

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

SMARTPHONE TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 6:14-CV-237
	§	
	§	JURY TRIAL DEMANDED
v.	§	
	§	
TCL COMMUNICATION TECHNOLOGY	§	
HOLDINGS LIMITED,	§	
TCT MOBILE (US) INC.,	§	
TCT MOBILE, INC., and	§	
TCT MOBILE (US) HOLDINGS INC.,	§	
	§	
	§	
Defendants.	§	
	§	

PLAINTIFF’S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff SmartPhone Technologies LLC (“SmartPhone”) files this First Amended Complaint against TCL Communication Technology Holdings Limited, TCT Mobile (US) Inc., TCT Mobile, Inc., and TCT Mobile (US) Holdings Inc. for infringement of U.S. Patent No. 6,173,316 (“the ’316 patent”), U.S. Patent No. 7,076,275 (“the ’275 patent”), U.S. Reissue Patent No. 40,459 (“the ’459 patent”), U.S. Patent No. 6,976,217 (“the ’217 patent”), and U.S. Patent No. 8,805,957 (“the ’957 patent”).

THE PARTIES

1. SmartPhone is a Texas limited liability company with its principal place of business in Plano, Texas.

2. On information and belief, TCL Communication Technology Holdings Limited is a corporation organized and existing under the laws of the People’s Republic of

China with its principal place of business Hong Kong.

3. On information and belief, TCT Mobile (US) Inc. is a Delaware corporation with its principal place of business in Irvine, California. This Defendant is a subsidiary of TCL Communication Technology Holdings Limited and may be served with process through its agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

4. On information and belief, TCT Mobile, Inc. is a Delaware corporation with its principal place of business in Irvine, California. This Defendant is a subsidiary of TCL Communication Technology Holdings Limited and may be served with process through its agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

5. On information and belief, TCT Mobile (US) Holdings Inc. (with TCL Communication Technology Holdings Limited, TCT Mobile (US) Inc., TCT Mobile (US) Inc., “TCL”) is a Delaware corporation with its principal place of business in Irvine, California. This Defendant is a subsidiary of TCL Communication Technology Holdings Limited and may be served with process through its agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

JURISDICTION AND VENUE

6. SmartPhone brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, has purposely transacted business involving their accused products in this judicial district, and/or has regular and established places of business in this judicial district.

8. Each Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this State and judicial district, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,173,316)

9. SmartPhone incorporates paragraphs 1 through 8 herein by reference.

10. SmartPhone is the exclusive licensee of the '316 patent, entitled "WIRELESS COMMUNICATION DEVICE WITH MARKUP LANGUAGE BASED MAN-MACHINE INTERFACE," with ownership of all substantial rights in the '316 patent. Among other rights, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude TCL, the exclusive right to sue TCL, the exclusive right to settle any claims

with TCL, and the exclusive right to grant a sublicense to TCL. A true and correct copy of the '316 patent is attached as Exhibit A.

11. The '316 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

12. TCL has and continues to directly infringe one or more claims of the '316 patent in this judicial district and elsewhere in Texas, including at least claims 1 - 4, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Alcatel 6033 Idol Ultra, Alcatel Authority, Alcatel M'Pop, Alcatel One Touch 918, Alcatel One Touch 991S, Alcatel One Touch Evolve, Alcatel One Touch Fierce, Alcatel One Touch Premiere, Alcatel One Touch Shockwave, Alcatel One Touch Ultra (960C), Alcatel OT-908, Alcatel OT-909, Alcatel OT-981, Alcatel OT-990S, Alcatel OT-995, Alcatel Venture, and Alcatel One Touch Idol (including related models marketed under a different name). TCL is thereby liable for direct infringement of the '316 patent pursuant to 35 U.S.C. § 271.

13. SmartPhone has been damaged as a result of TCL's infringing conduct described in this Count. TCL is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for TCL's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 7,076,275)

14. SmartPhone incorporates paragraphs 1 through 8 herein by reference.

15. SmartPhone is the exclusive licensee of the '275 patent, entitled "METHOD AND SYSTEM FOR SINGLE-STEP ENABLEMENT OF TELEPHONY FUNCTIONALITY FOR A PORTABLE COMPUTER SYSTEM," with ownership of all substantial rights in the '275 patent. Among other rights, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude TCL, the exclusive right to sue TCL, the exclusive right to settle any claims with TCL, and the exclusive right to grant a sublicense to TCL. A true and correct copy of the '275 patent is attached as Exhibit B.

16. The '275 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

17. TCL has and continues to directly infringe one or more claims of the '275 patent in this judicial district and elsewhere in Texas, including at least claims 1, 2, and 5, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Alcatel 6033 Idol Ultra, Alcatel Authority, Alcatel M'Pop, Alcatel One Touch 918, Alcatel One Touch 991S, Alcatel One Touch Evolve, Alcatel One Touch Fierce, Alcatel One Touch Premiere, Alcatel One Touch Shockwave, Alcatel One Touch Ultra (960C), Alcatel OT-908, Alcatel OT-909, Alcatel OT-981, Alcatel OT-990S, Alcatel OT-995, Alcatel Venture, and Alcatel One Touch Idol (including related models marketed under a different name). TCL is thereby liable for direct infringement of the '275 patent pursuant to 35 U.S.C. § 271.

18. SmartPhone has been damaged as a result of TCL's infringing conduct described in this Count. TCL is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for TCL's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. RE 40,459)

19. SmartPhone incorporates paragraphs 1 through 8 herein by reference.

20. SmartPhone is the exclusive licensee of the '459 patent, entitled "METHOD AND APPARATUS FOR COMMUNICATING INFORMATION OVER LOW BANDWIDTH COMMUNICATIONS NETWORKS," with ownership of all substantial rights in the '459 patent. Among other rights, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude TCL, the exclusive right to sue TCL, the exclusive right to settle any claims with TCL, and the exclusive right to grant a sublicense to TCL. A true and correct copy of the '459 patent is attached as Exhibit C.

21. The '459 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

22. TCL is directly and/or indirectly infringing (by inducing infringement) one or more claims of the '459 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 1, 17, and 18, without the consent or authorization of

SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Alcatel 6033 Idol Ultra, Alcatel Authority, Alcatel M'Pop, Alcatel One Touch 918, Alcatel One Touch 991S, Alcatel One Touch Evolve, Alcatel One Touch Fierce, Alcatel One Touch Premiere, Alcatel One Touch Shockwave, Alcatel One Touch Ultra (960C), Alcatel OT-908, Alcatel OT-909, Alcatel OT-981, Alcatel OT-990S, Alcatel OT-995, Alcatel Venture, and Alcatel One Touch Idol (including related models marketed under a different name) (collectively, the "'459 Accused Devices"). TCL and persons who acquire and use such devices, including TCL's customers, have, at a minimum, directly infringed the '459 patent, and TCL is thereby liable for direct and/or indirect infringement of the '459 patent pursuant to 35 U.S.C. § 271.

23. TCL has directly infringed the '459 patent by making, using, selling, offering for sale, and/or importing the '459 Accused Devices which include the claimed elements and that practice the claimed methods. TCL is thereby liable for direct infringement. Additionally, TCL is liable for indirect infringement of the '459 patent because it induces the direct infringement of the patent by its customers and other end users who use the '459 Accused Devices that practice the claimed methods.

24. TCL is, and has been, aware of the '459 patent at least as early as service of the Original Complaint in this lawsuit.

25. On information and belief, despite having knowledge of the '459 patent, TCL has specifically intended for persons who acquire and use such devices, including TCL's customers, to acquire and use such devices in such a way that infringes the '459 patent, including at least claims 1, 17, and 18, and TCL knew or should have known that its actions

were inducing infringement. In particular, despite having knowledge of the '459 patent, TCL has and continues to provide instructional materials (e.g., user guides) that specifically instruct its customers to use TCL's computerized communication devices in an infringing manner. For example, the Alcatel M'Pop Manual, available at <http://www.alcatelonetouch.com/>, specifically instructs customers who use that device to open a search form in an application (e.g., the Google Maps application), enter a search keyword, and view content, in a manner that performs each and every step of at least claims 1, 17, and 18. In providing such instructional materials, TCL intentionally encourages and specifically intends that its customers use TCL devices to directly infringe the '459 patent, with knowledge that such induced acts constitute patent infringement.

26. SmartPhone has been damaged as a result of TCL's infringing conduct described in this Count. TCL is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for TCL's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT IV

(INFRINGEMENT OF U.S. PATENT NO. 6,976,217)

27. SmartPhone incorporates paragraphs 1 through 8 herein by reference.

28. SmartPhone is the exclusive licensee of the '217 patent, entitled "METHOD AND APPARATUS FOR INTEGRATING PHONE AND PDA USER INTERFACE IN A SINGLE PROCESSOR," with ownership of all substantial rights in the '217 patent. Among other rights, SmartPhone has the exclusive right to exclude others, the exclusive right

to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude TCL, the exclusive right to sue TCL, the exclusive right to settle any claims with TCL, and the exclusive right to grant a sublicense to TCL. A true and correct copy of the '217 patent is attached as Exhibit D.

29. The '217 patent has been subject to re-examination and a re-examination certificate has issued as U.S. Pat. No. 6,976,217 C1 ("217 re-exam certificate"). A true and correct copy of the '217 re-exam certificate is attached as Exhibit E.

30. The '217 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

31. TCL is directly infringing one or more claims of the '217 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 22, 23, 25 - 28, and 31, without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Alcatel 6033 Idol Ultra, Alcatel Authority, Alcatel M'Pop, Alcatel One Touch 918, Alcatel One Touch 991S, Alcatel One Touch Evolve, Alcatel One Touch Fierce, Alcatel One Touch Premiere, Alcatel One Touch Ultra (960C), Alcatel OT-981, Alcatel OT-990S, Alcatel OT-995, Alcatel Venture, and Alcatel One Touch Idol (including related models marketed under a different name). TCL is thereby liable for direct infringement of the '217 patent pursuant to 35 U.S.C. § 271.

32. SmartPhone has been damaged as a result of TCL's infringing conduct described in this Count. TCL is, thus, liable to SmartPhone in an amount that adequately

compensates SmartPhone for TCL's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT V

(INFRINGEMENT OF U.S. PATENT NO. 8,805,957)

33. SmartPhone incorporates paragraphs 1 through 8 herein by reference.

34. SmartPhone is the exclusive licensee of the '957 patent, entitled "METHOD AND APPARATUS FOR COMMUNICATIONS OVER LOW BANDWIDTH COMMUNICATIONS NETWORKS," with ownership of all substantial rights in the '957 patent. Among other rights, SmartPhone has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude TCL, the exclusive right to sue TCL, the exclusive right to settle any claims with TCL, and the exclusive right to grant a sublicense to TCL. A true and correct copy of the '957 patent is attached as Exhibit F.

35. The '957 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

36. TCL is directly and/or indirectly infringing (by inducing infringement) one or more claims of the '957 patent in this judicial district and elsewhere in Texas and the United States, including at least claims 1, 4, 6, 7, 9, 14, and 15 without the consent or authorization of SmartPhone, by or through making, using, offering for sale, selling and/or importing computerized communication devices, including, without limitation, the Alcatel 6033 Idol

Ultra, Alcatel Authority, Alcatel M'Pop, Alcatel One Touch 918, Alcatel One Touch 991S, Alcatel One Touch Evolve, Alcatel One Touch Fierce, Alcatel One Touch Premiere, Alcatel One Touch Shockwave, Alcatel One Touch Ultra (960C), Alcatel OT-908, Alcatel OT-909, Alcatel OT-981, Alcatel OT-990S, Alcatel OT-995, Alcatel Venture, and Alcatel One Touch Idol (including related models marketed under a different name) (collectively, the "'957 Accused Devices"). TCL and persons who acquire and use such devices, including TCL's customers, have, at a minimum, directly infringed the '957 patent, and TCL is thereby liable for direct and/or indirect infringement of the '957 patent pursuant to 35 U.S.C. § 271.

37. TCL has directly infringed the '957 patent by making, using, selling, offering for sale, and/or importing the '957 Accused Devices which include the claimed elements and that practice the claimed methods. TCL is thereby liable for direct infringement. Additionally, TCL is liable for indirect infringement of the '957 patent because it induces the direct infringement of the patent by its customers and other end users who use the '957 Accused Devices that practice the claimed methods.

38. TCL is, and has been, aware of the '957 patent at least as early as service of this Complaint.

39. On information and belief, despite having knowledge of the '957 patent, TCL has specifically intended for persons who acquire and use such devices, including TCL's customers, to acquire and use such devices in such a way that infringes the '957 patent, including at least claims 1, 4, 6, 7, 9, 14, and 15, and TCL knew or should have known that its actions were inducing infringement. In particular, despite having knowledge of the '957 patent, TCL has and continues to provide instructional materials (e.g., user guides) that

specifically instruct its customers to use TCL's computerized communication devices in an infringing manner. For example, the Alcatel M'Pop Manual, available at <http://www.alcatelonetouch.com/>, specifically instructs customers who use that device to open a search form in an application (e.g., the Google Maps application), enter a search keyword, and view content, in a manner that performs each and every step of at least claims 1, 4, 6, 7, 9, 14, and 15. In providing such instructional materials, TCL intentionally encourages and specifically intends that its customers use TCL devices to directly infringe the '957 patent, with knowledge that such induced acts constitute patent infringement.

40. SmartPhone has been damaged as a result of TCL's infringing conduct described in this Count. TCL is, thus, liable to SmartPhone in an amount that adequately compensates SmartPhone for TCL's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

SmartPhone hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

SmartPhone requests that the Court find in its favor and against TCL, and that the Court grant SmartPhone the following relief:

- a. Judgment that one or more claims of the '316, '275, '459, '217, and/or '957 patents have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to whose infringements Defendants has contributed and/or by others whose infringements have been

induced by Defendants;

- b. Judgment that Defendants account for and pay to SmartPhone all damages to and costs incurred by SmartPhone because of Defendants' infringing activities and other conduct complained of herein;
- c. Judgment that Defendants account for and pay to SmartPhone a reasonable, on-going, post judgment royalty because of Defendants' infringing activities and other conduct complained of herein;
- d. That SmartPhone be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and
- e. That SmartPhone be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 8, 2014

Respectfully submitted

/s/ Edward R. Nelson, III

Edward R. Nelson, III

enelson@nbclaw.net

Texas State Bar No. 00797142

Christie B. Lindsey

clindsey@nbclaw.net

Texas State Bar No. 24041918

S. Brannon Latimer

blatimer@nbclaw.net

Texas State Bar No. 24060137

Thomas C. Cecil

tcecil@nbclaw.net

Texas State Bar No. 24069489

NELSON BUMGARDNER CASTO,
P.C.

3131 West 7th Street, Suite 300

Fort Worth, Texas 76107

Phone: (817) 377-9111

Fax: (817) 377-3485

Anthony G. Simon

asimon@simonlawpc.com

Michael P. Kella

mkella@simonlawpc.com

Benjamin R. Askew

baskew@simonlawpc.com
Timothy D. Krieger
tkrieger@simonlawpc.com
THE SIMON LAW FIRM, P.C.
800 Market Street, Suite 1700
St. Louis, MO 63101
Phone: (314) 241-2929
Fax: (314) 241-2029

T. John Ward, Jr.
jw@wsfirm.com
Texas State Bar No. 00794818
J. Wesley Hill
wh@wsfirm.com
Texas State Bar No. 24032294
Claire Abernathy Henry
claire@wsfirm.com
Texas State Bar No. 24053063
WARD & SMITH LAW FIRM
1127 Judson Road, Suite 220
Longview, Texas 75601
Phone: (903) 757-6400
Fax: (903) 757-2323

Attorneys for Plaintiff
SmartPhone Technologies LLC

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 via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 8th day of September 2014.

/s/ Edward R. Nelson, III
Edward R. Nelson, III