

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EON CORP. IP HOLDINGS, LLC,	§	
	§	
Plaintiff,	§	Civil Action No. 6:12-cv-00941-LED
v.	§	
	§	JURY TRIAL REQUESTED
LG ELECTRONICS MOBILECOMM	§	
USA, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF EON CORP. IP HOLDINGS, LLC'S FIRST AMENDED COMPLAINT

Plaintiff EON Corp. IP Holdings, LLC (“EON”), by and for its First Amended Complaint against LG Electronics MobileComm USA, Inc. (“LG”) for infringement of U.S. Patent No. 5,592,491 (the “491 Patent”) and U.S. Patent No. 5,388,101 (the “101 Patent”) (collectively, the “Patents-in-Suit”) pursuant to 35 U.S.C. § 271, alleges as follows:

I. THE PARTIES

1. Plaintiff EON Corp. IP Holdings, LLC is a Texas limited liability company with its principal place of business located at 719 W. Front Street, Suite 108, Tyler, Texas 75702. EON is a wholly owned subsidiary of EON Corporation, formerly known as TV Answer, Inc., a Delaware corporation founded in 1986. EON Corporation is a pioneering wireless technology research and development company that has been in continuous operation since its inception. In the early 1990s, the Federal Communications Commission granted EON Corporation’s petition for an allocation of wireless spectrum specifically for its proposed innovative wireless service offering, known then as Interactive Video and Data Services. While the “IVDS” offering did not originally realize its full commercial potential, the company’s technological advances in interactive digital wireless communications became the subject of a vast intellectual property

portfolio covering many communication techniques and devices that have become commonplace in recent years. EON, as the licensing division of EON Corporation, has been approaching companies in the wireless and interactive video industries to properly license its foundational technologies. In the current skeptical and hostile licensing environment, the largest communications companies often play a game of ostrich, burying their head in the sand and giving wireless consumers the products and services they demand despite at least a general recognition that in doing so they are traversing property boundaries owned by others. These companies refuse to license even those technologies with a strong pedigree and licensing track record. Costly and contentious patent litigation is the necessary result of this reckless but profitable behavior. Many of LG's major competitors in the wireless industry have properly paid for using EON's technology. By this action, EON engages a compulsory process that will require LG to do the same.

2. Defendant LG is a corporation organized under the laws of the State of California with its principal place of business located at 10101 Old Grove Rd, San Diego, CA, 92131. In addition to LG's continuous and systematic conduct of business in Texas, the causes of action against LG arise from or are connected with LG's purposeful acts committed in Texas, including LG's selling, offering to sell, using, inducing others to use, and contributing to the use of cellular handsets and related products, applications, and services containing interactive television programming that embody one or more claims of the Patents-in-Suit. LG may be served with process through its registered agent, National Registered Agents, Inc., 1021 Main Street, Suite 1150, Houston, TX 77002.

II. JURISDICTION AND VENUE

3. 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.”). The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

4. This Court has personal jurisdiction over LG under the laws of the State of Texas, including Texas Civil Practice and Remedies Code § 17.042.

5. This Court has personal jurisdiction over LG. LG has conducted and does conduct business within the State of Texas, directly or through intermediaries or agents, or offers for sale, sells, and advertises (including through the provision of interactive web pages) handsets and related products, applications, and services that directly and/or indirectly infringe the Patents-in-Suit.

III. FACTUAL ALLEGATIONS

A. The ’101 and ’491 Patents (the “Dinkins Patents”)

6. On February 7, 1995, after a full and fair examination, the USPTO duly and legally issued the ’101 Patent, titled “Interactive Nationwide Data Service Communication System for Stationary and Mobile Battery Operated Subscriber Units.” The claims of the ’101 Patent were confirmed during reexaminations, as evidenced by Reexamination Certificates issued on January 17, 2012 and August 14, 2012. A true and correct copy of the ’101 Patent and Reexamination Certificate are attached hereto as Exhibit A.

7. EON is the assignee through an exclusive license with EON Corporation of all right, title, and interest in and to the ’101 Patent and possesses all rights of recovery under the

'101 Patent, including the exclusive right to recover for infringement. The '101 Patent is valid and enforceable.

8. The '101 Patent describes a multi-faceted communication structure designed to enable two-way wireless digital signals to be exchanged between one or more base stations and remote, low-powered subscriber units placed at a distance from the base stations. Broadly and without reference to the particular construction of any claim terms, features of the communications technology claimed in the '101 Patent include individual low power subscriber units that transmit and receive wireless digital information from a network of cells to provide customers with a range of interactive and wireless data services.

9. On January 7, 1997, the USPTO duly and legally issued the '491 Patent, titled "Wireless Modem," after a full and fair examination. A true and correct copy of the '491 Patent with certificate of corrections is attached hereto as Exhibit B.

10. EON is the assignee under an exclusive license with EON Corporation of all rights, title, and interest in and to the '491 Patent and possesses all rights of recovery under the '491 Patent, including the right to recover for past infringement. The '491 Patent is valid and enforceable.

11. The '491 Patent is a continuation-in-part of the '101 Patent. The '491 Patent enables communication in a two-way network between subscriber units and the network base station or network hub switching center via multiple paths (*e.g.*, a Wide-Area-Network (WAN) path or a Local-Area-Network (LAN) path). The '491 Patent teaches deploying a wireless modem in the home or office as an alternate network access point for subscriber units. The '491 Patent overcomes persistent coverage and capacity issues in cellular deployments without the need for additional costly network infrastructure (*e.g.*, base stations), and thereby helps to

stabilize the cost of communication services within the network. Therefore, wireless interactive video services requiring increased bandwidth or speed become feasible. In fact, one of the many advantages of the patented technology is the provision of high bandwidth applications and services to multiple subscribers at peak load capacity in and out of the home or office by combining cellular access with a wireless modem LAN using, for instance, Wi-Fi technology.

12. The technology taught and claimed in the '101 and '491 Patents was invented by then EON head engineer, Gilbert Dinkins, and these patents are collectively referred to as the "Dinkins Patents."

13. LG has been and is presently infringing at least one claim of each of the Dinkins Patents literally or under the doctrine of equivalents, directly or indirectly by knowingly and specifically intending to contribute to or induce infringement by others, alone or with wireless network operators, application providers, customers, and/or end users. LG makes, uses, sells, offers for sale, imports, and/or exports subscriber units (*e.g.*, wireless devices such as Apex, Connect 4G, Escape, Esteem, Esteem 4G, Expo GW820, Genesis US760, GT 505, LG Mach, Mach LS860, Marquee, Motion 4G, Nexus 4, Nitro HD, Optimus 2, Optimus 3D, Optimus 3D MAX, Optimus 4X HD, Optimus Black, Optimus C, Optimus Elite, Optimus G, Optimus L3, Optimus L5, Optimus L7, Optimus LTE, Optimus M, Optimus M+, Optimus Net, Optimus Pad LTE, Optimus Q, Optimus S, Optimus Slider, Optimus U, Optimus V, Phoenix, Quantum, Splendor, Thrill 4G, Thrive, Viper and similar devices) that fall within the scope of at least one claim of each of the Dinkins Patents or are especially configured for use in and constitute a material portion of the patented inventions.

14. LG indirectly infringes by contributing to direct infringement by its customers and mobile network operators through the selling, offering for sale, importing, and/or exporting

of, for example, dual-mode (Wi-Fi and cellular or WiMAX enabled) subscriber units that are specially configured for use in and constitute a material portion of the patented invention.

15. LG induces others, including its customers and mobile network operators, to directly infringe the Dinkins Patents, for example, by providing subscriber units with multi-path capability to customers and instructing them in how to switch between WAN and LAN communication paths.

16. LG induces infringement by actively instructing and encouraging its customers to use LG's subscriber units in infringing network configurations by touting the advantages that its products can provide to such users, by providing technical assistance in integrating its products into such network configurations, or by providing service manuals or other instructions explaining how to use the LG subscriber units in a way that infringes the claims of the Dinkins Patents. In addition, LG actively promotes the advantages that its subscriber units can offer end users, including wider coverage and availability for its users and the applications they desire and increased communication speeds throughout the user experience both at home or on the go. LG's customers, end users and network operators directly infringe the apparatus and method claims of the Dinkins Patents by importing, exporting, making, using, selling, and/or offering to sell infringing networks that include LG's subscriber units.

17. LG acted and continues to act intentionally and with knowledge of its infringement of the Dinkins Patents at least since the date this lawsuit was filed or served. On information and belief, third parties, including current and prior defendants in related matters involving the same patents, put LG on notice of EON's claims and of LG's infringing activities prior to the filing of this Complaint. For example, on December 20, 2011, AT&T sent a letter notifying LG of several LG devices implicated in a related EON case involving all of the

Patents-in-Suit.¹ In addition, on August 13, 2012, Puerto Rico Telephone Company, Inc. sent LG a similar letter.² Through these letters, third parties notified LG of its devices that EON accused in the *AT&T* case as components or devices that alone or together with other components comprise the inventions claimed by each of the Patents-in-Suit. LG received a copy of the *EON v. AT&T* complaint identifying all of the current Patents-in-Suit and EON's allegations of infringement regarding these LG devices. The same or substantially similar LG components and devices accused in the *AT&T* case are devices implicated in the present case. LG also is and has been a defendant in another EON case since September 23, 2010.³ As a result of LG being a defendant in another EON case, and from its receipt of the third party letters, EON believes LG obtained knowledge of EON's patent portfolio and learned that it infringed and continues to infringe each of the Patents-in-Suit well in advance of the filing of the instant Complaint.

18. LG's subscriber units are made especially for performing the communication methods and for use on networks that infringe the Dinkins Patents and are not staple articles or commodities of commerce suitable for substantial noninfringing use. For example, LG's subscriber units are made especially for performing the communication methods and for use on networks that infringe the Dinkins Patents because they include multimode or dual path communication features and functions that are not staple articles or commodities of commerce suitable for substantial noninfringing use.

¹ *EON v. AT&T*, 11-cv-01555-FAB, E.D. Tex.

² *EON v. AT&T*, 11-cv-01555-FAB, E.D. Tex.

³ *EON v. FLO TV*, 1:10-cv-00812, D. DEL.

IV. CAUSE OF ACTION

Infringement of the Patents-in-Suit

19. EON repeats and realleges the allegations set forth in Paragraphs 1 through 18 as if those allegations had been fully set forth herein.

20. Defendant, without authorization or license and in violation of 35 U.S.C. § 271 (a), (b), (c), and (f), has been and is infringing the '101 Patent and the '491 Patent directly, by inducement, and contributorily.

21. Because Defendant had actual knowledge of EON's infringement allegations prior to the commencement of this action, Defendant's infringement has been and is willful. Furthermore, Defendant's infringement occurring after the date of this action will continue to be willful.

22. EON has no adequate remedy at law against Defendant's acts of infringement, and Defendant's infringement will continue unless enjoined by this Court.

23. Defendant's unauthorized use of EON's patented-technology causes EON and its licensees harm.

24. EON has suffered and will continue to suffer irreparable injury as a result of Defendant's infringement, including through the harm described in the preceding paragraph.

25. EON is in compliance with any requirements of 35 U.S.C. § 287, if applicable.

26. EON has been damaged by Defendant's infringement and will continue to be damaged until enjoined by this Court.

V. PRAYER FOR RELIEF

WHEREFORE, in consideration of the foregoing, Plaintiff respectfully requests that this Honorable Court enter judgment against Defendant, and in favor of Plaintiff. Plaintiff prays that this Court:

A. award Plaintiff all relief available under § 284 of the Patent Act, including monetary damages, for the Defendant's infringement in an amount to be determined by the trier of fact;

B. award Plaintiff all relief available under § 285 of the Patent Act, including the costs of this litigation as well as expert witness and attorneys' fees;

C. order payment of all applicable interests, including prejudgment interest;
and

D. award Plaintiff whatever equitable relief is deemed appropriate.

VI. DEMAND FOR JURY TRIAL

EON demands a trial by jury of any and all issues triable of right before a jury.

Dated: February 20, 2013

Respectfully Submitted,

/s/ Daniel Scardino

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case files system of the court. The electronic case files system sent a “Notice of Electronic Filing” to individuals who have consented in writing to accept this Notice as service of this document by electronic means, all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by first class mail today, February 20, 2013.

/s/ Daniel Scardino
Daniel Scardino