Patent has been duly and legally assigned to Brandywine. A  
14 copy of the '501 Patent is attached as Exhibit 5.

15 13. On February 22, 2011, U.S. Patent No. 7,894,472 (the "'472 Patent"), entitled  
16 "Method and Apparatus For Automatic Selection and Operation of a Subscriber Line  
17 Spectrum Class Technology," was duly and legally issued by the United States Patent and  
18 Trademark Office to inventors Gordon Bremer and Philip J. Kyees (collectively the "'472  
19 Inventors"). The '472 Patent has been duly and legally assigned to Brandywine. A copy of  
20 the '472 Patent is attached as Exhibit 6.

21 14. On December 10, 2012, Brandywine sent a letter to Defendant notifying  
22 Defendant that it has been infringing the '854, '328, '537, '657, '501, and '472 Patents  
23 through the operation of its Digital Subscriber Line ("DSL") business. This letter was sent  
24 by certified mail with return receipt requested. Upon information and belief, Defendant  
25 has received the letter.

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**FIRST CLAIM OF RELIEF**

**INFRINGEMENT OF U.S. PATENT NO. 5,206,854**

**(35 U.S.C. § 271)**

15. The allegations set forth in the foregoing paragraphs 1 through 14 are hereby realleged and incorporated herein by reference.

16. Upon information and belief, Defendant has infringed one or more claims of the '854 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for sale services and products that infringe and/or perform processes that infringe one or more claims of the '854 Patent ("Accused Services and Products for the '854 Patent").

17. Upon information and belief, Defendant's Accused Services and Products for the '854 Patent include but are not limited to Defendant's DSL service and equipment.

18. Defendant had actual knowledge of the '854 Patent and its alleged infringement of that patent since at least the time it received Brandywine's December 10, 2012 notice of infringement letter.

19. Because of Defendant's infringement of the '854 Patent, Brandywine has suffered damages.

**SECOND CLAIM OF RELIEF**

**INFRINGEMENT OF U.S. PATENT NO. 5,251,328**

**(35 U.S.C. § 271)**

20. The allegations set forth in the foregoing paragraphs 1 through 19 are hereby realleged and incorporated herein by reference.

21. Upon information and belief, Defendant has infringed one or more claims of the '328 Patent in this judicial district and elsewhere by making, using, selling, and/or offering for sale services and products that infringe and/or perform processes that infringe

1 one or more claims of the '328 Patent ("Accused Services and Products for the '328  
2 Patent").

3 22. Upon information and belief, Defendant's Accused Services and Products for  
4 the '328 Patent include but are not limited to Defendant's DSL service and equipment.

5 23. Defendant had actual knowledge of the '328 Patent and its alleged  
6 infringement of that patent since at least the time it received Brandywine's December 10,  
7 2012 notice of infringement letter.

8 24. Because of Defendant's infringement of the '328 Patent, Brandywine has  
9 suffered damages.

10 **THIRD CLAIM OF RELIEF**

11 **INFRINGEMENT OF U.S. PATENT NO. 5,812,537**

12 **(35 U.S.C. § 271)**

13 25. The allegations set forth in the foregoing paragraphs 1 through 24 are hereby  
14 realleged and incorporated herein by reference.

15 26. Upon information and belief, Defendant has infringed and continues to  
16 infringe one or more claims of the '537 Patent in this judicial district and elsewhere by  
17 making, using, selling, and/or offering for sale services and products that infringe and/or  
18 perform processes that infringe one or more claims of the '537 Patent ("Accused Services  
19 and Products for the '537 Patent").

20 27. Upon information and belief, Defendant's Accused Services and Products for  
21 the '537 Patent include but are not limited to Defendant's DSL service, modems, and  
22 equipment.

23 28. Defendant had actual knowledge of the '537 Patent and its alleged  
24 infringement of that patent since at least the time it received Brandywine's December 10,  
25 2012 notice of infringement letter.

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1           29. Upon information and belief, since at least the time it received Brandywine's  
2 December 10, 2012 notice letter, Defendant has committed and continues to commit acts  
3 of contributory infringement of the '537 Patent under 35 U.S.C. § 271(c) by providing  
4 products, including the Accused Services and Products to others, including but not limited  
5 to its customers and partners, knowing or willfully blind to the fact that that these products  
6 constitute a material part of the invention, were especially made or especially adapted for  
7 use in an infringement of the '537 Patent, and have no substantial non-infringing uses.

8           30. In particular, the Accused Services and Products include DSL modems,  
9 which constitute an especially adapted component to receive Defendant's DSL service.  
10 These modems are used by Defendant's partners and customers to perform all of the steps  
11 recited in one claim of the '537 Patent. These modems have no substantial non-infringing  
12 uses at least because they contain components whose only purpose is to practice the  
13 claimed method of providing the infringing DSL service. The use of these modems by  
14 Defendant's partners and customers constitutes direct infringement of at least one claim of  
15 the '537 Patent. Defendant has known or remained willfully blind to these facts since at  
16 least the date it received the notice letter from Brandywine notifying Defendant that such  
17 activities infringed the '537 Patent.

18           31. Upon information and belief, since at least the time it received Brandywine's  
19 December 10, 2012 notice letter, Defendant has induced and continues to induce others to  
20 infringe at least one claim of the '537 Patent under 35 U.S.C. § 271(b) by, among other  
21 things, and with specific intent or willful blindness, actively aiding and abetting others to  
22 infringe, including but not limited to Defendant's partners and customers, whose use of the  
23 Accused Services and Products constitutes direct infringement of at least one claim of the  
24 '537 Patent.

25           32. In particular, Defendant's actions that aid and abet others such as its partners  
26 and customers to infringe include advertising and distributing the Accused Services and

1 Products and providing instruction materials, training, and consulting services regarding  
2 the Accused Services and Products. On information and belief, Defendant has engaged in  
3 such actions with specific intent to cause infringement or with willful blindness to the  
4 resulting infringement because Defendant has had actual knowledge of the '537 Patent and  
5 that its acts were inducing its customers to infringe the '537 Patent since at least the date it  
6 received the notice letter from Brandywine notifying Defendant that such activities  
7 infringed the '537 Patent.

8 33. Despite Brandywine's notice regarding the '537 Patent, Defendant has  
9 continued to infringe the '537 Patent. On information and belief, Defendant's infringement  
10 has been and continues to be willful.

11 34. Brandywine has been harmed by Defendant's infringing activities.

12 **FOURTH CLAIM OF RELIEF**

13 **INFRINGEMENT OF U.S. PATENT NO. 5,828,657**

14 **(35 U.S.C. § 271)**

15 35. The allegations set forth in the foregoing paragraphs 1 through 34 are hereby  
16 realleged and incorporated herein by reference.

17 36. Upon information and belief, Defendant has infringed and continues to  
18 infringe one or more claims of the '657 Patent in this judicial district and elsewhere by  
19 making, using, selling, and/or offering for sale services and products that infringe and/or  
20 perform processes that infringe one or more claims of the '657 Patent ("Accused Services  
21 and Products for the '657 Patent").

22 37. Upon information and belief, Defendant's Accused Services and Products for  
23 the '657 Patent include but are not limited to Defendant's DSL service, modems, and  
24 equipment.

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1           38. Defendant had actual knowledge of the '657 Patent and its alleged  
2 infringement of that patent since at least the time it received Brandywine's December 10,  
3 2012 notice of infringement letter.

4           39. Upon information and belief, since at least the time it received Brandywine's  
5 December 10, 2012 notice letter, Defendant has committed and continues to commit acts  
6 of contributory infringement of the '657 Patent under 35 U.S.C. § 271(c) by providing  
7 products, including the Accused Services and Products to others, including but not limited  
8 to its customers and partners, knowing or willfully blind to the fact that these products  
9 constitute a material part of the invention, were especially made or especially adapted for  
10 use in an infringement of the '657 Patent, and have no substantial non-infringing uses.

11           40. In particular, the Accused Services and Products include DSL modems,  
12 which constitute an especially adapted component to receive Defendant's DSL service.  
13 These modems are used by Defendant's partners and customers to perform all of the steps  
14 recited in one claim of the '657 Patent. These modems have no substantial non-infringing  
15 uses at least because they contain components whose only purpose is to practice the  
16 claimed method of providing the infringing DSL service. The use of these modems by  
17 Defendant's partners and customers constitutes direct infringement of at least one claim of  
18 the '657 Patent. Defendant has known or remained willfully blind to these facts since at  
19 least the date it received the notice letter from Brandywine notifying Defendant that such  
20 activities infringed the '657 Patent.

21           41. Upon information and belief, since at least the time it received Brandywine's  
22 December 10, 2012 notice letter, Defendant has induced and continues to induce others to  
23 infringe at least one claim of the '657 Patent under 35 U.S.C. § 271(b) by, among other  
24 things, and with specific intent or willful blindness, actively aiding and abetting others to  
25 infringe, including but not limited to Defendant's partners and customers, whose use of the  
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1 Accused Services and Products constitutes direct infringement of at least one claim of the  
2 '657 Patent.

3 42. In particular, Defendant's actions that aid and abet others such as its partners  
4 and customers to infringe include advertising and distributing the Accused Services and  
5 Products and providing instruction materials, training, and consulting services regarding  
6 the Accused Services and Products. On information and belief, Defendant has engaged in  
7 such actions with specific intent to cause infringement or with willful blindness to the  
8 resulting infringement because Defendant has had actual knowledge of the '657 Patent and  
9 that its acts were inducing its customers to infringe the '657 Patent since at least the date it  
10 received the notice letter from Brandywine notifying Defendant that such activities  
11 infringed the '657 Patent.

12 43. Despite Brandywine's notice regarding the '657 Patent, Defendant has  
13 continued to infringe the '657 Patent. On information and belief, Defendant's infringement  
14 has been and continues to be willful.

15 44. Brandywine has been harmed by Defendant's infringing activities.

16 **FIFTH CLAIM OF RELIEF**

17 **INFRINGEMENT OF U.S. PATENT NO. 6,970,501**

18 **(35 U.S.C. § 271)**

19 45. The allegations set forth in the foregoing paragraphs 1 through 44 are hereby  
20 realleged and incorporated herein by reference.

21 46. Upon information and belief, Defendant has infringed and continues to  
22 infringe one or more claims of the '501 Patent in this judicial district and elsewhere by  
23 making, using, selling, and/or offering for sale services and products that infringe and/or  
24 perform processes that infringe one or more claims of the '501 Patent ("Accused Services  
25 and Products for the '501 Patent").  
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1           47.    Upon information and belief, Defendant's Accused Services and Products for  
2 the '501 Patent include but are not limited to Defendant's DSL service, modems, and  
3 equipment.

4           48.    Defendant had actual knowledge of the '501 Patent and its alleged  
5 infringement of that patent since at least the time it received Brandywine's December 10,  
6 2012 notice of infringement letter.

7           49.    Upon information and belief, since at least the time it received Brandywine's  
8 December 10, 2012 notice letter, Defendant has induced and continues to induce others to  
9 infringe at least one claim of the '501 Patent under 35 U.S.C. § 271(b) by, among other  
10 things, and with specific intent or willful blindness, actively aiding and abetting others to  
11 infringe, including but not limited to Defendant's partners and customers, whose use of the  
12 Accused Services and Products constitutes direct infringement of at least one claim of the  
13 '501 Patent.

14           50.    In particular, Defendant's actions that aid and abet others such as its partners  
15 and customers to infringe include advertising and distributing the Accused Services and  
16 Products and providing instruction materials, training, and consulting services regarding  
17 the Accused Services and Products. On information and belief, Defendant has engaged in  
18 such actions with specific intent to cause infringement or with willful blindness to the  
19 resulting infringement because Defendant has had actual knowledge of the '501 Patent and  
20 that its acts were inducing its customers to infringe the '501 Patent since at least the date it  
21 received the notice letter from Brandywine notifying Defendant that such activities  
22 infringed the '501 Patent.

23           51.    Despite Brandywine's notice regarding the '501 Patent, Defendant has  
24 continued to infringe the '501 Patent. On information and belief, Defendant's infringement  
25 has been and continues to be willful.

26           52.    Brandywine has been harmed by Defendant's infringing activities.

1 **SIXTH CLAIM OF RELIEF**

2 **INFRINGEMENT OF U.S. PATENT NO. 7,894,472**

3 **(35 U.S.C. § 271)**

4 53. The allegations set forth in the foregoing paragraphs 1 through 52 are hereby  
5 realleged and incorporated herein by reference.

6 54. Upon information and belief, Defendant has infringed and continues to  
7 infringe one or more claims of the '472 Patent in this judicial district and elsewhere by  
8 making, using, selling, and/or offering for sale services and products that infringe and/or  
9 perform processes that infringe one or more claims of the '472 Patent ("Accused Services  
10 and Products for the '472 Patent").

11 55. Upon information and belief, Defendant's Accused Services and Products for  
12 the '472 Patent include but are not limited to Defendant's DSL service, modems, and  
13 equipment.

14 56. Defendant had actual knowledge of the '472 Patent and its alleged  
15 infringement of that patent since at least the time it received Brandywine's December 10,  
16 2012 notice of infringement letter.

17 57. Upon information and belief, since at least the time it received Brandywine's  
18 December 10, 2012 notice letter, Defendant has induced and continues to induce others to  
19 infringe at least one claim of the '472 Patent under 35 U.S.C. § 271(b) by, among other  
20 things, and with specific intent or willful blindness, actively aiding and abetting others to  
21 infringe, including but not limited to Defendant's partners and customers, whose use of the  
22 Accused Services and Products constitutes direct infringement of at least one claim of the  
23 '472 Patent.

24 58. In particular, Defendant's actions that aid and abet others such as its partners  
25 and customers to infringe include advertising and distributing the Accused Services and  
26 Products and providing instruction materials, training, and consulting services regarding

1 the Accused Services and Products. On information and belief, Defendant has engaged in  
2 such actions with specific intent to cause infringement or with willful blindness to the  
3 resulting infringement because Defendant has had actual knowledge of the '472 Patent and  
4 that its acts were inducing its customers to infringe the '472 Patent since at least the date it  
5 received the notice letter from Brandywine notifying Defendant that such activities  
6 infringed the '472 Patent.

7 59. Despite Brandywine's notice regarding the '472 Patent, Defendant has  
8 continued to infringe the '472 Patent. On information and belief, Defendant's infringement  
9 has been and continues to be willful.

10 60. Brandywine has been harmed by Defendant's infringing activities.

11 **JURY DEMAND**

12 Brandywine demands a trial by jury on all issues triable as such.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Brandywine respectfully requests that this Court enter judgment for  
15 Brandywine and against Defendant as follows:

- 16 A. An adjudication that Defendant has infringed the '854, '328, '537, '657, '501,  
17 and '472 Patents;
- 18 B. An award of damages to be paid by Defendant adequate to compensate  
19 Brandywine for Defendant's past infringement of the above Patents, and any  
20 continuing or future infringement through the date such judgment is entered,  
21 including interest, costs, expenses and an accounting of all infringing acts  
22 including, but not limited to, those acts not presented at trial;
- 23 C. An order that Defendant pay an ongoing royalty in an amount to be  
24 determined for any continued infringement of the above Patents after the  
25 date judgment is entered;
- 26 D. An award of treble damages under 35 U.S.C. § 284;

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- E. A declaration finding this to be an exceptional case, and awarding Brandywine attorney fees under 35 U.S.C. § 285; and
- F. For such further relief at law and in equity as the Court may deem just and proper.

Dated: January 24, 2013

Respectfully submitted,

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