

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

IPVX PATENT HOLDINGS, INC.

vs.

ALTIGEN COMMUNICATIONS, INC.,  
*et al.*

KLAUSNER TECHNOLOGIES, INC.,  
a New York corporation, and  
IPVX PATENT HOLDINGS, INC.,  
a Delaware corporation,

vs.

APPLIED VOICE & SPEECH  
TECHNOLOGIES, INC., a Delaware  
corporation,

**CASE NO. 6:11-cv-00568-LED**  
(Lead Case for Severance and  
Reconsolidation)

JURY TRIAL DEMANDED

CASE NO. 6:12-cv-00168-LED  
(Consolidated with Above)  
JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

On March 19, 2012, plaintiff Klausner Technologies, Inc. (“Klausner”) brought the initial Complaint for Patent Infringement in this action against Defendant Applied Voice & Speech Technologies, Inc. (“Defendant”) alleging that Defendant had infringed United States Patent No. 5,572,576 entitled “Telephone Answering Device Linking Displayed Data with Recorded Audio Message” (the “’576 Patent”). On May 17, 2012, Klausner assigned to IPVX Patent Holdings, Inc. (“IPVX”) all right, title and interest in, *inter alia*, the patent-in-suit, i.e., the ’576 Patent, including the right to enforce the ’576 Patent and to recover for past infringement as to the Defendant in this lawsuit. On March

20, 2013, the Court ordered Klausner to file an amended complaint. On March 25, 2013, the Court ordered that Plaintiff IPVX be joined as a party to this suit.

By this First Amended Complaint, Klausner Technologies, Inc. and IPVX Patent Holdings, Inc. (“Plaintiffs”) sue Defendant and on information and belief, allege as follows:

### **Introduction**

1. Plaintiff IPVX owns the inventions described and claimed in the ‘576 Patent and Defendant (a) has used IPVX’s patented technology in products that it made, used, sold, and offered to sell, without either Klausner’s or IPVX’s authorization, and (b) has contributed to or induced others to infringe the ‘576 Patent. Plaintiffs seek damages for patent infringement.

### **Jurisdiction and Venue**

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, et seq. The Court has original jurisdiction over this patent infringement action under 28 U.S.C. §§ 1338(a).

3. Venue is proper in this Court because the Defendant is responsible for acts of infringement occurring in the Eastern District of Texas as alleged in this Complaint, and has delivered or caused to be delivered its infringing products in the Eastern District of Texas.

### **Plaintiff Klausner**

4. Plaintiff Klausner is a corporation existing under and by virtue of the laws of the State of New York.

**Plaintiff IPVX**

5. Plaintiff IPVX is a corporation existing under and by virtue of the laws of the State of Delaware.

**The '576 Patent**

6. The United States Patent and Trademark Office issued the '576 Patent on November 5, 1996. A copy of the '576 Patent is attached as Exhibit A. Through assignment, Plaintiff IPVX is the owner of all right, title, and interest, including rights for damages for past infringement, in the '576 Patent.

**Defendant Applied Voice & Speech Technologies, Inc.**

7. Upon information and belief, Applied Voice & Speech Technologies, Inc. is a Delaware corporation having its principal place of business in Foothill Ranch, California.

**First Claim for Patent Infringement ('576 Patent)**

8. On or about November 5, 1996, the '576 Patent, disclosing and claiming a "Telephone Answering Service Linking Displayed Data with Recorded Audio Message," was duly and legally issued by the United States Patent and Trademark Office.

9. The '576 Patent application is a continuation of Ser. No. 881,949, May 12, 1992, Pat. No. 5,390,236, which is a continuation-in-part of Ser. No. 860,699, Mar. 31, 1992, Pat. No. 5,283,818 ("the '818 Patent"), entitled "Telephone Answering Device Linking Displayed Data with Recorded Audio Message." The '818 Patent was cited in the prosecution history of U.S. Patent No. 5,568,540 ("the '540 Patent"), which was filed on or about April 14, 1995, after the date the '576 Patent application was filed (on or about March

15, 1994), and issued on or about October 22, 1996. Specifically, the ‘818 Patent was identified by the patent examiner in the Office Action mailed on April 4, 1996 (“the Office Action”) rejecting certain claims of the ‘540 Patent application. The Applicant subsequently amended the claims in response to the Office Action. Active Voice Corporation is the assignee of the ‘540 Patent and, upon information and belief, was aware of at least the ‘818 family of Klausner patents and patent applications, including the ‘576 Patent application, prior to October 22, 1996. Upon information and belief, Applied Voice & Speech Technologies, Inc. acquired Active Voice Corporation in 2010.

10. Plaintiff IPVX is the current owner of the ‘576 Patent with full rights to pursue recovery of royalties or damages for infringement of such patent, including full rights to recover past damages.

11. The ‘576 Patent relates to what is known in the telecommunications and related industries as “visual voicemail”, i.e., the “visual identification of callers’ identities and selective access to their linked recorded voice messages.” ‘576 Patent at Col. 2 (Summary of Invention).

12. The ‘576 Patent and its previous assignee Plaintiff Klausner Patent Technologies (“Klausner”) have been virtually synonymous with “visual voicemail” functionality since the time when this feature rapidly entered the marketplace. At least as early as 2007, visual voicemail became widely publicized as a feature of Apple’s first iPhone. Coinciding with Apple’s release of its first iPhone, Klausner’s patent infringement suit against Apple and AT&T asserting the ‘576 Patent was heavily publicized, especially in publications directed toward telecommunications and related industries, including without limitation, VoIP Monitor, Reuters, PC World, and The Register. The identification of Klausner and its ‘576

Patent with visual voicemail capabilities is so widespread that it is included with the Wikipedia encyclopedia entry for the term “visual voicemail” available at

[http://en.wikipedia.org/wiki/Visual\\_voicemail](http://en.wikipedia.org/wiki/Visual_voicemail). Since as early as September 18, 2009, Klausner and its ‘576 Patent were referenced in the Wikipedia encyclopedia entry for visual voicemail when the entry stated that “The patent for Visual Voicemail is owned by Klausner Technologies, Inc.” See Wikipedia Archive available at

[http://en.wikipedia.org/w/index.php?title=Visual\\_voicemail&oldid=314720314](http://en.wikipedia.org/w/index.php?title=Visual_voicemail&oldid=314720314).

13. The patent infringement suit against Apple and AT&T was preceded by several other articles that were widely distributed across the telecommunications industry which publicized infringement suits, licenses, and settlements relating to the ‘576 patent, involving visual voicemail offerings by Time Warner AOL and Vonage Holdings. Klausner has also filed highly publicized suits for infringement of the ‘576 Patent against others in the industry, including wireless services providers, mobile phone manufacturers, cable/VOIP providers, and other companies that offer visual voicemail services, such as Verizon, Cablevision, Google, Comcast, HTC Corporation, LG Electronics, Citrix, Panasonic, Avaya, Yahoo, Cisco, NEC, Siemens, Alcatel-Lucent, Samsung, and Aptela.

14. Upon information and belief, those companies involved in offering voicemail products at the time of Apple’s release of its first iPhone and popularization of visual voicemail capability knew about Klausner and its ‘576 Patent.

15. Upon information and belief, Defendant has been active in the telecommunications and related industries.

16. Upon information and belief, Defendant was aware of the release of Apple’s iPhone and its visual voicemail feature.

17. Upon information and belief, Defendant was aware of visual voicemail features offered by Defendant's competitors.

18. Upon information and belief, Defendant was aware of the fact that others who offered products with visual voicemail capabilities were sued by Klausner for infringement of the '576 Patent.

19. Upon information and belief, Defendant was aware that others in the telecommunications and related industries offering products with visual voicemail capabilities entered into licensing agreements and settled infringement suits with Klausner.

20. Defendant has infringed, contributed to the infringement of, and induced others to infringe the '576 Patent through the expiration date of the '576 patent.

21. Defendant has infringed, contributed to the infringement of, and induced others to infringe the '576 Patent by manufacturing, using, selling, offering for sale or by using the method(s) claimed in the '576 Patent in conjunction with, or by contributing to or inducing others to manufacture, use, sell, offer to sale, or use the method(s) claimed in the '576 Patent in conjunction with voicemail products with visual voicemail capabilities, including AVST CallXpress Web PhoneManager, CallXpress Unified Messaging Solutions and CallXpress AVST Mobile Clients, and other systems with similar functionality (hereinafter "AVST Voicemail Products").<sup>1</sup>

22. On information and belief, AVST has a Regional Channel Manager and an Inside Sales Manager in the Texas area to put customers, and potential customers, in Texas, including customers in the Eastern District of Texas, in touch with Authorized AVST Resellers. See [http://www.avst.com/contact\\_us/howtobuy.asp#texas](http://www.avst.com/contact_us/howtobuy.asp#texas).

---

<sup>1</sup> Upon information and belief, AVST's CallXpress products are now branded CX-E products. See, e.g., <http://www.avst.com/products/cx-e/overview.asp>.

23. On information and belief, AVST has at least one Reseller Vendor located in the Eastern District of Texas. *See*

[http://www2.dir.state.tx.us/ict/contracts/Pages/Details.aspx?dir\\_contract\\_number=DIR-SDD-1494&Return=http%3A//www2.dir.state.tx.us/ict/contracts/Pages/ResultsByProduct.aspx?k=AVST](http://www2.dir.state.tx.us/ict/contracts/Pages/Details.aspx?dir_contract_number=DIR-SDD-1494&Return=http%3A//www2.dir.state.tx.us/ict/contracts/Pages/ResultsByProduct.aspx?k=AVST).

24. On information and belief, AVST is engaged in a strategic technology relationship with NEC Corporation of America, headquartered in Irving, Texas, involving its CallXpress Unified Communications platform to, *inter alia*, increase AVST's customer base and expand access to distribution channels. *See*

[http://www.avst.com/pr/AVST\\_and\\_NEC\\_Corporation\\_of\\_America\\_Expand\\_Global\\_Footprint\\_For\\_Unified\\_Communications.asp](http://www.avst.com/pr/AVST_and_NEC_Corporation_of_America_Expand_Global_Footprint_For_Unified_Communications.asp).

25. On information and belief, AVST showcased its CallXpress Unified Communications platform from April 18, 2010 through April 21, 2010 at ACUTA's 39th Annual Conference and Exhibit in San Antonio, Texas. *See*

[www.avst.com/nm/templates/articletoPDF.asp?articleIDsearch=1386](http://www.avst.com/nm/templates/articletoPDF.asp?articleIDsearch=1386).

26. AVST advertises its State of Texas DIR Contract on its website and identifies its CallXpress software as included in the Texas DIR Portfolio of AVST Products. *See* <http://www.avst.com/customers/TexasDIR.asp>.

27. Defendant infringed the Patents by manufacturing, using, selling, offering for sale or by using the method(s) claimed in the '576 Patent in conjunction with the AVST Voicemail Products, by contributing to the manufacture, use, sale, offer to sell, or use of the method(s) claimed in the '576 Patent in conjunction with the AVST Voicemail Products by others, including Defendant's customers, and inducing others, including Defendant's

customers to infringe by manufacturing, using, selling, offering to sell or by using the method(s) claimed in the '576 Patent in conjunction with the AVST Voicemail Products.

28. The manufacture, use, sale, or offer to sell the AVST Voicemail Products, or use of the method(s) claimed in the '576 Patent in conjunction with the AVST Voicemail Products by Defendant and others, including Defendant's customers, infringes the '576 Patent because, upon information and belief, the AVST Voicemail Products contain visual voicemail capabilities or features that make voicemails accessible via e-mail boxes and/or through remote devices such as a computer, telephone, or Personal Digital Assistant (PDA).

29. Upon information and belief, users of Defendant's AVST Voicemail Products have used the method(s) claimed in the '576 Patent and infringed at least claim(s) 3, 4, 18 and/or 19 of the '576 Patent. Upon information and belief, Defendant has induced such users of Defendant's AVST Voicemail Products to use the method(s) claimed in the '576 Patent and infringed at least claim(s) 3, 4, 18 and/or 19 of the '576 Patent. Specifically, upon information and belief, Defendant's marketing materials identify users of the AVST Voicemail Products that Defendant has induced to use the method(s) claimed in the '576 Patent and infringe at least claim(s) 3, 4, 18 and/or 19 of the '576 Patent. For example, upon information and belief, Defendant has issued press releases identifying customers that have selected, deployed and/or use the AVST Voicemail Products, including AVST's CallXpress Unified Communications services, and who were induced to infringe and did infringe at least claim(s) 3, 4, 18 and/or 19 of the '576 Patent. *See, e.g.,* [http://www.avst.com/pr/Del\\_Monte\\_Foods\\_Selects\\_CallXpress\\_Unified\\_Communications.asp](http://www.avst.com/pr/Del_Monte_Foods_Selects_CallXpress_Unified_Communications.asp); [http://www.avst.com/pr/PepsiAmericas\\_Deploys\\_CallXpress\\_Unified\\_Communications.asp](http://www.avst.com/pr/PepsiAmericas_Deploys_CallXpress_Unified_Communications.asp);



[http://www.avst.com/pr/Babbage\\_Simmel\\_&\\_Associates\\_Unifies\\_Communications\\_with\\_CallX\\_press.asp](http://www.avst.com/pr/Babbage_Simmel_&_Associates_Unifies_Communications_with_CallX_press.asp).

30. Defendant had actual knowledge of the '576 Patent at least as of the date that it was served with the initial Complaint in this action.

31. Upon information and belief, Defendant had actual knowledge of the '576 Patent before the filing of the Complaint in this action. Specifically, upon information and belief Defendant was aware of visual voicemail technology and, as a result of the association of Klausner and the '576 Patent with visual voicemail technology, was also aware of the '576 Patent when Defendant incorporated the visual voicemail features into the AVST Voicemail Products and induced its customers to use such features. Defendant therefore knew that use of the AVST Voicemail Products by Defendant's customers infringed the '576 Patent and by offering and encouraging users to use the AVST Voicemail Products, Defendant intended that the users of the AVST Voicemail Products infringe the '576 Patent. Additionally, through the entity they acquired, AVST and its predecessors in interest had knowledge of Klausner and at least the '818 family of Klausner patents, including the '576 Patent, through the prosecution of their '540 Patent where the '818 Patent was cited in an Office Action mailed on April 4, 1996.

32. Upon information and belief, Defendant has also induced customers and users of the AVST Voicemail Products, particularly users of the visual voicemail features, to infringe the '576 Patent by promoting and instructing users to use the capability of retrieving voicemails using the visual voicemail feature of the AVST Voicemail Products. For example, Defendant's website and marketing materials promote the visual voicemail features of the AVST Mobile Client by identifying the users' ability to "View and Manage Voicemail." *See, e.g.,*

[http://www.avst.com/downloads/public/CX\\_Series/CX-E%20Datasheet.pdf](http://www.avst.com/downloads/public/CX_Series/CX-E%20Datasheet.pdf);

<http://www.avst.com/products/cx-e/specifications.asp>.

33. Upon information and belief, the CallXpress Web PhoneManager displays a Caller ID number and/or name associated with a caller that a user can use to retrieve a voicemail message left by that caller. *See Exhibit B.*

34. Upon information and belief, the CallXpress Web PhoneManager web portal can be accessed from a computer or mobile phone. *See Exhibit B.*

35. Upon information and belief, the CallXpress Unified Messaging Solutions allow users to view voicemail messages in their email inbox. *See Exhibit C.*

36. Upon information and belief, a number associated with a caller is displayed in the subject header of an email that a user of the CallXpress Unified Messaging Solutions can use to retrieve a voicemail message left by that caller. *See Exhibit C.*

37. Upon information and belief, users of the CallXpress Unified Messaging Solutions can access voicemails from a computer or mobile phone. *See Exhibit C.*

38. Upon information and belief, the CallXpress AVST Mobile Clients display a Caller ID number and/or name associated with a caller that a user can use to retrieve a voicemail message left by that caller. *See Exhibit D.*

39. Upon information and belief, users of the CallXpress AVST Mobile Clients can access voicemails from a mobile phone. *See Exhibit D.*

40. Upon information and belief, Defendant advertised at least its CallXpress Web PhoneManager product in a manner that demonstrated that the CallXpress Web PhoneManager product provides a telephone answering device with a memory that is coupled to a telephone for automatically answering telephone calls, as well as storing and

retrieving information related to the telephone calls; receives first signals in the form of the caller's Caller ID number and/or name for each incoming call and then displays the Caller ID number and/or name for the voicemail in the web portal interface; that the CallXpress Web PhoneManager product receives and stores voice messages in its memory; that the CallXpress Web PhoneManager product links each of said received first signals with a corresponding voice message by displaying the Caller ID number and/or name for each voice message in the web portal interface; that the CallXpress Web PhoneManager product transmits received first signals to a user remote access device in the form of the caller's Caller ID number and/or name displayed in the web portal interface, which can be viewed on a remote devices such as a computer and allowing the first signals to be used as assistance in selectively retrieving voice messages; and that the CallXpress Web PhoneManager product transmits a specific voice message which is linked to the specific received first signal in the form of the caller's Caller ID number and/or name, the specific voice message being transmitted to a user remote access device, such as a computer, in response to a selection of the stored voice message.

41. Upon information and belief, Defendant also contributed to the infringement of the '576 Patent by providing its customers with the infringing visual voicemail feature as part of its AVST Voicemail Products when such visual voicemail feature had no substantial non-infringing use.

42. Plaintiffs demand trial by jury of all issues so triable.

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. Compensatory damages awarding Plaintiffs damages caused by Defendant's infringement of the '576 Patent;

- B. For costs of suit and attorneys' fees;
- C. For pre-judgment interest; and
- D. For such other relief as justice requires.

Dated: April 3, 2013

Respectfully submitted,

By: /s/ S. Calvin Capshaw

S. Calvin Capshaw, III  
State Bar No. 03783900  
Email: [ccapshaw@capshawlaw.com](mailto:ccapshaw@capshawlaw.com)  
Elizabeth L. DeRieux  
State Bar No. 05770585  
Email: [ederieux@capshawlaw.com](mailto:ederieux@capshawlaw.com)  
D. Jeffrey Rambin  
State Bar No. 00791478  
Email: [jrambin@capshawlaw.com](mailto:jrambin@capshawlaw.com)  
**CAPSHAW DERIEUX, LLP**  
114 E. Commerce Ave.  
Gladewater, Texas 75647  
Telephone: (903)-233-9800  
Facsimile: (903)-236-8787

OF COUNSEL:

Pierre R. Yanney  
State Bar No. 033391993  
Email: [pyanney@stroock.com](mailto:pyanney@stroock.com)  
STROOCK & STROOCK & LAVAN LLP  
180 Maiden Lane  
New York, N.Y. 10038  
Tel: (212) 806-5400  
Fax: (212) 806-6006

ATTORNEYS FOR PLAINTIFFS  
KLAUSNER TECHNOLOGIES, INC.,  
and IPVX PATENT HOLDINGS, INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document this 3rd day of April, 2013, via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ S. Calvin Capshaw