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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RATES TECHNOLOGY INC.,)	
)	CIVIL ACTION
Plaintiff,)	
)	
v.)	No. 13-152 (LTS)
)	
BROADVOX HOLDING COMPANY, LLC,)	
CYPRESS COMMUNICATIONS OPERATING)	
COMPANY, LLC and ABC COMPANIES)	
1 to 10,)	
)	
Defendants.)	
)	

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND JURY DEMAND**

In accordance with Rule 15(a) of the Federal Rules of Civil Procedure and the agreement of the parties, Plaintiff Rates Technology Inc. (“RTI”) amends its Complaint and alleges as follows:

1. Plaintiff RTI is a corporation duly organized pursuant to the laws of the State of Delaware, having its principal place of business at 50 Route 111, Suite 210, Smithtown, NY 11787.
2. Defendant Broadvox Holding Company, LLC is a limited liability company organized under the laws of the State of Delaware, having a place of business at 1228 Euclid Avenue, Suite 390, Cleveland, Ohio, 44115.

3. Defendant Cypress Communications Operating Company, LLC is a limited liability company organized under the laws of the State of Delaware, having a place of business at Four Piedmont Center, Suite 600, Atlanta, Georgia 30305.

4. Defendants ABC Companies 1 to 10 are other legal entities, including limited liability companies and corporations, that are corporate subsidiaries or affiliates of defendant Broadvox Holding Company, LLC, and work together with it or at its control and direction to provide telecommunications services to consumers and to other companies, and which provision of services also implicate the patents-in-suit.

5. All of defendants herein are collectively referenced as “Defendants” or “Broadvox.”

6. This case is an action for patent infringement arising under the Patent Laws of the United States, as set forth in 35 U.S.C. §§ 271 and 280 through 285.

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

8. Upon information and believe, Broadvox is doing business in New York or is otherwise subject to jurisdiction in the State of New York under the law of this State and Rule 4 of the Federal Rules of Civil Procedure. Broadvox operates “Super” “Points of Presence” and its VoIP network in, among other places, the State of New York.

9. Venue is proper before this Court under 28 U.S.C. § 1400(b).

FIRST CAUSE OF ACTION FOR PATENT INFRINGEMENT

10. RTI repeats and realleges the allegations contained in the foregoing paragraphs as if fully repeated and restated herein.

11. The United States government has duly and legally issued United States

Patent Number 5,425,085 (the “‘085 Patent”), for inventions relating to the routing of telephone calls based upon cost. The ‘085 Patent remains valid and enforceable.

12. At all relevant times, RTI has been the lawful owner of the ‘085 Patent, and has had the right to sue and to recover for any and all infringement(s) of such patent.

13. Upon information and belief, within the past six years, Broadvox has made, used, supplied and offered to sell (including, but not limited to) its systems that “maintain end-to-end control of voice circuits” in routing calls originating from its subscribers through its Voice Over Internet Protocol (VoIP) network and terminating off-network on another phone. These systems use various components, at least including, as identified by Broadvox’s advertising materials, “compatible phones,” “legacy phones,” use of “ENUM” and other call identifications, “integrated access device[s],” “jacks,” “switches,” “routers,” “gateways,” “application servers,” “signaling gateways” and “least-cost on-network and off-network routing,” where such “off-network routing” of calls are “transferred” to the “Public Switched Telephone Network (PSTN)” on one or more of Broadvox’s “over 300 telecommunications carriers.” Such components are enclosed in one or more housings. Together, Broadvox’s systems incorporate a device that has and does directly infringe the ‘085 Patent, literally or by equivalents (collectively, the “Infringing ‘085 Products and Services”). Further, Broadvox has had knowledge of the ‘085 Patent at least through communications with RTI, has had knowledge of its systems that infringe, and has induced at least its subscribers to infringe (*e.g.*, Broadvox, describing its systems, advertised that “Broadvox Makes it Easy to Switch” to its products and services which “saves customers up to 70% off traditional phone systems”; and its benefits include “least-cost on-network and off-network routing”). Broadvox induces infringement at least through such advertising materials.

Broadvox contributes to direct infringement via its systems and components (identified above) which operate as a material component to a device that directly infringes the '085 Patent. Such systems and components specifically handle, among other things, "least-cost" routing as claimed and lack any substantial non-infringing use.

14. Upon information and belief, RTI has been damaged by Broadvox's infringing activities, and Broadvox is liable for such damages, in an amount not known at this time, but not less than \$40 million.

15. Broadvox's wrongful acts have damaged and will continue to damage RTI irreparably, and RTI has no adequate remedy at law for those wrongs and injuries. In addition to its actual damages, RTI is therefore entitled to injunctive relief enjoining Broadvox and its agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '085 Patent, including without limitation restraining and enjoining the making, using, advertising, marketing, selling, and/or offering to sell the Infringing '085 Products and Services within the United States, which infringe the '085 Patent.

16. RTI timely gave Broadvox actual notice of the '085 Patent and has sought from Defendants information that would assist RTI in confirming whether Broadvox is within the lawful scope of one or more claims of the '085 Patent. Broadvox has not provided and has refused to provide this information. In the absence of such information, RTI resorts to the judicial process and the aid of discovery to obtain under appropriate judicial safeguards such information as is required to confirm RTI's belief and to present to the Court evidence that Defendants infringe one or more claims of the '085 Patent.

Hoffman-La Roche Inc. v. Invamed Inc., 213 F.3d 1359, 1364 (Fed. Cir. 2000);

Cambridge Prods. Ltd. v. Penn Nutrients. Inc., 962 F.2d 1048, 1050 (Fed. Cir. 1992).

17. RTI discussed with and gave Broadvox notice of its infringement and sought to resolve this matter without litigation, but Broadvox refused to do so, thereby forcing RTI to file this suit. Broadvox's president, Mr. Chatterley, has and had actual knowledge of the '085 Patent during his prior work at a different company. The acts of infringement by Broadvox are therefore willful.

SECOND CAUSE OF ACTION FOR PATENT INFRINGEMENT

18. RTI repeats and realleges the allegations contained in the foregoing paragraphs as if fully repeated and restated herein.

19. The United States Government has also duly and legally issued United States Patent Number 5,519,769 (the "'769 Patent"), for inventions relating to a method for updating a database in a telephone call routing system. The '769 Patent remains valid and enforceable.

20. At all relevant times, RTI has been the lawful owner of the '769 Patent, and has had the right to sue and to recover for any and all infringement(s) of such patent.

21. Upon information and belief, within the past six years, Broadvox has made, used, supplied, and offered to sell (including but not limited to) its systems that "maintain end-to-end control of voice circuits" in routing calls originating from its subscriber through its Voice Over Internet Protocol (VoIP) network and "terminat[ing]" off-network on another phone. These systems use various components, at least including, as described by Broadvox's advertising materials, "compatible phones," "legacy phones," use of "ENUM" and other call identifications, "integrated access device[s]," "jacks," "switches," "routers," "gateways," "application servers," "signaling gateways" and "least-cost on-network and off-network routing" where such "off-network routing" of

calls are “transferred” to the “Public Switched Telephone Network (PSTN)” on one or more of Broadvox’s “over 300 telecommunications carriers.” These components are enclosed in one or more housings. Broadvox’s systems include a “database” to route calls; these systems include one or more databases and a method to “lookup” and determine such routing. The Broadvox systems and the methods performed in those systems directly infringe the ‘769 Patent, literally or by equivalents (collectively, the “Infringing ‘769 Products and Services”). Further, Broadvox has had knowledge of the ‘769 Patent at least through communications with RTI, has had knowledge of its systems and methods that infringe, and has induced at least its subscribers to infringe (*e.g.*, Broadvox, describing its systems, advertised that “Broadvox Makes it Easy to Switch” to its products and services which “saves customers up to 70% off traditional phone systems”; and its benefits include “least-cost on-network and off-network routing”). Broadvox induces infringement at least through such advertising materials. Broadvox contributes to direct infringement via its systems, methods and components (identified above) which operate as a material component to one or more systems and methods that directly infringe the ‘769 Patent. Such systems and methods are specific components and steps corresponding to those claimed and lack any substantial non-infringing use.

22. Upon information and belief, RTI has been damaged by the infringing activities of Broadvox, and Broadvox is liable for such damages, in an amount not known at this time, but not less than \$40 million.

23. Broadvox’s wrongful acts have damaged and will continue to damage RTI irreparably, and RTI has no adequate remedy at law for those wrongs and injuries. In addition to its actual damages, RTI is therefore entitled to injunctive relief enjoining Broadvox and its agents, servants and employees, and all persons acting thereunder, in

concert with, or on their behalf, from infringing the '769 Patent, including without limitation restraining and enjoining the making, using, advertising, marketing, selling, and/or offering to sell the Infringing '769 Products and Services within the United States, which infringe the '769 Patent.

24. RTI timely gave Broadvox actual notice of the '769 Patent and has sought from Defendants information that would assist RTI in confirming whether Broadvox is within the lawful scope of one or more claims of the '769 Patent. Broadvox has not provided and has refused to provide this information. In the absence of such information, RTI resorts to the judicial process and the aid of discovery to obtain under appropriate judicial safeguards such information as is required to confirm RTI's belief and to present to the Court evidence that Defendants infringe one or more claims of the '769 Patent.

Hoffman-La Roche, supra, 213 F.3d at 1364; *Cambridge, supra*, 962 F.2d at 1050.

25. As noted above, RTI discussed with and gave Broadvox notice of its infringement, and sought to resolve this matter without litigation, but Broadvox refused to do so. Broadvox's president Mr. Chatterley has and had actual knowledge of the '769 Patent during his work at a different company. Thus, Broadvox forced RTI to file this lawsuit. The acts of infringement by Broadvox are therefore willful.

PRAYER FOR RELIEF

WHEREFORE, RTI demands judgment against Broadvox, as follows:

1. That the '085 Patent be determined valid and enforceable.
2. That the '769 Patent be determined valid and enforceable.
3. That Broadvox be adjudged to have willfully infringed, actively induced the infringement of and/or knowingly contributorily infringed the '085 and '769 Patents.

4. That an accounting be had for the damages caused RTI by Broadvox's infringing activities, and that such damages including damages for lost profits and/or a reasonable royalty in an amount not less than \$40 million, which due to willfulness can exceed \$125 million under 35 U.S.C. §284, with interest, be awarded to RTI.

5. That RTI be granted injunctive relief restraining and enjoining Broadvox and its agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '085 and '769 Patents, including without limitation restraining and enjoining the making, using, advertising, marketing, selling, and/or offering to sell the Infringing '085 Products and Services and the Infringing '769 Products and Services within the United States, which infringe RTI's '085 and '769 Patents.

6. That RTI be awarded its attorney fees, costs and expenses, under 35 U.S.C. §285.

7. That RTI be awarded such further necessary and proper relief as the Court may deem equitable and just.

JURY TRIAL DEMANDED

RTI hereby demands a trial by jury of all issues so triable.

Dated: March 4, 2013
New York, New York

SPRINGUT LAW PC

By: 

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*Counsel for Plaintiff
Rates Technology Inc.*

CERTIFICATE OF SERVICE

TAL S. BENSCHAR declares that:

1. I am a partner with SPRINGUT LAW, P.C. attorneys for Plaintiffs in the captioned proceeding, and that on the execution date which appears below, I caused to be served via the method indicated annexed FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND upon the following addressee(s):

Via U.S. Mail and Email


Keith Nowak, Esq.
Andriy Pazuniak, Esq.
CARTER LEDYARD & MILLBURN, LLP
2 Wall Street
New York, NY 10005
nowak@clm.com
pazuniak@clm.com

Via Email

Alex Gertsburg, Esq.
agertsburg@broadvox.com

2. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Executed on March 4, 2013
New York, New York

By: 
Tal S. Benschar