

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA**

<p>PRISM TECHNOLOGIES LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>AT&amp;T MOBILITY LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>-X</p> <p>:</p> <p>-X</p>	<p>Civil Action No. 8:12-cv-122-LES-TDT</p> <p><b>SECOND AMENDED COMPLAINT</b></p> <p><b>JURY TRIAL REQUESTED IN OMAHA</b></p>
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Plaintiff Prism Technologies LLC, for its Second Amended Complaint against Defendant AT&T Mobility LLC, upon information and belief as to all other matters, hereby alleges as follows:

**THE PARTIES**

1. Plaintiff Prism Technologies LLC (“Prism”) is a limited liability company organized and existing under the laws of the State of Nebraska, with its principal place of business at 2323 S. 171st Street, Suite 106, Omaha, Nebraska 68130.

2. AT&T Inc. is a holding company incorporated under the laws of the State of Delaware and has its principal executive offices at 208 S. Akard St., Dallas, Texas, 75202. Defendant AT&T Mobility LLC (referred to as “AT&T” or “Defendant”) is a Delaware limited liability company and is a wholly-owned subsidiary of AT&T Inc. with its principal place of business at 5565 Glenridge Connector, Atlanta, Georgia 30342. AT&T conducts substantial business in this judicial district.

### **JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has specific and general personal jurisdiction over Defendant because it has committed acts giving rise to this action within this judicial district and has established minimum contacts within Nebraska and within this judicial district such that the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because AT&T has conducted business in this district and/or provided service and support to AT&T's customers within this district, and has committed acts of patent infringement within this district giving rise to this action.

### **PRISM AND THE PATENTS**

6. Prism's direct predecessor-in-interest, Prism Resources, was founded by Mr. Richard L. Gregg in 1989. In 1996, Mr. Gregg, along with Timothy Goeke, and Sandeep Giri, researched and developed novel systems and methods that included controlling access to protected computer resources. The systems and methods included a server with an associated database to store information that could authenticate a device to determine which device was authorized to access protected resources.

7. Prism Resources proceeded to file various patent applications to protect these and related inventions. On October 30, 2007, United States Letters Patent No. 7,290,288 ("the '288 patent") entitled METHOD AND SYSTEM FOR CONTROLLING ACCESS, BY AN AUTHENTICATION SERVER, TO PROTECTED COMPUTER RESOURCES PROVIDED

VIA AN INTERNET PROTOCOL NETWORK was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '288 patent is attached hereto as Exhibit A, and is incorporated herein by reference. A true and correct copy of a Certificate of Correction issued by the United States Patent and Trademark Office on September 8, 2009, in connection with the '288 patent is attached hereto as Exhibit B. On August 3, 2010, *Ex Parte* Reexamination Certificate issued and is attached hereto as Exhibit C. On June 7, 2011, a second *Ex Parte* Reexamination Certificate issued and is attached hereto as Exhibit D. On August 23, 2011 and Certificate of Correction issued and is attached hereto as Exhibit E.

8. On February 28, 2012, United States Letters Patent No. 8,127,345 (“the '345 patent”) entitled METHOD AND SYSTEM FOR MANAGING ACCESS TO PROTECTED COMPUTER RESOURCES PROVIDED VIA AN INTERNET PROTOCOL NETWORK was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '345 patent is attached hereto as Exhibit F, and is incorporated herein by reference.

9. On February 26, 2013, United States Letters Patent No. 8,387,155 (“the '155 patent”) entitled SYSTEM FOR MANAGING ACCESS TO PROTECTED COMPUTER RESOURCES was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '155 patent is attached hereto as Exhibit G, and is incorporated herein by reference.

10. Prism is the owner and assignee of all right, title and interest in and to the '288 patent, the '345 patent, and the '155 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

11. Today, various wireless networks allow computer devices, such as smartphones, tablets and mobile broadband cards, to access protected resources of the wireless networks, such

as web servers. These wireless networks implement systems and methods for controlling access to the wireless networks that Prism pioneered and patented.

**COUNT I**  
**DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,290,288**

12. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 11 above as if fully set forth herein.

13. AT&T owns, operates, and/or controls one or more wireless networks. AT&T uses, sells and offer for sale various data services provided through its wireless networks.

14. AT&T implements authentication systems and methods for controlling and protecting unauthorized access to its wireless networks.

15. AT&T's authentication systems and methods are used when a computer or wireless device accesses AT&T's wireless network and data services.

16. On information and belief, AT&T's systems and methods for controlling and protecting unauthorized access to its wireless networks and data services operate in the same manner as the systems and methods for controlling access that Prism pioneered and patented in the '288 patent, '345 patent, and '155 patent.

**AT&T's Wireless Network and Data Services**

17. AT&T owns, controls, operates and/or uses one or more wireless networks that include a complex infrastructure of network computers and telecommunication systems.

18. On information and belief, AT&T owns, controls, operates and/or uses wireless networks that are based on various technologies including Universal Mobile Telecommunications System/High-Speed Downlink Packet Access (HSPA) and HSPA+ and next generation LTE technology. On information and belief, AT&T relies on transmission

technologies known as GSM, General Packet Radio Services and Enhanced Data Rates for GSM Evolution (individually and collectively referred to as the AT&T “Wireless Networks”).

19. AT&T owns, controls, operates, uses, sells and/or offers for sale access to its Wireless Networks, including data communications services made available through its Wireless Networks.

20. AT&T’s data communication services, made available through its Wireless Networks, include mobile productivity applications, such as Internet access, messaging and email services; wireless photo and video offerings, location-based capabilities, including asset and fleet management, dispatch services and navigation tools; and mobile entertainment applications, including the ability to view live television, listen to internet radio, download and listen to music, and game play with full-color graphics and polyphonic and real-music sounds from a wireless handset computing device (individually and collectively referred to as AT&T’s “Data Services”).

21. AT&T authorizes customers’ devices to access AT&T’s Wireless Networks and Data Services if customers purchase and/or subscribe to AT&T’s Data Service plans. These Data Service plans include, for example, DataPlus 300MB for Smartphone 4G LTE, DataPro 3GB for Smartphone 4G LTE, DataPro 5GB for Smartphone 4G LTE, DataPlus 300MB for iPhone, DataPro 3GB for iPhone, DataPro 5GB for iPhone Personal Hotspot, DataConnect 250MB for 4G LTE, DataConnect 3GB for 4G LTE, DataConnect 5GB for 4G LTE, DataConnect 5GB for 4G, DataConnect for iPad 250MB, DataConnect on LTE for iPad 250MB, DataConnect 3GB for iPad, DataConnect on LTE for iPad 3GB, DataConnect 5GB for iPad, DataConnect on LTE for iPad 5GB, (individually and collectively referred to as AT&T “Data Plans”).

22. On information and belief, AT&T requires all Data Plan subscribers to enter into an agreement (of varying term/length) with AT&T in which customers must comply with AT&T's terms of use in order to access AT&T's Wireless Network and Data Services. An exemplary copy of such an Agreement is attached as Exhibit H.

### **AT&T's Authentication Systems**

23. AT&T's Wireless Network complies with one or more various industry standards, including, for example, 3GPP standard.

24. Industry standards such as 3GPP include authentication systems and methods for controlling and protecting access to data resources.

25. AT&T controls and limits unauthorized access to its Wireless Network and Data Services by implementing authentication systems and methods so only authorized devices may access at least a portion of AT&T's Wireless Networks and Data Services (collectively referred to as AT&T's Authentication Systems").

26. On information and belief, AT&T's Authentication Systems include: one or more access servers, authentication servers, and databases for storing at least the digital identifications associated with customers' wireless devices (e.g., smartphone, tablet or broadband card) and associated authorized Data Services.

27. On information and belief, AT&T's Authentication Systems requires that any wireless devices used to access AT&T's Data Services include an associated hardware key/access key and digital identification that may be associated with such wireless device.

28. AT&T uses its Authentication Systems when a device accesses the AT&T Wireless Network and Data Services.

29. On information and belief, if customers choose not to subscribe to AT&T's Data Plans, AT&T does not authorize the customers' wireless device(s) to access, at least a portion of, AT&T Wireless Networks and Data Services.

#### **AT&T's Wireless Devices**

30. The Wireless Networks and Data Services operated, offered, sold, and marketed by AT&T are accessed by AT&T's customers using a wide variety of wireless devices including smartphones, mobile broadband devices such as aircards and hotspots, and embedded tablets and laptops manufactured by various suppliers for use with AT&T's Data Services.

31. On information and belief, AT&T, as identified in its Customer Agreement, controls at least portions of the hardware, software and operation of customers' wireless devices to ensure each wireless device can access AT&T's Wireless Network and Data Services by using the systems and methods claimed in the '288 patent. For example, AT&T's Agreement with its customers states "AT&T Wireless Service(s) may be used with: (a) a mobile device that contains a SIM that is assigned to your account ("Device") and/or, (b) a device that is designed and purchased for use exclusively on AT&T's network ("Equipment")." (Exhibit H). AT&T further states in its Agreement with customers:

Your Device must be compatible with, and not interfere with, our Services and must comply with all applicable laws, rules, and regulations. We may periodically program your Device remotely with system settings for roaming service, to direct your Device to use network services most appropriate for your typical usage, and other features that cannot be changed manually.

You agree that you won't make any modifications to your Equipment or its programming to enable the Equipment to operate on any other system. AT&T may, at its sole and absolute discretion, modify the programming to enable the operation of the Equipment on other systems.

If you bought a Device from AT&T, it may have been programmed with a SIM lock which will prevent it from operating with other compatible wireless telephone carriers' services. If you wish to use this Device with the service of another wireless telephone carrier, you must enter a numeric

Unlock Code to unlock the phone. AT&T will provide the Unlock Code upon request, provided that you meet certain criteria including, but not limited to the following: (a) your account has been active for at least sixty days and is in good standing (i.e. it has no past due amount or unpaid balance owed AT&T); (b) you have fulfilled your Service Commitment by expiration of any contractual term, upgrading to a new Device under AT&T's standard or early upgrade policies, or payment of any applicable ETF; (c) your Device has not been reported lost or stolen; and (d) AT&T has the Unlock Code or can reasonably obtain it from the manufacturer. AT&T will unlock a maximum of five phones per account, per year. For Devices sold with a Prepaid Plan, AT&T will provide you with the Unlock Code upon request if you provide a detailed receipt or other proof of purchase of the phone and AT&T has the Unlock Code or can reasonably obtain it from the manufacturer. For further details on eligibility requirements and for assistance on obtaining the Unlock Code for your handset, please call 1-800-331-0500 or visit an AT&T company store.

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AT&T data plans are designed for use with only one of the following distinct Device types: (1) Smartphones, (2) basic and Quick Messaging phones, (3) tablets, (4) LaptopConnect cards, and (5) stand-alone Mobile Hotspot devices. A data plan designated for one type of device may not be used with another type of device. For example, a data plan designated for use with a basic phone or a Smartphone may not be used with a LaptopConnect card, tablet, or stand-alone Mobile Hotspot device, by tethering devices together, by SIM card transfer, or any other means. A data tethering plan, however, may be purchased for an additional fee to enable tethering on a compatible device. An Activation Fee may apply for each data line.

(Exhibit H).

32. On information and belief, at this time, AT&T requires that any wireless devices used to access AT&T's Data Services include an associated hardware key/access key and digital identification that may be associated with such wireless device necessary to work with AT&T's Authentication System. Prism expects, through discovery, to learn of additional devices that are provided sold and/or offered for sale by AT&T that are capable of accessing AT&T's Data Services through its Wireless Networks.

33. AT&T offers, sells and markets wireless devices capable of accessing AT&T's Data Services. These wireless devices include at least the following examples: Apple iPhone 5, Apple iPhone 4S, Apple iPhone 4S, HTC One X, Samsung Galaxy S III, LG Nitro HD, Nokia Lumia 900, Pantech Flex, LG Escape, Samsung DoubleTime, BlackBerry Bold 9700, Pantech Burst, Pantech Pocket, Samsung Galaxy Exhilarate, BlackBerry Curve 9360, Samsung Focus 2, HTC Vivid, Samsung Captivate Glide, Samsung Rugby Smart, Xperia ion by Sony, Motorola Atrix HD, Blackberry Torch 9810, Motorola Atrix 2, Samsung Galaxy S II Skyrocket, HTC Titan II, Samsung Galaxy Note, Samsung Galaxy Tab 8.9, Pantech Element, HTC Jetstream, Apple iPad, AT&T Mobile Hotspot Elevate 4G, AT&T USB Connect Momentum 4G, and Acer Aspire AO722 (collectively "Data Enabled Wireless Devices").

#### **AT&T's Authentication Systems And Methods Infringe Prism's Patents**

34. AT&T uses its Authentication Systems to control and protect access to its Wireless Network and Data Services. For example, a Data Enabled Wireless Device that is not associated with a customer subscribing to one of AT&T's Data Plans will not be authorized by AT&T to access at least a portion of AT&T's Wireless Network and Data Services.

35. AT&T's Authentication Systems may further be used to control access to its Wireless Network and Data Services in such a way that AT&T may

interrupt, suspend or cancel your Services and terminate your Agreement without advance notice for any reason including, but not limited to, the following: ... You use your Device/Equipment and/or our Services in any way that: (a) is harmful to, interferes with, or negatively affects our network, other customers, or the network of any other provider, (b) is harmful to, interferes with, or negatively affects our Services or operations, (c) infringes intellectual property rights of AT&T or others, (d) results in the publication of threatening, offensive or illegal material, or (e) generates spam or other abusive messaging or calling, a security risk, or a violation of privacy;... You modify your device from its manufacturer's specifications.

(See Exhibit H).

36. On information and belief, AT&T's Wireless Networks implement the systems and methods that are claimed in the '288 patent, including at least claims 186 and 187, when a Data Enabled Wireless Device accesses AT&T's Data Services through Wireless Networks.

37. AT&T has been and now is directly infringing the '288 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing systems and methods for controlling Data Enabled Wireless Devices from accessing its Wireless Network and Data Service as claimed in the '288 patent.

38. To the extent others are acting with AT&T to use the systems and methods for controlling access to AT&T's Wireless Network and Data Services, AT&T is the mastermind behind the use of the systems and methods that are implemented for controlling access to AT&T's Wireless Network and Data Services. For example, on information and belief, AT&T requires that Data Enabled Wireless Devices include an access/key hardware key and/or digital identification that is transmitted to AT&T's Wireless Network so that AT&T's Authentication Systems can control and limit "without advance notice, the permitted and prohibited activities, and the optimization requirements for your wireless data services." (Exhibit H).

39. Further, on information and belief, through its Customer Agreements, AT&T requires that all customers subscribing to a Data Plan use a Data Enabled Wireless Device that works with AT&T's Wireless Network and Data Services. Failure to comply with a Customer Agreement may (at AT&T's discretion) result in termination of services. (Exhibit H)

40. AT&T and its customers have been and now are jointly infringing the '288 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by

implementing and using systems and methods for controlling access to AT&T's protected computer resources as claimed in the '288 patent.

41. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

42. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '288 patent, Prism will be greatly and irreparably harmed.

**COUNT II**  
**INDIRECT CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 7,290,288**

43. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 42 above as if fully set forth herein.

44. On information and belief, when AT&T sells Data Enabled Wireless Devices to customers, AT&T also sells a Data Plan that allows his or her device to access AT&T's Wireless Network and Data Services.

45. On information and belief, the Data Enabled Wireless Devices sold by AT&T necessarily include software and hardware that allows the device to use AT&T's authentication systems and methods controlling access to AT&T's Wireless Network and Data Services. On information and belief, a Data Enabled Wireless Device includes software controlled by AT&T to ensure that the Data Enabled Wireless Device attempts to access AT&T's Wireless Network and Data Services when the Data Enabled Wireless Device is powered-on.

46. On information and belief, these Data Enabled Wireless Devices are specifically designed to work with AT&T's Wireless Network, Data Services and Authentication Systems and have no substantial non-infringing use as sold and authorized by AT&T.

47. AT&T has been and now is indirectly infringing the '288 patent (by contributory infringement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling and offering to sell Data Enabled Wireless Devices that use and practice the systems and methods claimed in the '288 patent.

48. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

49. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '288 patent, Prism will be greatly and irreparably harmed.

**COUNT III**  
**INDIRECT INDUCEMENT OF INFRINGEMENT OF U.S. PATENT NO. 7,290,288**

50. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 49 above as if fully set forth herein.

51. On information and belief, AT&T sells Data Enabled Wireless Devices at prices below AT&T's cost to attract and induce new customers to subscribe to AT&T's Wireless Network and Data Services. AT&T offers, sells and markets these Data Enabled Wireless Devices through its web site and through various channels including AT&T agents and other third parties. Further, on information and belief, AT&T sells accessories, such as carrying cases,

hands-free devices, batteries, battery chargers and other items to AT&T customers, to AT&T agents and other third-party distributors for resale so that they may be used by AT&T customers (with Data Enabled Devices) who access AT&T's Wireless Network and Data Services.

52. On information and belief, AT&T markets and sells Data Services and Data Enabled Wireless Devices, targeting groups of retail subscribers: individual consumers, businesses and governments. On information and belief, AT&T uses a variety of sales channels to attract new subscribers of wireless services, including: direct sales representatives whose efforts are focused on marketing and selling wireless data communication services, primarily to mid-sized to large businesses and government agencies; retail outlets owned and operated by or on behalf of AT&T, that focus on sales to the consumer market as well as third-party retailers; indirect sales agents that primarily consist of local and national non-affiliated dealers and independent contractors that market and sell services to businesses and the consumer market, and are generally paid through commissions; and subscriber-convenient channels, including web sales and telesales.

53. On information and belief, on April 4, 2012, Prism filed a complaint against AT&T alleging infringement of the '288 patent and '345 patent. On April 7, 2012, AT&T received a copy of the April 4, 2012 Complaint and has known of the '288 patent.

54. On information and belief, to the extent others, such as AT&T's customers (and their Data Enabled Devices), are acting with AT&T to use systems and methods for accessing AT&T's Wireless Networks and Data Services, AT&T controls the design, function and operation of its Wireless Networks, including Data Enabled Devices, to ensure that customers' Data Enabled Devices will work with AT&T's systems and methods for controlling access to AT&T's Wireless Networks. Further, on information and belief, AT&T, at least as early as

April 7, 2012, has induced and continued to induce others, including its customers, to use Data Enabled Devices to practice one or more steps of the systems and methods claimed in the '288 patent.

55. AT&T has been, at least as early as April 7, 2012, and now is indirectly infringing the '288 patent (by inducement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by inducing its customers, in combination with AT&T, to continue to use Data Enabled Devices and practice the methods claimed in the '288 patent. Further, on information and belief, at least as early as April 7, 2012, AT&T has recklessly, knowingly, and willfully continued to implement and use systems and methods claimed in the '288 patent and '345 patent to control access to its wireless network and data connection service despite knowing of its infringing activity.

56. On information and belief, this use of AT&T's Authentication Systems by AT&T and its customers have and will continue to occur at AT&T's active behest, and with its intent, knowledge and encouragement, and with AT&T's aid and support to its customers, with knowledge that it is in contravention of Prism's rights under the '288 patent.

57. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

58. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '288 patent, Prism will be greatly and irreparably harmed.

**COUNT IV**  
**DIRECT INFRINGEMENT OF U.S. PATENT NO. 8,127,345**

59. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 58 above as if fully set forth herein.

60. On information and belief, AT&T's Wireless Network and Data Services use authentication methods that are claimed in the '345 patent, including at least claims 1 and 49.

61. AT&T has been and now is directly infringing the '345 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing authentication systems and methods for controlling access to protected computer resources as claimed in the '345 patent.

62. To the extent others are acting with AT&T to use the systems and methods for controlling access to AT&T's Wireless Network and Data Services, AT&T is the mastermind behind the use of the systems and methods that are implemented for controlling access to AT&T's Wireless Network and Data Services. For example, on information and belief, AT&T requires that Data Enabled Wireless Devices include identity data that is transmitted to AT&T's Wireless Network so that AT&T's Authentication Systems can control and limit without advance notice, the permitted and prohibited activities, and the optimization requirements for your wireless data services. (Exhibit H).

63. Further, on information and belief, through its Customer Agreements, AT&T requires that all customer subscribing to a Data Plan use a Data Enabled Wireless Device that works with AT&T's Wireless Network and Data Services. Failure to comply with a Customer Agreement may (at AT&T's discretion) result in termination of services. (Exhibit H)

64. AT&T and its customers have been and now are jointly infringing the '345 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by

implementing and using authentication systems and methods for controlling access to protected computer resources as claimed in the '345 patent.

65. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

66. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '345 patent, Prism will be greatly and irreparably harmed.

**COUNT V**  
**INDIRECT CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 8,127,345**

67. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 66 above as if fully set forth herein.

68. When AT&T sells Data Enabled Wireless Devices to customers, AT&T also sells a Data Plan that allows his or her device to access AT&T's Wireless Network and Data Services.

69. On information and belief, the Data Enabled Wireless Devices sold by AT&T necessarily include software and hardware that allows the device to use AT&T's authentication systems and methods controlling access to AT&T's Wireless Network and Data Services. On information and belief, a Data Enabled Wireless Device includes software controlled by AT&T to ensure that the Data Enabled Wireless Device attempts to access AT&T's Wireless Network and Data Services when the Data Enabled Wireless Device is powered-on.

70. On information and belief, these Data Enabled Wireless Device are specifically designed to work with AT&T's Wireless Network, Data Services and Authentication Systems and have no substantial non-infringing use as sold and authorized by AT&T.

71. AT&T has been and now is indirectly infringing the '345 patent (by contributory infringement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling and offering to sell Data Enabled Wireless Devices that use and practice the systems and methods claimed in the '345 patent.

72. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

73. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '345 patent, Prism will be greatly and irreparably harmed.

**COUNT VI**  
**INDIRECT INDUCEMENT OF INFRINGEMENT OF U.S. PATENT NO. 8,127,345**

74. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 73 above as if fully set forth herein.

75. On information and belief, AT&T sells Data Enabled Wireless Devices at prices below AT&T's cost to attract and induce new customers to subscribe to AT&T's Wireless Network and Data Services. AT&T offers, sells and markets these Data Enabled Wireless Devices through its web site and through various channels including AT&T agents and other third parties. Further, on information and belief, AT&T sells accessories, such as carrying cases,

hands-free devices, batteries, battery chargers and other items to AT&T customers, to AT&T agents and other third-party distributors for resale so that they may be used by AT&T customers (with Data Enabled Devices) who access AT&T's Wireless Network and Data Services.

76. AT&T markets and sells Data Services and Data Enabled Wireless Devices, targeting groups of retail subscribers: individual consumers, businesses and government. On information and belief, AT&T uses a variety of sales channels to attract new subscribers of wireless services, including: direct sales representatives whose efforts are focused on marketing and selling wireless data communication services; primarily to mid-sized to large businesses and government agencies, retail outlets owned and operated by or on behalf of AT&T, that focus on sales to the consumer market as well as third-party retailers; indirect sales agents that primarily consist of local and national non-affiliated dealers and independent contractors that market and sell services to businesses and the consumer market, and are generally paid through commissions; and subscriber-convenient channels, including web sales and telesales.

77. On information and belief, on April 4, 2012, Prism filed a complaint against AT&T alleging infringement of the '288 patent and '345 patent. On April 7, 2012, AT&T received a copy of the April 4, 2012 Complaint and has known of the '345 patent.

78. On information and belief, to the extent others, such as AT&T's customers (and their Data Enabled Devices), are acting with AT&T to use systems and methods for accessing AT&T's Wireless Networks and Data Services, AT&T controls the design, function and operation of its Wireless Networks, including Data Enabled Devices, to ensure that customers' Data Enabled Devices will work with AT&T's systems and methods for controlling access to AT&T's Wireless Networks. Further, on information and belief, AT&T, at least as early as April 7, 2012, has induced and continued to induce others, including its customers, to use Data

Enabled Devices to practice one or more steps of the systems and methods claimed in the '345 patent.

79. AT&T has been, at least as early as April 7, 2012, and now is indirectly infringing the '345 patent (by inducement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by inducing its customers, in combination with AT&T, to continue to use Data Enabled Devices and practice the methods claimed in the '345 patent. Further, on information and belief, at least as early as April 7, 2012, AT&T has recklessly, knowingly, and willfully continued to implement and use systems and methods claimed in the '288 patent and '345 patent to control access to its wireless network and data connection service despite knowing of its infringing activity.

80. On information and belief, this use of AT&T's Authentication Systems by AT&T and its customers have and will continue to occur at AT&T's active behest, and with its intent, knowledge and encouragement, and with AT&T's aid and support to its customers, with knowledge that it is in contravention of Prism's rights under the '345 patent.

81. On information and belief, this use of AT&T's Authentication Systems by AT&T and its customers have and will continue to occur at AT&T's active behest, and with its intent, knowledge and encouragement, and with AT&T's aid and support to its customers, with knowledge that it is in contravention of Prism's rights under the '345 patent.

82. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

83. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '345 patent, Prism will be greatly and irreparably harmed.

**COUNT VII**  
**DIRECT INFRINGEMENT OF U.S. PATENT NO. 8,387,155**

84. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 83 above as if fully set forth herein.

85. AT&T has been and now is directly infringing the '155 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing authentication systems for controlling access to protected computer resources as claimed in the '155 patent.

86. To the extent others are acting with AT&T to use the systems for controlling access to AT&T's Wireless Network and Data Services, AT&T is the mastermind behind the use of the systems that are implemented for controlling access to AT&T's Wireless Network and Data Services. For example, on information and belief, AT&T requires that Data Enabled Wireless Devices include identity data that is transmitted to AT&T's Wireless Network so that AT&T's Authentication Systems can control and limit without advance notice, the permitted and prohibited activities, and the optimization requirements for your wireless data services. (Exhibit H).

87. Further, on information and belief, through its Customer Agreements, AT&T requires that all customer subscribing to a Data Plan use a Data Enabled Wireless Device that works with AT&T's Wireless Network and Data Services. Failure to comply with a Customer Agreement may (at AT&T's discretion) result in termination of services. (Exhibit H)

88. AT&T and its customers have been and now are jointly infringing the '155 patent in the State of Nebraska, in this judicial district, and elsewhere in the United States, by implementing and using authentication systems for controlling access to protected computer resources as claimed in the '155 patent.

89. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

90. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '155 patent, Prism will be greatly and irreparably harmed.

**COUNT VIII**  
**INDIRECT CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 8,387,155**

91. Prism re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 90 above as if fully set forth herein.

92. When AT&T sells Data Enabled Wireless Devices to customers, AT&T also sells a Data Plan that allows his or her device to access AT&T's Wireless Network and Data Services.

93. On information and belief, the Data Enabled Wireless Devices sold by AT&T necessarily include software and hardware that allows the device to use AT&T's authentication systems controlling access to AT&T's Wireless Network and Data Services. On information and belief, a Data Enabled Wireless Device includes software controlled by AT&T to ensure that the Data Enabled Wireless Device attempts to access AT&T's Wireless Network and Data Services when the Data Enabled Wireless Device is powered-on.

94. On information and belief, these Data Enabled Wireless Device are specifically designed to work with AT&T's Wireless Network, Data Services and Authentication Systems and have no substantial non-infringing use as sold and authorized by AT&T.

95. AT&T has been and now is indirectly infringing the '155 patent (by contributory infringement) in the State of Nebraska, in this judicial district, and elsewhere in the United States, by making, using, selling and offering to sell Data Enabled Wireless Devices that use and practice the systems claimed in the '345 patent.

96. Prism has been injured by AT&T's infringing activities, and is entitled to recover money damages from AT&T adequate to compensate it for AT&T's infringement, but in no event less than a reasonable royalty together with interest and costs as fixed by the Court, and Prism will continue to suffer damages in the future unless AT&T's infringing activities are enjoined by this Court.

97. Unless a permanent injunction is issued enjoining AT&T and its respective agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '345 patent, Prism will be greatly and irreparably harmed.

#### **PRAYER FOR RELIEF**

Wherefore, Prism respectfully requests judgment in its favor and against Defendant, as follows:

- a. A judgment in favor of Prism that AT&T has infringed the '288 patent;
- b. A judgment in favor of Prism that AT&T has infringed the '345 patent;
- c. A judgment in favor of Prism that AT&T has infringed the '155 patent;

- d. A permanent injunction against AT&T and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '288 patent.
- e. A permanent injunction against AT&T and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '345 patent;
- f. A permanent injunction against AT&T and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringing the '155 patent;
- g. A judgment and order requiring AT&T to pay Prism its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '288 patent as provided under 35 U.S.C. § 284;
- h. A judgment and order requiring AT&T to pay Prism its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '345 patent as provided under 35 U.S.C. § 284;
- i. A judgment and order requiring AT&T to pay Prism its damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '155 patent as provided under 35 U.S.C. § 284;
- j. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Prism its reasonable attorneys' fees; and
- k. Such other relief in law and equity as this Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Prism demands a trial by jury in Omaha of all issues triable by a jury.

Dated: March 1, 2013

Respectfully submitted,

**Kramer Levin Naftalis & Frankel LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2013 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

*s/ Daniel J. Fischer*