

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

KLAUSNER TECHNOLOGIES, INC.

vs.

AASTRA TECHNOLOGIES LTD., *et al.*

IPVX PATENT HOLDINGS, INC.,
a Delaware corporation,

vs.

ADTRAN, INC., a Delaware corporation,

CASE NO. 6:11-cv-00480-LED

(Lead Case for Consolidation)

JURY TRIAL DEMANDED

CASE NO. 6:12-cv-00166-LED

(Consolidated with Above)

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

On March 19, 2012 then plaintiff Klausner Technologies, Inc. (“Klausner”) brought the initial Complaint for Patent Infringement in this action against Defendant Adtran, 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 June 6, 2012, the Court ordered that Plaintiff IPVX be substituted for Klausner Technologies, Inc. as plaintiff in this action. On March 20, 2013, the Court also ordered Plaintiff to file an amended complaint.

By this First Amended Complaint, Plaintiff IPVX sues Defendant and on information and belief, alleges as follows:

Introduction

1. Plaintiff IPVX owns the inventions described and claimed in the '576 Patent and Defendant (a) has used Plaintiff's patented technology in products that it made, used, sold, and offered to sell, without Plaintiff's authorization, and (b) has contributed to or induced others to infringe the '576 Patent. Plaintiff IPVX seeks 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 IPVX

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

The '576 Patent

5. 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 is the owner of all right, title, and interest, including rights for damages for past infringement, in the '576 Patent.

Defendant Adtran, Inc.

6. Upon information and belief, Adtran, Inc. is a Delaware corporation having its principal place of business in Huntsville, Alabama.

First Claim for Patent Infringement ('576 Patent)

7. 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.

8. Plaintiff IPVX is the 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.

9. 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).

10. The '576 Patent and its previous assignee 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. 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.

11. 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.

12. 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.

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

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

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

16. 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.

17. 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.

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

19. 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 Adtran NetVanta 7060/7100 Personal Phone Manager Web Portal and Adtran NetVanta UC Server Unified and Integrated Messaging, and other systems with similar functionality (hereinafter "Adtran Voicemail Products").

20. On information and belief, Adtran engages in business with at least one partner and reseller located in the Eastern District of Texas that sells the Adtran Voicemail Products within the Eastern District of Texas. *See, e.g.,* http://www.adtran.com/web/page/portal/Adtran/wp_findapartner_landing (search Frisco, Texas).

21. 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 Adtran 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 Adtran 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 Adtran Voicemail Products.

22. The manufacture, use, sale, or offer to sell the Adtran Voicemail Products, or use of the method(s) claimed in the '576 Patent in conjunction with the Adtran Voicemail Products by Defendant and others, including Defendant's customers, infringes the '576 Patent because, upon information and belief, the Adtran 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).

23. Upon information and belief, users of Defendant's Adtran 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 Adtran 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 Adtran 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 produces and/or distributes case studies profiling customers 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.adtran.com/pub/Library/Case_Studies/EN1821%20TravAd%20Case%20Study.pdf;

http://www.adtran.com/pub/Library/Case_Studies/EN1820%20Avatar%20Case%20Study.pdf.

24. 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.

25. Upon information and belief, Defendant had actual knowledge of the '576 Patent before the filing of the initial 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 Adtran Voicemail Products and induced its customers to use such features. Defendant therefore knew that use of the Adtran Voicemail Products by Defendant's customers infringed the '576 Patent and by offering and encouraging users to use the Adtran Voicemail Products, Defendant intended that the users of the Adtran Voicemail Products infringe the '576 Patent.

26. Upon information and belief, Defendant has also induced customers and users of the Adtran 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 Adtran Voicemail Products. Upon information and belief, since at least as early as January 17, 2010, Defendant's website featured screenshots showing the visual voicemail features of its Adtran Voicemail Products including screenshots showing the visual voicemail feature in Outlook, Gmail and Lotus Notes, as well as integrated messaging without unified messaging through a "UC Client." *See*

[http://web.archive.org/web/20100117204154/http://www.adtran.com/web/contentTemplatePage/](http://web.archive.org/web/20100117204154/http://www.adtran.com/web/contentTemplatePage/2877)

[2877](#). Defendant's marketing materials tout the visual voicemail features of the Adtran Voicemail Products, advertising that "[e]ach user of the NetVanta 7100 System has access to the Personal Phone Manager" and promoting the Personal Phone Manager as a "Web-based Graphical User Interface (GUI)" that "provides access to your voice mail," that NetVanta Unified Messaging features "[v]isual message management," and that NetVanta's UC Client "displays all your voice and fax messages in one inbox."

27. Upon information and belief, the NetVanta 7060/7100 Personal Phone Manager Web Portal displays a number associated with a caller that a user can use to retrieve a voicemail message left by that caller. *See* Exhibit B.

28. Upon information and belief, the NetVanta 7060/7100 Personal Phone Manager Web Portal can be accessed from a computer or mobile phone. *See* Exhibit B.

29. Upon information and belief, the NetVanta UC Server Unified and Integrated Messaging allows users to view voicemail messages in their email inbox. *See* Exhibit C.

30. Upon information and belief, a number and/or name associated with a caller is displayed in the subject header of an email that a user of the NetVanta UC Server

Unified and Integrated Messaging product can use to retrieve a voicemail message left by that caller. *See* Exhibit C.

31. Upon information and belief, users of the NetVanta UC Server Unified and Integrated Messaging product can access voicemails from a computer. *See* Exhibit C.

32. Upon information and belief, Defendant advertised at least its NetVanta 7060/7100 Personal Phone Manager Web Portal product in a manner that demonstrated that the NetVanta 7060/7100 Personal Phone Manager Web Portal 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 for each incoming call and then displays the Caller ID number for the voicemail in the Web Portal interface; that the NetVanta 7060/7100 Personal Phone Manager Web Portal product receives and stores voice messages in its memory; that the NetVanta 7060/7100 Personal Phone Manager Web Portal product links each of said received first signals with a corresponding voice message by displaying the Caller ID number for each voice message in the Web Portal interface; that the NetVanta 7060/7100 Personal Phone Manager Web Portal product transmits received first signals to a user remote access device in the form of the caller's Caller ID number 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 NetVanta 7060/7100 Personal Phone Manager Web Portal 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, 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.

33. 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 Adtran Voicemail Products when such visual voicemail feature had no substantial non-infringing use.

34. Plaintiff demands trial by jury of all issues so triable.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Compensatory damages awarding Plaintiff 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

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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