

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

	§	
MOBILE TELECOMMUNICATIONS	§	
TECHNOLOGIES, LLC,	§	CIVIL ACTION NO. 2:12-cv-00832-JRG-
	§	RSP
Plaintiff,	§	
v.	§	JURY TRIAL REQUESTED
	§	
SPRINT NEXTEL CORPORATION,	§	
	§	
Defendant.	§	

FIRST AMENDED COMPLAINT

Plaintiff Mobile Telecommunications Technologies, LLC (“MTEL”) files this Complaint against Defendant Sprint Nextel Corporation (“Sprint”) for infringement of U.S. Patent No. 5,590,403 (the “403 Patent”), U.S. Patent No. 5,659,891 (the “891 Patent”), and U.S. Patent No. 5,915,210 (the “210 Patent”) (collectively, the “Patents-in-Suit”) pursuant to 35 U.S.C. § 271 and alleges as follows.

THE PARTIES

1. Plaintiff MTEL is a Delaware corporation with its principal place of business at 1720 Lakepointe Drive, Suite 100 Lewisville, TX 75057.
2. MTEL is the holder of a portfolio of patents formerly held by Mobile Telecommunication Technologies Corp. (“MTEL Corp.”) and its related entities, such as Destineer and SkyTel Communications.
3. MTEL Corp. was a pioneer in wireless communications and is credited with launching the world’s first two-way wireless paging service, dubbed SkyTel 2-Way.
4. The paging operations and business are currently based out of Lewisville, Texas.

5. Defendant Sprint is a Kansas corporation with a principal place of business in Johnson County, Kansas. In addition to Sprint continuously and systematically conducting business in Texas, the causes of action against Sprint arose from or are connected with Sprint's purposeful acts committed in Texas. Sprint engages in business in but does not maintain a regular place of business in Texas and has not designated or maintained a resident agent for service of process. Accordingly, pursuant to Federal Rule of Civil Procedure 4, section 17.044 of the Texas Civil Practice and Remedies Code, and Articles 2.11 of the Texas Business Corporations Act, the Texas Secretary of State is designated as Sprint's agent for service of process in this action. The Texas Secretary of State Citations Unit may be served at P.O. Box 12079, Austin, Texas 78711-2079 by certified mail, return receipt requested. Pursuant to section 17.045(a) of the Civil Practice and Remedies Code, the Secretary of State shall forward citation and a copy of this Complaint to Sprint's home or home office, c/o Corporation Service Company, 2900 SW Wanamaker Dr., Suite 204, Topeka, KS 66614. This Amended Complaint shall be served using the electronic case files system of the court.

6. Defendant uses Clearwire Corporation's WiMAX network and operates 3G, 4G, LTE, and Wi-Fi networks.

7. On information and belief, Defendant is the majority owner of Clearwire Corporation and is attempting to acquire the remainder of the company.

JURISDICTION AND VENUE

8. This is an action for patent infringement under the Patent Laws of the United States, Title 35 of the United States Code. 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).

9. This Court has personal jurisdiction over Defendant under the laws of the State of Texas, including the Texas long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.042.

10. Plaintiff incorporates all statements of jurisdiction in the preceding paragraphs. The causes of action against Defendant in this Complaint arise from or are connected with purposeful acts committed by Defendant in Texas. Defendant has conducted and continues to conduct business within the State of Texas, directly or through intermediaries or agents, or offer for sale, sell, or advertise (including through the provision of interactive web pages) products or services, or use or induce others to use products or services in Texas that infringe the Patents-in-Suit, or knowingly contribute to infringement of the Patents-in-Suit.

THE PATENTS-IN-SUIT

11. On December 31, 1996, the United States Patent and Trademark (“USPTO”) duly and legally issued United States Patent No. 5,590,403, titled “Method and System for Efficiently Providing Two Way Communication Between a Central Network and Mobile Unit,” after a full and fair examination. A true and correct copy of the ’403 Patent is attached hereto as Exhibit A. MTEL is the assignee of all right, title and interest in and to the ’403 Patent and possesses the exclusive right of recovery under the ’403 Patent, including the exclusive right to recover for infringement of the ’403 Patent. The ’403 Patent is valid and enforceable.

12. The ’403 Patent claims, *inter alia*, a two-way communications system for communication between a system network and a mobile unit.

13. Without reference to the construction of any particular claim term or the scope of any of the claims, the inventions described in the ’403 Patent present novel methods for, *inter alia*, improving throughput and communication within a wireless network using transmission and

network optimization techniques, including but not limited to simulcasting and dynamic assignment of transmitters to different zones.

14. On August 19, 1997, the USPTO duly and legally issued U.S. Patent No. 5,659,891, titled “Multicarrier Techniques in Bandlimited Channels,” after a full and fair examination. A true and correct copy of the ’891 Patent is attached hereto as Exhibit B. MTEL is the assignee of all right, title and interest in and to the ’891 Patent and possesses the exclusive right of recovery under the ’891 Patent, including the exclusive right to recover for infringement of the ’891 Patent. The ’891 Patent is valid and enforceable.

15. The ’891 Patent claims, *inter alia*, a method of multicarrier modulation in a single mask-defined, bandlimited channel.

16. Without reference to the construction of any particular claim term or the scope of any of the claims, the inventions described in the ’891 Patent present novel methods for, *inter alia*, improving capacity and communication over a bandlimited channel within a wireless network and without the need for stringent subchannel interference protection.

17. On June 22, 1999, the USPTO duly and legally issued United States Patent No. 5,915,210, titled “Method and System for Providing Multicarrier Simulcast Transmission,” after a full and fair examination. A true and correct copy of the ’210 Patent is attached hereto as Exhibit C. MTEL is the assignee of all right, title and interest in and to the ’210 Patent and possesses the exclusive right of recovery under the ’210 Patent, including the exclusive right to recover for infringement of the ’210 Patent. The ’210 Patent is valid and enforceable.

18. The ’210 Patent claims, *inter alia*, a two-way communications system for communication between a system network and a mobile unit.

19. Without reference to the construction of any particular claim term or the scope of any of the claims, the inventions described in the '210 Patent present novel methods for, *inter alia*, improving message throughput and communication within a wireless network while minimizing frequency bandwidth usage.

INFRINGEMENT OF THE PATENTS-IN-SUIT

20. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1-19 as if those allegations have been fully set forth herein.

21. WiMAX (Worldwide Interoperability for Microwave Access) is a dedicated data network offering wider coverage and a higher capacity than Wi-Fi, while supporting a single standard for fixed and mobile usage. WiMAX service uses towers in markets, creating market-sized “hot zones” as opposed to Wi-Fi “hot spots” which have a very limited range. WiMAX circumvents service issues such as interference and noise that can be experienced when using Wi-Fi.

22. Defendant utilizes a WiMAX network that implements the mobile WiMAX Standard – sometimes referred to as the IEEE 802.16e Standard.

23. In particular, on information and belief, Defendant utilizes a WiMAX network that implements the Macro Diversity Handover portions of the IEEE 802.16e-2005 Standard.

24. Defendant’s 4G network operates in the FCC licensed 2.5 GHz spectrum.

25. Defendant makes, uses, sells or offers to sell access to its wireless 3G, 4G, and Wi-Fi networks, which utilizes multiple input, multiple output (MIMO) functionality, including but not limited to WiMAX, LTE (Long Term Evolution), IEEE 802.11 communication technology, multicast capabilities, and certain subcarrier frequency structures.

26. Defendant's commercial wireless network has a nationwide footprint across the U.S. and its territories. Defendant offers its 4G LTE service in at least 49 markets, including Dallas and Houston.

27. Defendant offers for sale and sells wireless devices that allow its customers access to Defendant's nationwide network utilizing MIMO functionality, including but not limited to 4G WiMAX, 4G LTE, and Wi-Fi networks, multicast capabilities, and certain subcarrier frequency structures.

28. Defendant uses transmission configurations in accordance with technical standards described in IEEE 802.11n, HSPA+/LTE Release 10, and IEEE 802.16e-2005 Standard

29. Defendant uses the technique described and claimed in the '403 Patent consistent with the MIMO aspects of the standard (described at Wi-Fi Certified n: Longer Range, Faster Throughput, Multimedia-Grade Wi-Fi Networks, at 5-6):

A MIMO system has some number of transmitters (N) and receivers (M) Signals from each of the N transmitters can reach each of the M receivers via a different path in the channel. A MIMO device with multiple antennas is capable of sending multiple spatial streams – spatially distinct data streams within the same channel. A MIMO device with multiple antennas is capable of receiving multiple spatial streams. Multipath helps decorrelate the received signals enabling transmission of multiple data streams through the same MIMO channel – a technique called spatial multiplexing. MIMO can multiply data rate through a technique called spatial multiplexing - dividing a data stream into several branches and sending it as multiple parallel data streams simultaneously in the same channel.

30. Defendant's use, sale, offer to sell, importation, and making of products practicing the 802.11n standard infringes the claims of the '403 Patent. In addition to directly infringing the '403 Patent, Defendant induces the performance of the claimed methods by its

customers and users of Defendant's 802.11n equipment. By providing its 802.11n compliant MIMO-enabled products, Defendant contributes to its users' and customers' infringement of the '403 Patent.

31. Defendant's devices wirelessly communicate with Defendant's networks using MIMO and multicast functionality and certain subcarrier frequency structures

32. Defendant charges its customers a monthly fee for access to Defendant's networks.

33. Defendant, without authorization or license, has been and is now infringing one or more claims of each of the Patents-in-Suit, in violation of 35 U.S.C. § 271, directly and/or indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents.

34. Defendant directly infringes by making, using, selling, offering for sell, and/or importing its nationwide wireless network that practices one or more of the communication methods claimed in the Patents-in-Suit, including but not limited to its 4G WiMAX, 4G LTE, and Wi-Fi networks. In addition, Defendant provides wireless devices that practice one or more claims of the Patents-in-Suit. Defendant's network infringes one or more claims of the '403 Patent by, *inter alia*, utilizing MIMO functionality or dynamically reassigning transmitters due to changing conditions within the network or load balancing transmitters to achieve efficient coverage and capacity. Defendant's network infringes one or more claims of the '210 Patent by, *inter alia*, utilizing multicasting and multipoint transmission techniques. Defendant's network infringes one or more claims of the '891 Patent by, *inter alia*, utilizing techniques for structuring subcarrier signals.

35. Users of Defendant's nationwide wireless network, including but not limited to its 4G WiMAX, 4G LTE, and Wi-Fi networks, are also direct infringers of the Patents-in-Suit.

36. Defendant contributes to and induces infringement by others when it encourages them to infringe the Patents-in-Suit by providing subscription service to a network that performs the methods of the Patents-in-Suit and wireless devices compatible with such network.

37. The infringing network performs, by Defendant's acts alone or in concert with others, the transmission techniques claimed in the Patents-in-Suit.

38. Defendant had knowledge of the '403 Patent at least at the time of the filing of this action. On information and belief, Defendant gained knowledge of the '403 Patent prior to the filing of this action, in part, due to prior assertions by MTEL of the '403 Patent against affiliates of Defendant.

39. Defendant's infringement has been and continues to be deliberate and willful.

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

41. Plaintiff has suffered, and will continue to suffer, irreparable injury as a result of Defendant's infringement.

42. Plaintiff is in compliance with the requirements of 35 U.S.C. § 287.

43. Plaintiff has been damaged by Defendant's infringement, and will continue to be damaged until this Court enjoins Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. That Defendant be adjudged to have infringed the Patents-in-Suit, directly and indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;

B. That Defendant, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the Patents-in-Suit;

C. That Plaintiff be awarded damages sufficient to compensate Plaintiff for Defendant's infringement, pursuant to 35 U.S.C. § 284;

D. That Defendant be directed to pay Plaintiff pre-judgment and post-judgment interest and costs for Plaintiff bringing this lawsuit, in accordance with 35 U.S.C. § 284;

E. That Defendant be directed to pay enhanced damages, including Plaintiff's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

F. That Plaintiff receives such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

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

Dated: March 22, 2013

Respectfully Submitted,

/s/ Daniel R. Scardino

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**ATTORNEYS FOR PLAINTIFF
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TECHNOLOGIES, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 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 March 22, 2013.

/s/ Daniel R. Scardino

Daniel R. Scardino