

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA**

-----X	:	
PRISM TECHNOLOGIES LLC,	:	Civil Action No. 8:12-cv-124-LES-TDT
	:	
Plaintiff,	:	
	:	
v.	:	<b>SECOND AMENDED COMPLAINT</b>
	:	
T-MOBILE USA INC.,	:	
	:	<b>JURY TRIAL REQUESTED</b>
Defendant.	:	<b>IN OMAHA</b>
	:	
-----X	:	

Plaintiff Prism Technologies LLC, for its Second Amended Complaint against T-Mobile USA Inc., upon information and belief as to all other matters, hereby alleges as follows:

**THE PARTIES**

1. Plaintiff Prism Technologies LLC (“Prism”) is a limited liability company organized and existing under the laws of the State of Nebraska, with its principal place of business at 2323 S. 171st Street, Suite 106, Omaha, Nebraska 68130.

2. Defendant T-Mobile USA Inc. (“T-Mobile”) is a Delaware corporation with its principal place of business at 12920 SE 38th Street, Bellevue, Washington 98006. T-Mobile conducts substantial business in this judicial district.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has specific and general personal jurisdiction over Defendants because they have committed acts giving rise to this action within this judicial district and have established minimum contacts within Nebraska and within this judicial district such that the

exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because T-Mobile has conducted business in this district and/or provided service and support to T-Mobile's customers within this district, and has committed acts of patent infringement within this district giving rise to this action.

### **PRISM AND THE PATENTS**

6. Prism's direct predecessor-in-interest, Prism Resources, was founded by Mr. Richard L. Gregg in 1989. In 1996, Mr. Gregg, along with Timothy Goeke, and Sandeep Giri, researched and developed novel systems and methods that included controlling access to protected computer resources. The systems and methods included a server with an associated database to store information that could authenticate a device to determine which device was authorized to access protected resources.

7. Prism Resources proceeded to file various patent applications to protect these and related inventions. On October 30, 2007, United States Letters Patent No. 7,290,288 ("the '288 patent") entitled METHOD AND SYSTEM FOR CONTROLLING ACCESS, BY AN AUTHENTICATION SERVER, TO PROTECTED COMPUTER RESOURCES PROVIDED VIA AN INTERNET PROTOCOL NETWORK was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '288 patent is attached hereto as Exhibit A, and is incorporated herein by reference. A true and correct copy of a Certificate of Correction issued by the United States Patent and Trademark Office on September 8, 2009, in connection with the '288 patent is attached hereto as Exhibit B. On August 3, 2010, *Ex Parte* Reexamination Certificate issued and is attached hereto as Exhibit C. On June 7, 2011, a second

*Ex Parte* Reexamination Certificate issued and is attached hereto as Exhibit D. On August 23, 2011 and Certificate of Correction issued and is attached hereto as Exhibit E.

8. On February 28, 2012, United States Letters Patent No. 8,127,345 (“the ’345 patent”) entitled METHOD AND SYSTEM FOR MANAGING ACCESS TO PROTECTED COMPUTER RESOURCES PROVIDED VIA AN INTERNET PROTOCOL NETWORK was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’345 patent is attached hereto as Exhibit F, and is incorporated herein by reference.

9. On February 26, 2013, United States Letters Patent No. 8,387,155 (“the ’155 patent”) entitled SYSTEM FOR MANAGING ACCESS TO PROTECTED COMPUTER RESOURCES was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’155 patent is attached hereto as Exhibit G, and is incorporated herein by reference.

10. Prism is the owner and assignee of all right, title and interest in and to the ’288 patent, the ’345 patent, and the ’155 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

11. Today, various wireless networks allow computer devices, such as smartphones, tablets and mobile broadband cards, to access protected resources of the wireless networks, such as web servers. These wireless networks implement systems and methods for controlling access to the wireless networks that Prism pioneered and patented.

**COUNT 1**  
**INFRINGEMENT OF U.S. PATENT NO. 7,290,288**

12. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 11 above as if fully set forth herein.

13. T-Mobile owns, operates, and/or controls one or more wireless networks. On information and belief, T-Mobile uses, sells and offer for sale various data services provided through its wireless networks.

14. T-Mobile implements authentication systems and methods for controlling and protecting unauthorized access to its wireless networks.

15. T-Mobile's authentication systems and methods are used when a computer or wireless device accesses T-Mobile's wireless network and data services.

16. On information and belief, T-Mobile's systems and methods for controlling and protecting unauthorized access to its wireless networks and data services operate in the same manner as the systems and methods for controlling access that Prism pioneered and patented in the '288 patent, '345 patent, and '155 patent.

#### **T-Mobile's Wireless Network and Data Services**

17. T-Mobile owns, controls, operates and/or uses one or more wireless networks that include a complex infrastructure of network computers and telecommunication systems.

18. On information and belief, T-Mobile owns, controls, operates and/or uses wireless networks that are based on various technologies including Universal Mobile Telecommunications System/High-Speed Downlink Packet Access (HSPA+) and next generation LTE technology. On information and belief, T-Mobile relies on transmission technologies known a, General Packet Radio Services (GSM) (individually and collectively referred to as the T-Mobile "Wireless Networks").

19. T-Mobile owns, controls, operates, uses, sells and/or offers for sale access to its Wireless Networks, including data communications services made available through its Wireless Networks.

20. T-Mobile's data communication services, made available through its Wireless Networks, include mobile productivity applications, such as Internet access, messaging and email services; wireless photo and video offerings, location-based capabilities, including asset and fleet management, dispatch services and navigation tools; and mobile entertainment applications, including the ability to view live television, listen to internet radio, download and listen to music, and game play with full-color graphics and polyphonic and real-music sounds from a wireless handset computing device (individually and collectively referred to as T-Mobile's "Data Services").

21. T-Mobile authorizes customers' devices to access T-Mobile's Wireless Networks and Data Services if customers purchase and/or subscribe to T-Mobile's Data Service plans. These Data Service plans include, for example, Classic Unlimited Ultra, Classic Unlimited Premium, Classic Unlimited, Classic Unlimited Plus, Simple, Classic Overage-Free Ultra, Classic Overage-Free Premium, Classic Overage-Free Plus, Week Pass 300MB, Month Pass 1.5GB, Month Pass 3.5GB, Month Pass 5GB, and Monthly 4G Handset Protection (individually and collectively referred to as T-Mobile "Data Plans").

22. On information and belief, T-Mobile requires all Data Plan subscribers to enter into an agreement (of varying term/length) with T-Mobile in which customers must comply with T-Mobile's terms of use in order to access T-Mobile's Wireless Network and Data Services. An exemplary copy of such an Agreement is attached as Exhibit H.

#### **T-Mobile's Authentication Systems**

23. T-Mobile's Wireless Network complies with one or more various industry standards, including, for example, 3GPP standard.

24. Industry standards such as 3GPP include authentication systems and methods for controlling and protecting access to data resources.

25. T-Mobile controls and limits unauthorized access to its Wireless Network and Data Services by implementing authentication systems and methods so only authorized devices may access at least a portion of T-Mobile's Wireless Networks and Data Services (collectively referred to as T-Mobile's Authentication Systems").

26. On information and belief, T-Mobile's Authentication Systems include: one or more access servers, authentication servers, and databases for storing at least the digital identifications associated with customers' wireless devices (e.g., smartphone, tablet or broadband card) and associated authorized Data Services.

27. On information and belief, T-Mobile's Authentication Systems requires that any wireless devices used to access T-Mobile's Data Services include an associated hardware key/access key and digital identification that may be associated with such wireless device.

28. T-Mobile uses its Authentication Systems when a device accesses the T-Mobile Wireless Network and Data Services.

29. On information and belief, if customers choose not to subscribe to T-Mobile's Data Plans, T-Mobile does not authorize the customers' wireless device(s) to access, at least a portion of, T-Mobile Wireless Networks and Data Services.

#### **T-Mobile's Wireless Devices**

30. The Wireless Networks and Data Services operated, offered, sold, and marketed by T-Mobile are accessed by T-Mobile's customers using a wide variety of wireless devices including smartphones, mobile broadband devices such as aircards and hotspots, and embedded tablets and laptops manufactured by various suppliers for use with T-Mobile's Data Services.

31. On information and belief, T-Mobile, as identified in its Customer Agreement, controls at least portions of the hardware, software and operation of customers' wireless devices to ensure each wireless device can access T-Mobile's Wireless Network and Data Services by using the systems and methods claimed in the '288 patent. For example, T-Mobile states in its Agreement with customers:

Your T-Mobile Device may not be compatible with the network and services provided by another service provider. You may buy a Device from us or someone else, but it must, as solely determined by T-Mobile, be compatible with, and not potentially harm, our network. Some T-Mobile features will be available only on T-Mobile Devices purchased from us. A T-Mobile Device is designed to be used only with T-Mobile Service. You may be eligible to have your T-Mobile Device reprogrammed to work with another carrier, but you must contact us to do so. Not all T-Mobile Devices are capable of being reprogrammed. T-Mobile reserves the right to prevent your Device from being used on our network. At times we may remotely change software, systems, applications, features or programming on your Device without notice to address security, safety or other issues that impact the T-Mobile network or your Device. These changes will modify your Device and may affect or erase data you have stored on your Device, the way you have programmed your Device, or the way you use your Device. We may offer you changes to systems, applications, features or programming remotely to your Device; you will not be able to use your Device during the installation of the changes even for emergencies.

(Exhibit H)

32. On information and belief, T-Mobile requires that any wireless devices used to access T-Mobile's Data Services include an associated hardware key/access key and digital identification that may be associated with such wireless device necessary to work with T-Mobile's Authentication System.

33. T-Mobile offers, sells and markets wireless devices capable of accessing T-Mobile's Data Services. These wireless devices include at least the following examples: Samsung Galaxy S II, Nokia Lumia 710, Samsung Galaxy S 4G, T-Mobile myTouch by LG, T-Mobile myTouch Q by LG, Samsung Exhibit 4G, Samsung Galaxy Exhibit 4G, HTC One S,

HTC Radar, Samsung Galaxy S Blaze 4G, Samsung Galaxy Relay 4G, Samsung Galaxy S III, BlackBerry Bold 9900 4G, Samsung Galaxy Note, T-Mobile Sonic 4G Mobile HotSpot, T-Mobile Rocket 3.0 4G Laptop Stick, T-Mobile 4G Mobile HotSpot, Samsung Galaxy Tab 7.0 Plus, T-Mobile SpringBoard, and T-Mobile Jet 2.0 (collectively “Data Enabled Wireless Devices”). Prism expects, through discovery, to learn of additional devices that are provided sold and/or offered for sale by T-Mobile that are capable of accessing T-Mobile’s Data Services through its Wireless Networks.

### **T-Mobile’s Authentication Systems And Methods Infringe Prism’s Patents**

34. T-Mobile uses its Authentication Systems to control and protect access to its Wireless Network and Data Services. For example, a Data Enabled Wireless Device that is not associated with a customer subscribing to one of T-Mobile’s Data Plans will not be authorized by T-Mobile to access at least a portion of T-Mobile’s Wireless Network and Data Services.

35. T-Mobile’s Authentication Systems may further be used to control access to its Wireless Network and Data Services in such a way that T-Mobile may:

take measures including temporarily reducing data throughput for a subset of customers who use a disproportionate amount of bandwidth. In addition, if your total usage exceeds 5GB (amount is subject to change without notice; please check T-Mobile's T&Cs on [ww.TMobile.com](http://ww.TMobile.com) for updates) during a billing cycle, we may reduce your data speed for the remainder of that billing cycle. If you use your Data Plan in a manner that could interfere with other customers' service, affect our ability to allocate network capacity among customers, or degrade service quality for other customers, we may suspend, terminate, or restrict your data session, or switch you to a more appropriate Data Plan. We also manage our network to facilitate the proper functioning of services that require consistent high speeds, such as video calling, which may, particularly at times and in areas of network congestion, result in reduced speeds for other services. Additionally, we may implement other network management practices, such as caching less data, using less capacity, and sizing video more appropriately for a Device to transmit data files more efficiently. These practices are agnostic to the content itself and to the websites that provide it. While we avoid changing text, image, and video files in the compression process when practical, the process may impact the appearance of files as displayed on your Device.



(See Exhibit H).

36. On information and belief, T-Mobile's Wireless Networks implement the systems and methods that are claimed in the '288 patent, including at least claims 186 and 187, when a Data Enabled Wireless Device accesses T-Mobile's Data Services through Wireless Networks.

37. T-Mobile has been and now is directly infringing the '288 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing systems and methods for controlling Data Enabled Wireless Devices from accessing its Wireless Network and Data Service as claimed in the '288 patent.

38. To the extent others are acting with T-Mobile to use the systems and methods for controlling access to T-Mobile's Wireless Network and Data Services, T-Mobile is the mastermind behind the use of the systems and methods that are implemented for controlling access to T-Mobile's Wireless Network and Data Services. For example, on information and belief, T-Mobile requires that Data Enabled Wireless Devices include an access/key hardware key and/or digital identification that is transmitted to T-Mobile's Wireless Network so that T-Mobile's Authentication Systems can "LIMIT, SUSPEND OR TERMINATE YOUR SERVICE OR AGREEMENT WITHOUT NOTICE FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, if you, any user of your Device, or any user on your account: (a) breaches the Agreement..." (Exhibit H). A breach of a the Agreement includes infringement of intellectual property which may result in a violation "which cannot be fully redressed by money damages, and that T-Mobile shall be entitled to immediate injunctive relief in addition to all other remedies available." (Exhibit H).

39. Further, on information and belief, through its Customer Agreements, T-Mobile requires that all customers subscribing to a Data Plan use a Data Enabled Wireless Device that

works with T-Mobile's Wireless Network and Data Services. Failure to comply with a Customer Agreement may (at T-Mobile's discretion) result in termination of services. For example, as stated in the attached Agreement (Exhibit H) a customer "may buy a Device from T-Mobile] or someone else, but it must, as solely determined by T-Mobile, be compatible with, and not potentially harm, our network."

40. T-Mobile and its customers have been and now are jointly infringing the '288 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing and using systems and methods for controlling access to T-Mobile's protected computer resources as claimed in the '288 patent.

41. Prism has been injured by T-Mobile's infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile's infringing activities are enjoined by this Court.

42. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '288 patent, Prism will be greatly and irreparably harmed.

**COUNT II**  
**INDIRECT CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 7,290,288**

43. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 42 above as if fully set forth herein.

44. On information and belief, when T-Mobile sells Data Enabled Wireless Devices to customers, T-Mobile also sells a Data Plan that allows his or her device to access T-Mobile's Wireless Network and Data Services.

45. On information and belief, the Data Enabled Wireless Devices sold by T-Mobile necessarily include software and hardware that allows the device to use T-Mobile's authentication systems and methods controlling access to T-Mobile's Wireless Network and Data Services. On information and belief, a Data Enabled Wireless Device includes software controlled by T-Mobile to ensure that the Data Enabled Wireless Device attempts to access T-Mobile's Wireless Network and Data Services when the Data Enabled Wireless Device is powered-on.

46. On information and belief, these Data Enabled Wireless Devices are specifically designed to work with T-Mobile's Wireless Network, Data Services and Authentication Systems and have no substantial non-infringing use as sold and authorized by T-Mobile.

47. T-Mobile has been and now is indirectly infringing the '288 patent (by contributory infringement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling and offering to sell Data Enabled Wireless Devices that use and practice the systems and methods claimed in the '288 patent.

48. Prism has been injured by T-Mobile's infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile's infringing activities are enjoined by this Court.

49. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '288 patent, Prism will be greatly and irreparably harmed.

**COUNT III**  
**INDIRECT INDUCEMENT OF INFRINGEMENT OF U.S. PATENT NO. 7,290,288**

50. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 49 above as if fully set forth herein.

51. On information and belief, T-Mobile sells Data Enabled Wireless Devices at prices below T-Mobile's cost to attract and induce new customers to subscribe to T-Mobile's Wireless Network and Data Services. T-Mobile offers, sells and markets these Data Enabled Wireless Devices through its web site and through various channels including T-Mobile agents and other third parties. Further, on information and belief, T-Mobile sells accessories, such as carrying cases, hands-free devices, batteries, battery chargers and other items to T-Mobile customers, to T-Mobile agents and other third-party distributors for resale so that they may be used by T-Mobile customers (with Data Enabled Devices) who access T-Mobile's Wireless Network and Data Services.

52. On information and belief, T-Mobile markets and sells Data Services and Data Enabled Wireless Devices, targeting groups of retail subscribers: individual consumers, businesses and governments. On information and belief, T-Mobile uses a variety of sales channels to attract new subscribers of wireless services, including: direct sales representatives whose efforts are focused on marketing and selling wireless data communication services, primarily to mid-sized to large businesses and government agencies; retail outlets owned and operated by or on behalf of T-Mobile, that focus on sales to the consumer market as well as third-party retailers; indirect sales agents that primarily consist of local and national non-

affiliated dealers and independent contractors that market and sell services to businesses and the consumer market, and are generally paid through commissions; and subscriber-convenient channels, including web sales and telesales.

53. On information and belief, on April 4, 2012, Prism filed a complaint against T-Mobile alleging infringement of the '288 patent and '345 patent. On April 7, 2012, T-Mobile received a copy of the April 4, 2012 Complaint and has known of the '288 patent.

54. On information and belief, to the extent others, such as T-Mobile's customers (and their Data Enabled Devices), are acting with T-Mobile to use systems and methods for accessing T-Mobile's Wireless Networks and Data Services, T-Mobile controls the design, function and operation of its Wireless Networks, including Data Enabled Devices, to ensure that customers' Data Enabled Devices will work with T-M's systems and methods for controlling access to T-Mobile's Wireless Networks. Further, on information and belief, T-Mobile, at least as early as April 7, 2012, has induced and continued to induce others, including its customers, to use Data Enabled Devices to practice one or more steps of the systems and methods claimed in the '288 patent.

55. T-Mobile has been, at least as early as April 7, 2012, and now is indirectly infringing the '288 patent (by inducement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by inducing its customers, in combination with T-Mobile, to continue to use Data Enabled Devices and practice the methods claimed in the '288 patent. Further, on information and belief, at least as early as April 7, 2012, T-Mobile has recklessly, knowingly, and willfully continued to implement and use systems and methods claimed in the '288 patent and '345 patent to control access to its wireless network and data connection service despite knowing of its infringing activity.

56. On information and belief, this use of T-Mobile's Authentication Systems by T-Mobile and its customers have occurred and will continue to occur at T-Mobile's active behest, and with its intent, knowledge and encouragement, and with T-Mobile's aid and support to its customers, with knowledge that it is in contravention of Prism's rights under the '288 patent.

57. Prism has been injured by T-Mobile's infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile's infringing activities are enjoined by this Court.

58. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '288 patent, Prism will be greatly and irreparably harmed.

**COUNT IV**  
**DIRECT INFRINGEMENT OF U.S. PATENT NO. 8,127,345**

59. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 58 above as if fully set forth herein.

60. On information and belief, T-Mobile's Wireless Network and Data Services use authentication methods that are claimed in the '345 patent, including at least claims 1 and 49.

61. T-Mobile has been and now is directly infringing the '345 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing authentication systems and methods for controlling access to protected computer resources as claimed in the '345 patent.

62. To the extent others are acting with T-Mobile to use the systems and methods for controlling access to T-Mobile's Wireless Network and Data Services, T-Mobile is the

mastermind behind the use of the systems and methods that are implemented for controlling access to T-Mobile's Wireless Network and Data Services. For example, on information and belief, T-Mobile requires that Data Enabled Wireless Devices include identity data that is transmitted to T-Mobile's Wireless Network so that T-Mobile's Authentication Systems can "LIMIT, SUSPEND OR TERMINATE YOUR SERVICE OR AGREEMENT WITHOUT NOTICE FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, if you, any user of your Device, or any user on your account: (a) breaches the Agreement..." (Exhibit H). A breach of a the Agreement includes infringement of intellectual property which may result in a violation "which cannot be fully redressed by money damages, and that T-Mobile shall be entitled to immediate injunctive relief in addition to all other remedies available." (Exhibit H).

63. Further, on information and belief, through its Customer Agreements, T-Mobile requires that all customer subscribing to a Data Plan use a Data Enabled Wireless Device that works with T-Mobile's Wireless Network and Data Services. Failure to comply with a Customer Agreement may (at T-Mobile's discretion) result in termination of services. For example, as stated in the attached Agreement (Exhibit H) a customer "may buy a Device from T-Mobile] or someone else, but it must, as solely determined by T-Mobile, be compatible with, and not potentially harm, our network."

64. T-Mobile and its customers have been and now are jointly infringing the '345 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing and using authentication systems and methods for controlling access to protected computer resources as claimed in the '345 patent.

65. Prism has been injured by T-Mobile's infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile's infringement,

but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile's infringing activities are enjoined by this Court.

66. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '345 patent, Prism will be greatly and irreparably harmed.

**COUNT V**  
**INDIRECT CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 8,127,345**

67. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 66 above as if fully set forth herein.

68. When T-Mobile sells Data Enabled Wireless Devices to customers, T-Mobile also sells a Data Plan that allows his or her device to access T-Mobile's Wireless Network and Data Services.

69. On information and belief, the Data Enabled Wireless Devices sold by T-Mobile necessarily include software and hardware that allows the device to use T-Mobile's authentication systems and methods controlling access to T-Mobile's Wireless Network and Data Services. On information and belief, a Data Enabled Wireless Device includes software controlled by T-Mobile to ensure that the Data Enabled Wireless Device attempts to access T-Mobile's Wireless Network and Data Services when the Data Enabled Wireless Device is powered-on. On information and belief.

70. On information and belief, these Data Enabled Wireless Device are specifically designed to work with T-Mobile's Wireless Network, Data Services and Authentication Systems and have no substantial non-infringing use as sold and authorized by T-Mobile.



71. T-Mobile has been and now is indirectly infringing the '345 patent (by contributory infringement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling and offering to sell Data Enabled Wireless Devices that use and practice the systems and methods claimed in the '345 patent.

72. Prism has been injured by T-Mobile's infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile's infringing activities are enjoined by this Court.

73. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '345 patent, Prism will be greatly and irreparably harmed.

**COUNT VI**  
**INDIRECT INDUCEMENT OF INFRINGEMENT OF U.S. PATENT NO. 8,127,345**

74. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 73 above as if fully set forth herein.

75. On information and belief, T-Mobile sells Data Enabled Wireless Devices at prices below T-Mobile's cost to attract and induce new customers to subscribe to T-Mobile's Wireless Network and Data Services. T-Mobile offers, sells and markets these Data Enabled Wireless Devices through its web site and through various channels including T-Mobile agents and other third parties. Further, on information and belief, T-Mobile sells accessories, such as carrying cases, hands-free devices, batteries, battery chargers and other items to T-Mobile customers, to T-Mobile agents and other third-party distributors for resale so that they may be

used by T-Mobile customers (with Data Enabled Devices) who access T-Mobile's Wireless Network and Data Services.

76. On information and belief, T-Mobile markets and sells Data Services and Data Enabled Wireless Devices, targeting groups of retail subscribers: individual consumers, businesses and government. On information and belief, T-Mobile uses a variety of sales channels to attract new subscribers of wireless services, including: direct sales representatives whose efforts are focused on marketing and selling wireless data communication services; primarily to mid-sized to large businesses and government agencies, retail outlets owned and operated by or on behalf of T-Mobile, that focus on sales to the consumer market as well as third-party retailers; indirect sales agents that primarily consist of local and national non-affiliated dealers and independent contractors that market and sell services to businesses and the consumer market, and are generally paid through commissions; and subscriber-convenient channels, including web sales and telesales.

77. On information and belief, on April 4, 2012, Prism filed a complaint against T-Mobile alleging infringement of the '288 patent and '345 patent. On April 7, 2012, T-Mobile received a copy of the April 4, 2012 Complaint and has known of the '345 patent.

78. On information and belief, to the extent others, such as T-Mobile's customers (and their Data Enabled Devices), are acting with T-Mobile to use systems and methods for accessing T-Mobile's Wireless Networks and Data Services, T-Mobile controls the design, function and operation of its Wireless Networks, including Data Enabled Devices, to ensure that customers' Data Enabled Devices will work with T-Mobile's systems and methods for controlling access to T-Mobile's Wireless Networks. Further, on information and belief, T-Mobile, at least as early as April 7, 2012, has induced and continued to induce others, including

its customers, to use Data Enabled Devices to practice one or more steps of the systems and methods claimed in the '345 patent.

79. T-Mobile has been, at least as early as April 7, 2012, and now is indirectly infringing the '345 patent (by inducement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by inducing its customers, in combination with T-Mobile, to continue to use Data Enabled Devices and practice the methods claimed in the '345 patent. Further, on information and belief, at least as early as April 7, 2012, T-Mobile has recklessly, knowingly, and willfully continued to implement and use systems and methods claimed in the '288 patent and '345 patent to control access to its wireless network and data connection service despite knowing of its infringing activity.

80. On information and belief, this use of T-Mobile's Authentication Systems by T-Mobile and its customers have occurred and will continue to occur at T-Mobile's active behest, and with its intent, knowledge and encouragement, and with T-Mobile's aid and support to its customers, with knowledge that it is in contravention of Prism's rights under the '288 patent.

81. Prism has been injured by T-Mobile's infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile's infringing activities are enjoined by this Court.

82. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '345 patent, Prism will be greatly and irreparably harmed.

**COUNT VII**  
**DIRECT INFRINGEMENT OF U.S. PATENT NO. 8,387,155**

83. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 82 above as if fully set forth herein.

84. T-Mobile has been and now is directly infringing the '155 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing authentication systems for controlling access to protected computer resources as claimed in the '155 patent.

85. To the extent others are acting with T-Mobile to use the systems for controlling access to T-Mobile's Wireless Network and Data Services, T-Mobile is the mastermind behind the use of the systems that are implemented for controlling access to T-Mobile's Wireless Network and Data Services. For example, on information and belief, T-Mobile requires that Data Enabled Wireless Devices include identity data that is transmitted to T-Mobile's Wireless Network so that T-Mobile's Authentication Systems can "LIMIT, SUSPEND OR TERMINATE YOUR SERVICE OR AGREEMENT WITHOUT NOTICE FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, if you, any user of your Device, or any user on your account: (a) breaches the Agreement..." (Exhibit H). A breach of a the Agreement includes infringement of intellectual property which may result in a violation "which cannot be fully redressed by money damages, and that T-Mobile shall be entitled to immediate injunctive relief in addition to all other remedies available." (Exhibit H).

86. Further, on information and belief, through its Customer Agreements, T-Mobile requires that all customer subscribing to a Data Plan use a Data Enabled Wireless Device that works with T-Mobile's Wireless Network and Data Services. Failure to comply with a Customer Agreement may (at T-Mobile's discretion) result in termination of services. For example, as

stated in the attached Agreement (Exhibit H) a customer “may buy a Device from T-Mobile] or someone else, but it must, as solely determined by T-Mobile, be compatible with, and not potentially harm, our network.”

87. T-Mobile and its customers have been and now are jointly infringing the ’155 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing and using authentication systems for controlling access to protected computer resources as claimed in the ’155 patent.

88. Prism has been injured by T-Mobile’s infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile’s infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile’s infringing activities are enjoined by this Court.

89. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the ’155 patent, Prism will be greatly and irreparably harmed.

**COUNT VIII**  
**INDIRECT CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 8,127,345**

90. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 89 above as if fully set forth herein.

91. When T-Mobile sells Data Enabled Wireless Devices to customers, T-Mobile also sells a Data Plan that allows his or her device to access T-Mobile’s Wireless Network and Data Services.

92. On information and belief, the Data Enabled Wireless Devices sold by T-Mobile necessarily include software and hardware that allows the device to use T-Mobile’s

authentication systems controlling access to T-Mobile's Wireless Network and Data Services.

On information and belief, a Data Enabled Wireless Device includes software controlled by T-Mobile to ensure that the Data Enabled Wireless Device attempts to access T-Mobile's Wireless Network and Data Services when the Data Enabled Wireless Device is powered-on.

93. On information and belief, these Data Enabled Wireless Device are specifically designed to work with T-Mobile's Wireless Network, Data Services and Authentication Systems and have no substantial non-infringing use as sold and authorized by T-Mobile.

94. T-Mobile has been and now is indirectly infringing the '155 patent (by contributory infringement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling and offering to sell Data Enabled Wireless Devices that use and practice the systems claimed in the '155 patent.

95. Prism has been injured by T-Mobile's infringing activities, and is entitled to recover money damages from T-Mobile adequate to compensate it for T-Mobile's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless T-Mobile's infringing activities are enjoined by this Court.

96. Unless a permanent injunction is issued enjoining T-Mobile and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '155 patent, Prism will be greatly and irreparably harmed.

#### **PRAYER FOR RELIEF**

Wherefore, Prism respectfully requests judgment in its favor and against Defendant, as follows:

- a. A judgment in favor of Prism that T-Mobile has infringed the '288 patent;

- b. A judgment in favor of Prism that T-Mobile has infringed the '345 patent;
- c. A judgment in favor of Prism that T-Mobile has infringed the '155 patent;
- d. A permanent injunction against T-Mobile and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '288 patent;
- e. A permanent injunction against T-Mobile and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '345 patent;
- f. A permanent injunction against T-Mobile and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '155 patent;
- g. A judgment and order requiring T-Mobile to pay Prism its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '288 patent as provided under 35 U.S.C. § 284;
- h. A judgment and order requiring T-Mobile to pay Prism its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '345 patent as provided under 35 U.S.C. § 284;
- i. A judgment and order requiring T-Mobile to pay Prism its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '155 patent as provided under 35 U.S.C. § 284;
- j. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Prism its reasonable attorneys' fees; and
- k. Such other relief in law and equity as this Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Prism demands a trial by jury in Omaha of all issues triable by a jury.

Dated: March 1, 2013

Respectfully submitted,

By: *s/ Daniel J. Fischer*

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

*s/ Daniel J. Fischer*