

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

MOBILE TELECOMMUNICATIONS	§	
TECHNOLOGIES, LLC,	§	
	§	Case No. 2:14-cv-00897-RSP
Plaintiff,	§	
v.	§	JURY TRIAL REQUESTED
	§	
AT&T MOBILITY LLC,	§	
	§	
Defendant.	§	

PLAINTIFF’S THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Mobile Telecommunications Technologies, LLC (“MTel”), by and through its undersigned counsel, files this Third Amended Complaint against Defendant AT&T Mobility LLC (“ATTM” or “Defendant”) for infringement of U.S. Patent Nos. 5,590,403 (the “403 Patent”), 5,659,891 (the “891 Patent”), and 5,915,210 (the “210 Patent”), (collectively, the “Asserted Patents” or the “Patents-in-Suit”) in accordance with 35 U.S.C. § 271 and alleges as follows:

PARTIES

1. Plaintiff MTel is a Delaware limited liability company having a principal place of business at 1720 Lakepointe Drive, Suite 100, Lewisville, TX 75057.
2. MTel is a wholly owned subsidiary of United Wireless Holdings, Inc. (“United Wireless”). In 2008, United Wireless, through another of its wholly owned subsidiaries, Velocita Wireless, LLC, purchased the SkyTel wireless network, including assets related to SkyTel’s more than twenty-year history as a wireless data company. Velocita Wireless, LLC, continued to operate the SkyTel wireless data network after the acquisition. As a result of that transaction, United Wireless gained ownership and control over the intellectual property

portfolio, including patents, that several SkyTel-related entities, including Mobile Telecommunication Technologies Corp. (“MTel Corp.”), Destineer Corp., and SkyTel Communications, developed over the years. United Wireless subsequently assigned certain patent assets, including the Patents-in-Suit, together with all rights of recovery related to those patent assets, to its wholly owned subsidiary, MTel, which is the plaintiff here.

3. MTel Corp. was a pioneer of two-way wireless data communications and launched the world’s first two-way wireless paging service, dubbed SkyTel 2-Way. MTel Corp. (through its SkyTel 2-way and network) and AT&T (through, for example, its predecessor Bell South) were competitors in the wireless PCS marketplace in the 1990s, and MTel’s affiliates, including Velocita, remained competitors in the provision of wireless data services at all times relevant to the claims asserted here. The SkyTel paging operations and business are currently based out of Lewisville, Texas.

4. To protect its intellectual property rights and the interests of its licensees, MTel extended offers for ATTM to license its patents, including the ’403 Patent and the ’210 Patent, in 2012 and 2013. ATTM has thus far refused to respect MTel’s intellectual property rights, including the rights in the Asserted Patents. In a widely publicized November, 2014 jury trial , MTel was awarded favorable infringement and validity verdicts against Apple, Inc. on the ’403, ’210, ’891, and ’428 Patents. On information and belief, representatives of ATTM attended the Apple trial in person and were aware of the jury verdict in favor of MTel.

5. MTel alleges, upon information and belief, that Defendant AT&T Mobility LLC is a Delaware limited liability company with its principal place of business at 5565 Glenridge Connector, Atlanta, Georgia 30342.

6. AT&T Mobility LLC may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, or through its counsel of record.

7. MTel alleges, upon information and belief, that ATTM operates several infringing wireless networks, including its 4G Long Term Evolution (“LTE”) and 4G LTE-Advanced, wireless networks in the United States, including within this judicial district, the Eastern District of Texas. MTel alleges, upon information and belief, that ATTM offers its 4G LTE service in at least 500 markets, including Austin, Dallas, Houston, and Marshall, Texas, and that ATTM’s 4G LTE networks operate in the FCC-licensed 1700 MHz / 2100 MHz, and 1900 MHz spectrums.

8. MTel alleges, upon information and belief, that ATTM’s wireless 4G networks use Multiple-Input Multiple-Output (“MIMO”), Orthogonal Frequency Division Multiplexing (“OFDM”), and similar functionalities, including but not limited to orthogonal frequency division multiple access (“OFDMA”), single carrier-frequency division multiple access (“SC-FDMA”), multicast transmission capabilities, and certain subcarrier frequency structures.

9. MTel alleges, upon information and belief, that ATTM’s networks support or use transmission configurations in accordance with technical standards described in 3rd Generation Partnership Project (“3GPP”) Releases 6, 7, 8, 9, 10, and 11 (LTE standards).

10. MTel alleges, upon information and belief, that ATTM supports or uses the techniques consistent with the OFDM aspects of the above standards (<http://www.4gamericas.org/index.cfm?fuseaction=page§ionid=253>).

The interfaces of both OFDM and OFDMA work by separating a single signal into subcarriers, or, in other words, by dividing one extremely fast signal into numerous slow signals that optimize mobile access, as the subchannels can then transmit data without being subject to the same intensity of multipath distortion faced by single carrier transmission. The numerous subcarriers are then collected at the receiver and recombined to form one high speed transmission.

11. ATTM has voluntarily and purposely placed these and other products and services into the stream of commerce with the expectation that they will be offered for sale and sold in Texas and in this judicial district.

12. On Information and belief, ATTM is a party to one or more agreements with Apple that provide for indemnification, joint defense or other privity of contract related to the MTel's patents.

JURISDICTION AND VENUE

13. This is an action for patent infringement under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over the matters pleaded in this complaint under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper under 28 U.S.C. §§ 1391 and 1400(b).

14. This Court has personal jurisdiction over the Defendants under the law of the State of Texas, including the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE § 17.042.

15. As detailed in paragraphs 5-13 above, ATTM regularly and deliberately engaged in and continues to engage in activities that result in the making, using, selling, offering for sale, or importing of infringing products or processes in the State of Texas and in this judicial district. These activities violate the United States patent rights MTel has under the Asserted Patents. In addition, this Court also has personal jurisdiction over ATTM because ATTM conducts business in Texas and in this judicial district.

FIRST CLAIM FOR RELIEF

(Infringement of United States Patent No. 5,590,403)

16. MTel incorporates by reference the preceding paragraphs of this Complaint as if set forth here in full.

17. The United States Patent and Trademark Office (“USPTO”) duly and lawfully issued the ’403 Patent, entitled “Method and System for Efficiently Providing Two Way Communication between a Central Network and Mobile Unit,” on December 31, 1996. MTel is the assignee of all right, title, and interest in and to the ’403 Patent and possesses the exclusive right of recovery, including the exclusive right to recover for past infringement. Each and every claim of the ’403 Patent is valid and enforceable and each enjoys a statutory presumption of validity separate, apart, and in addition to the statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. § 282. A true and correct copy of the ’403 Patent is attached as Exhibit A.

18. MTel alleges, upon information and belief, that processes ATTM uses in the United States during the relevant time frame, directly infringe one or more claims of the ’403 Patent. MTel alleges, upon information and belief, that ATTM’s 4G LTE networks and 4G LTE products infringe one or more claims of the ’403 Patent literally and/or under the doctrine of equivalents, by, among other things, using MIMO functionality, dynamically reassigning transmitters due to changing conditions within the network, or load balancing transmitters to achieve efficient coverage and capacity.

19. MTel alleges, upon information and belief, that users of ATTM’s nationwide wireless 4G LTE network during the relevant time frame are also direct infringers, literally and/or under the doctrine of equivalents, of one or more claims of the ’403 Patent.

20. MTel alleges, upon information and belief, that ATTM induced the infringement of at least one claim of the ’403 Patent during the relevant time frame, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(b), by, among other things, actively, knowingly, and/or recklessly aiding and abetting others, including ATTM’s customers and end

users, through activities such as marketing with the specific intent to induce others to directly use without license or authority, processes that fall within the scope of at least one claim of the '403 Patent. MTel alleges, upon information and belief, that during the relevant period, ATTM charged its customers a monthly fee for access to ATTM's 4G LTE networks.

21. MTel alleges, upon information and belief, that ATTM contributed to the infringement of at least one claim of the '403 Patent during the relevant time frame, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(c), by, among other things, providing its MIMO-enabled 4G LTE products that embody a material part of the claimed inventions of the '403 Patent, knowing that such 4G LTE products are especially made or especially adapted for use in an infringement of these claims, and that, during the relevant time period, they were not staple articles or commodities of commerce suitable for substantial non-infringing use. ATTM also contributed to its users' and customers' infringement of the '403 Patent.

22. ATTM contributed to and induced infringement by others when it encouraged them to infringe by providing a subscription service to its 4G LTE network that performs the methods of the '403 Patent and when it provided wireless 4G LTE devices that are compatible with its 4G LTE network during the relevant time frame.

23. As a result of ATTM's unlawful infringement of the '403 Patent, MTel has suffered damage. MTel is entitled to recover from ATTM damages adequate to compensate for such infringement.

Willful Infringement of the '403 Patent

24. MTel alleges, upon information and belief, that ATTM's infringement was deliberate and willful because ATTM knew or should have known of the risk of infringement.

MTel alleges, upon information and belief, that ATTM was aware of MTel's pioneering '403 Patent because ATTM acknowledged receiving a Notice Letter dated December 31, 2012 (sent via certified United States mail RRR from counsel for MTel to ATTM and attached as Exhibit D) officially notifying ATTM of the '403 Patent and MTel's claims. All infringing activity since at least that time demonstrates a deliberate and conscious decision to infringe the '403 Patent or, at the very least, a reckless disregard of MTel's patent rights. Additionally, ATTM did not make changes to its products or provide end users with instructions regarding how to avoid infringement, despite ATTM's actual knowledge of the '403 Patent. ATTM continuing to use infringing processes and products following the Notice Letter constitutes willful infringement, which entitles MTel to up to treble damages, as well as attorneys' fees and costs incurred in this action, along with prejudgment interest. 35 U.S.C. §§ 284, 285.

25. MTel further alleges, upon information and belief, that ATTM knew of the '403 Patent because former MTel employees with knowledge of the patents, including at least John Stupka, became employees of ATTM subsequent to their employment with MTel, and shared their knowledge of the '403 Patent with ATTM. All infringing activity since at least that time demonstrates a deliberate and conscious decision to infringe the '403 Patent or, at the very least, a reckless disregard of MTel's patent rights. Additionally, ATTM did not make changes to its products or provide end users with instructions regarding how to avoid infringement, despite ATTM's actual knowledge of the '403 Patent.

SECOND CLAIM FOR RELIEF

(Infringement of United States Patent No. 5,659,891)

26. MTel incorporates by reference the preceding paragraphs of this Complaint as if set forth here in full.

27. The USPTO duly and lawfully issued the '891 Patent, entitled "Multicarrier Techniques in Bandlimited Channels," on August 19, 1997. MTel is the assignee of all right, title, and interest in and to the '891 Patent and possesses the exclusive right of recovery, including the exclusive right to recover for past, present, and future infringement. Each and every claim of the '891 Patent is valid and enforceable and each enjoys a statutory presumption of validity separate, apart, and in addition to the statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. § 282. A true and correct copy of the '891 Patent is attached as Exhibit B.

28. MTel alleges, upon information and belief, that ATTM's 4G LTE networks and 4G LTE products directly infringe one or more claims of the '891 Patent literally and/or under the doctrine of equivalents, by among other things, using certain subcarrier frequency structures in, for example, OFDM.

29. MTel alleges, upon information and belief, that ATTM induced and continues to induce the infringement of at least one claim of the '891 Patent, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(b), by, among other things, actively, knowingly, and/or recklessly aiding and abetting others, including ATTM's customers and end users, through activities such as marketing with the specific intent to induce others to directly use without license or authority, processes that fall within the scope of at least one claim of the '891 Patent. MTel alleges, upon information and belief, that ATTM charges its customers a monthly fee for access to ATTM's 4G LTE networks.

30. MTel alleges, upon information and belief, that ATTM contributed to and continues to contribute to the infringement of at least one claim of the '891 Patent, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(c), by, among other

things, providing 4G LTE equipment compatible with, and access to, 4G LTE networks that embody a material part of the claimed inventions of the '891 Patent, knowing that such 4G LTE products are especially made or especially adapted for use in an infringement of these claims, and that they are not staple articles or commodities of commerce suitable for substantial non-infringing use. ATTM also contributes to its users' and customers' infringement of the '891 Patent.

31. MTel alleges, upon information and belief, that ATTM contributes to and induces infringement by others when it encourages them to infringe by providing a subscription service to its 4G LTE network that performs the methods of the '891 Patent, and when it provides wireless devices that are compatible with its 4G LTE network.

32. As a result of ATTM's unlawful infringement of the '891 Patent, MTel has suffered and continues to suffer damage. MTel is entitled to recover damages from ATTM adequate to compensate for such infringement.

Willful Infringement of the '891 Patent

33. MTel alleges, upon information and belief, that ATTM has had knowledge of the '891 Patent since at least the time of filing or service of this action. MTel further alleges that ATTM's continuing use of the systems, processes, and applications identified above constitutes willful infringement, allowing MTel to recover up to treble damages, as well as attorneys' fees and costs incurred in this action, along with prejudgment interest. 35 U.S.C. §§ 284, 285. ATTM's actions are at least objectively reckless as ATTM knew or should have known of this objective risk. ATTM's infringement of the '891 Patent is willful, intentional, and in conscious disregard of MTel's rights under the patent.

34. MTel further alleges, upon information and belief, that ATTM knew of the '891 Patent because former MTel employees with knowledge of the patents, including at least John Stupka, became employees of ATTM subsequent to their employment with MTel, and shared their knowledge of the '891 Patent with ATTM. All infringing activity since at least that time demonstrates a deliberate and conscious decision to infringe the '891 Patent or, at the very least, a reckless disregard of MTel's patent rights. Additionally, ATTM did not make changes to its products or provide end users with instructions regarding how to avoid infringement, despite ATTM's actual knowledge of the '891 Patent.

THIRD CLAIM FOR RELIEF

(Infringement of United States Patent No. 5,915,210)

35. MTel incorporates by reference the preceding paragraphs of this Complaint as if set forth here in full.

36. The USPTO duly and lawfully issued the '210 Patent entitled, "Method and System for Providing Multicarrier Simulcast Transmission," on June 22, 1999. MTel is the assignee of all right, title, and interest in and to the '210 Patent and possesses the exclusive right of recovery, including the exclusive right to recover for past, present, and future infringement. Each and every claim of the '210 Patent is valid and enforceable and each enjoys a statutory presumption of validity separate, apart, and in addition to the statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. § 282. A true and correct copy of the '210 Patent is attached as Exhibit C.

37. MTel alleges, upon information and belief, that ATTM's 4G LTE networks and 4G LTE products during the relevant time frame directly infringe one or more claims of the '210 Patent literally and/or under the doctrine of equivalents when ATTM makes, uses, sells, or offers

to sell access to its wireless 4G LTE networks and 4G LTE equipment that employ MIMO functionality, multicast capabilities, and certain multi-carrier frequency structures.

38. MTel alleges, upon information and belief, that ATTM use of MIMO configurations in accordance with technical standards described in LTE during the relevant time frame also directly infringe literally and/or under the doctrine of equivalents one or more of the claims of the '210 Patent.

39. As a result of ATTM's unlawful infringement of the '210 Patent, MTel has suffered damage. MTel is entitled to recover damages from ATTM adequate to compensate for such infringement.

Willful Infringement of the '210 Patent

40. MTel alleges, upon information and belief, that ATTM has had knowledge of the '210 Patent since at least August 22, 2001 when ATTM filed its USPTO application for U.S. Patent 8,116,260 in which ATTM disclosed the '210 Patent as a pertinent prior art reference. ATTM's knowledge of the asserted patents is further demonstrated by ATTM citations to the asserted Patents in the prosecution of U.S. Patent 8,705,452. MTel further alleges that ATTM's continuing use of the systems, processes, and applications identified above constitutes willful infringement, allowing MTel to recover up to treble damages, as well as attorneys' fees and costs incurred in this action, along with prejudgment interest. 35 U.S.C. §§ 284, 285. ATTM's actions are at least objectively reckless as ATTM knew or should have known of this objective risk. ATTM infringement of the '210 Patent is willful, intentional, and in conscious disregard of MTel's rights under the patent.

41. MTel further alleges, upon information and belief, that ATTM knew of the '210 Patent because former MTel employees with knowledge of the patents, including at least John

Stupka, became employees of ATTM subsequent to their employment with MTel, and shared their knowledge of the '210 Patent with ATTM. All infringing activity since at least that time demonstrates a deliberate and conscious decision to infringe the '210 Patent or, at the very least, a reckless disregard of MTel's patent rights. Additionally, ATTM did not make changes to its products or provide end users with instructions regarding how to avoid infringement, despite ATTM's actual knowledge of the '210 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MTel prays for entry of judgment against AT&T Mobility, LLC as follows:

- A. That ATTM has directly infringed each of the Asserted Patents under 35 U.S.C. § 271(a);
- B. That ATTM has induced the infringement by others of the asserted '403, '891, and '210, Patents under 35 U.S.C. § 271(b);
- C. That ATTM has contributed to the infringement by others of the asserted '403, '891, and '210 Patents under 35 U.S.C. § 271(c);
- D. That ATTM provide to MTel an accounting of all gains, profits, savings, and advantages derived by AT&T's direct or indirect infringement of the Asserted Patents, and that MTel be awarded damages adequate to compensate for the wrongful infringement by ATTM, in accordance with 35 U.S.C. § 284;
- E. That the damages awarded to MTel with respect to each of the asserted '403, '891, and '210 Patents be increased up to three times, in view of the relevant period of ATTM's willful infringement, in accordance with 35 U.S.C. § 284;

- F. That this case be declared an exceptional one in favor of MTel under 35 U.S.C. § 285, and that MTel be awarded its reasonable attorneys' fees and all other costs and expenses incurred in connection with this civil action in accordance with 35 U.S.C. § 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- G. That MTel receive all other or further relief as this Court may deem just or proper.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), MTel hereby demands a trial by jury on all issues triable to a jury.

Dated: August 28, 2015

Respectfully Submitted,

/s/ Nicholas A. Wyss

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned certifies that on August 28, 2015, the foregoing document was filed through the CM/ECF system of the U.S. District Court, Eastern District of Texas, which served a true and correct copy by electronic mail on all counsel of record who are deemed to have consented to electronic service.

/s/ Nicholas A. Wyss

Nicholas A. Wyss