

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

SPRINT COMMUNICATIONS
COMPANY, L.P.,
SPRINT SPECTRUM L.P.,
NEXTEL OPERATIONS, INC.,
VIRGIN MOBILE USA, L.P., AND
SPRINT NEXTEL CORPORATION,

Plaintiffs,

Civil Action No. 11-2635 SAC/KGS

v.

JOHN R. GAMMINO,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

For their Complaint, Plaintiffs Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Operations, Inc., Virgin Mobile USA, L.P., and Sprint Nextel Corporation (collectively, “Sprint”) allege as follows:

Introduction

1. This is an action by Sprint against Defendant John R. Gammino for a declaratory judgment that United States Patent No. 5,359,643 (“the ’643 Patent”, copy attached as Exhibit A) is invalid and that Sprint has neither infringed nor induced infringement of the ’643 Patent. This action arises out of improper counts for patent infringement that Gammino filed in the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 2:10-cv-2493-CMR (the “Pennsylvania Action”), against Plaintiff Sprint, but which counts were dismissed by the Eastern District of Pennsylvania court in an Order granting Sprint’s Motion to Dismiss. In

addition to declaratory relief, Sprint seeks reimbursement of the attorneys' fees it has been forced to incur to clear the cloud that has been placed over Sprint with respect to Gammino's alleged patent rights.

The Parties

2. Sprint Communications Company L.P. is a limited partnership organized and existing under the laws of Delaware with its principal place of business at 6200 Sprint Parkway, Overland Park, KS 66251. Sprint Communications Company L.P. has long provided, among other things, wireline long distance service, FONCARDS, and other telecommunications services in Kansas and throughout the nation.

3. Sprint Spectrum L.P. is a limited partnership organized and existing under the laws of Delaware with its principal place of business at 6200 Sprint Parkway, Overland Park, KS 66251. Sprint Spectrum L.P. has long provided mobile telephone service to customers in Kansas and throughout the nation.

4. Nextel Operations, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Nextel Operations, Inc. has long provided mobile telephone service to customers in Kansas and throughout the nation.

5. Virgin Mobile USA, L.P. is a limited partnership organized and existing under the laws of Delaware with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Virgin Mobile USA, L.P. has long offered pre-paid wireless services on Sprint's wireless network for customers in Kansas and throughout the nation.

6. Sprint Nextel Corporation is primarily a holding company, organized and existing under the laws of Kansas with its principal place of business at 6200 Sprint Parkway, Overland

Park, KS 66251. Sprint Nextel Corporation does not make or distribute and has not made or distributed, and does not provide and has not provided, any FONCARD products or services.

7. Defendant Gammino is, upon information and belief, an adult individual and a resident of the State of Florida.

Jurisdiction

8. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338.

10. Gammino is, upon information and belief, an individual resident of Vero Beach, Florida. A substantial part of the events giving rise to this complaint occurred in Kansas, and a substantial part of the Sprint property and operations that are the subject of Gammino's unfounded allegations are situated in Kansas. Venue is proper in this judicial district pursuant to the provisions of 28 U.S.C. § 1391 and 1400(b) and events giving rise to Sprint's claims occurred in this district.

Factual Background

11. Sprint Communications Company L.P. is in the business of selling and offering for sale wireline telephone products and services throughout the United States, including the state of Kansas. Among other things, for many years Sprint Communications Company has provided FONCARDS to its customers to give them access to a wireline communication network.

12. Sprint Spectrum L.P. is in the business of selling and offering for sale mobile phones and wireless phone service to customers throughout the United States, including the state of Kansas.

13. Nextel Operations, Inc. is in the business of selling and offering for sale mobile phones and wireless phone service to customers throughout the United States, including the state of Kansas.

14. Virgin Mobile USA, L.P. is in the business of selling and offering for sale mobile phones and wireless phone service to customers throughout the United States, including the state of Kansas..

15. Sprint Nextel Corporation is primarily a holding company that does not make or distribute, has not made or distributed, does not provide, and has not provided, any FONCARD products or services.

16. On October 25, 1994, the United States Patent Office issued the '643 Patent, entitled "Telecommunications Device With Simplified Calling Procedures."

17. The '643 Patent was issued on an application filed on January 26, 1993, in the name of John R. Gammino of Lincroft, N.J..

18. On its face, the '643 Patent indicates that it has not been assigned and is currently held by Gammino.

19. Gammino claims to be the owner of the '643 Patent.

20. Gammino first alleged that certain Sprint entities, including Sprint Communications Company L.P., Sprint Spectrum L.P, Nextel Operations, Inc., Virgin Mobile USA, L.P., and Sprint Nextel Corporation infringe the '643 Patent in an Amended Complaint he filed on December 22, 2010 in the United States District Court for the Eastern District of

Pennsylvania. On January 21, 2011, Gammino withdrew the Amended Complaint and filed a Second Amended Complaint in that court also alleging that Sprint infringes the '643 Patent. A copy of the Second Amended Complaint is attached as Exhibit B. Like the Amended Complaint, the Second Amended Complaint alleged that Sprint infringes the '643 Patent:

by using methods and apparatus in payphones, network switches, PBX lines, Centrex lines, Business Exchange lines, cell phones and cellular phone networking, including its Mobile Telephone Switching Offices, network switches, other telecommunication switches and other telecommunications devices. Defendants, Sprint Nextel and Unknown Subsidiaries use the methods described in the claims for placing a telephone call through a central office from a telecommunications device according to a desired method of making payment.

Second Amended Complaint (Ex. B) at ¶ 76. More specifically, the Second Amended Complaint alleges that the “Website of Defendants, Sprint Nextel and Unknown Subsidiaries states instructions to make calls on a product named ‘FONCARD,’ going back to February 2004 or earlier. The instructions on the Website on use of the FONCARD confirm the infringement.” Ex. B at ¶ 77.

Gammino’s Second Amended Complaint sought injunctive relief, damages, treble damages, punitive and exemplary damages, interest, attorney fees and costs, from Sprint. Ex. B at p. 26.

21. Upon motion by Sprint under Rule 12 of the Federal Rules of Civil Procedure, the E.D. Pa. court dismissed without prejudice the two counts in the Second Amended Complaint alleging infringement of the '643 Patent. A copy of the Order of dismissal is attached as Exhibit C.

22. Gammino continues to believe that Sprint infringes the '643 Patent, and stated during the hearing on Sprint’s motion to dismiss his intent to “go file another complaint” in the event of dismissal. Ex. C. Gammino’s counsel recently made a statement expressing Gammino’s belief that Sprint is violating Gammino’s '643 Patent rights and restating Gammino’s intention to file another lawsuit.

23. Accordingly, there exists an immediate and continuing justiciable controversy between Sprint and Gammino as to the validity and infringement of the '643 Patent, and Sprint has a reasonable apprehension that Gammino will file suit.

**COUNT I
(Declaratory Judgment of Invalidity)**

24. Sprint re-alleges and incorporates by reference here each and every allegation contained in Paragraphs 1 through 23 above.

25. The '643 Patent is invalid for failure to comply with the requirements of the patent laws of the United States, Title 35 U.S.C., including, for example, §§ 102, 103, and 112.

**COUNT II
(Declaratory Judgment of Non-Infringement)**

26. Sprint re-alleges and incorporates by reference here each and every allegation contained in Paragraphs 1 through 25 above.

27. Sprint does not infringe and has not infringed any claim of the '643 Patent.

**COUNT III
(Declaratory Judgment of No Inducement to Infringe)**

28. Sprint re-alleges and incorporates by reference here each and every allegation contained in Paragraphs 1 through 27 above.

29. Sprint does not induce and has not induced infringement of any claim of the '643 Patent.

DEMAND FOR JURY TRIAL

Sprint demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiffs pray that this Court enter Judgment:

A. Declaring each claim of United States Patent No. 5,359,643 invalid;

- B. Declaring that no claim of United States Patent No. 5,359,643 has been infringed by any act of the Sprint plaintiffs, related corporate and partnership entities, or customers;
- C. Declaring that the Sprint plaintiffs and related corporate and partnership entities have not induced infringement of any claim of United States Patent No. 5,359,643;
- D. Enjoining and restraining Gammino, his attorneys, agents, and employees, and any others acting in concert with him, from asserting or threatening to assert any alleged right arising from United States Patent No. 5,788,643 against the Sprint plaintiffs, related corporate and partnership entities, or Sprint's agents, licensees, customers, suppliers, vendees, or others acting on their behalf;
- E. Declaring this to be an exceptional case within the meaning of 35 U.S.C. § 285 and awarding Sprint all relief appropriate under that statute;
- F. Awarding Sprint its costs in this action, together with its reasonable attorneys' fees; and
- G. Granting Sprint any other relief as this Court deems just and equitable.

DESIGNATION OF PLACE OF TRIAL

Pursuant to Local Rule 40.2, Plaintiff hereby designates Kansas City, Kansas as the place of trial.

Dated: November 21, 2011

Respectfully submitted,

PLAINTIFFS SPRINT COMMUNICATIONS
COMPANY, L.P., SPRINT SPECTRUM
L.P., NEXTEL OPERATIONS, INC., VIRGIN
MOBILE USA, L.P., AND SPRINT NEXTEL
CORPORATION

/s/ Mark W. McGrory
Mark W. McGrory
ROUSE HENDRICKS GERMAN MAY PC
1201 Walnut, 20th Floor
Kansas City, MO 64106
Telephone: 816-471-7700
Facsimile:

Of Counsel:

John J. Cotter

George S. Haight

Ian E. Cohen

K&L GATES LLP

State Street Financial Center

One Lincoln Street

Boston, MA 02111-2950

Telephone: 617-261-3100

Facsimile: 617-261-3175

Exhibit A



US005359643A

United States Patent [19]

[11] Patent Number: 5,359,643

Gammino

[45] Date of Patent: Oct. 25, 1994

[54] TELECOMMUNICATIONS DEVICE WITH SIMPLIFIED CALLING PROCEDURES

4,935,956 6/1990 Hellwarth et al. .

5,046,183 9/1991 Dorst et al. .

5,113,433 5/1992 Hird et al. .

[76] Inventor: John R. Gammino, 6 East Point Rd., Lincroft, N.J. 07738

5,131,027 7/1992 Hird et al. 379/144 X

[21] Appl. No.: 9,318

Primary Examiner—Stephen Chin

Assistant Examiner—Paul Loomis

[22] Filed: Jan. 26, 1993

Attorney, Agent, or Firm—Ratner & Prestia

[51] Int. Cl.⁵ H04M 17/00

[57] ABSTRACT

[52] U.S. Cl. 379/143; 379/144; 379/155; 379/146

A telephone call is conveniently placed between a tele-communications device and a central office. A first plurality of signals representing a telephone dialing digit not including "0", followed by a multiple-digit phone number, is received. At least one signal which indicates a desired method of making payment for the telephone call is then received. Arrangements are made for payment of the telephone call according to the desired method of payment. The telephone call is then placed by transmitting a second plurality of signals representing the multiple-digit phone number to the central office.

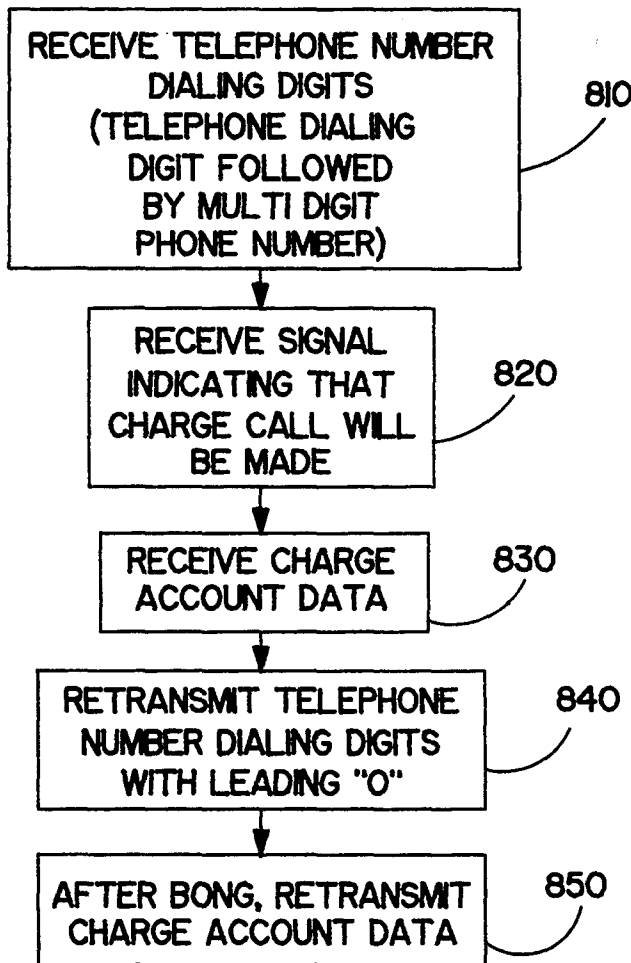
[58] Field of Search 379/143, 144, 145, 155, 379/112, 113, 201, 123

[56] References Cited

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- 4,926,469 5/1990 Smith et al. 379/123 X
- 4,933,965 6/1990 Hird et al. .

11 Claims, 8 Drawing Sheets



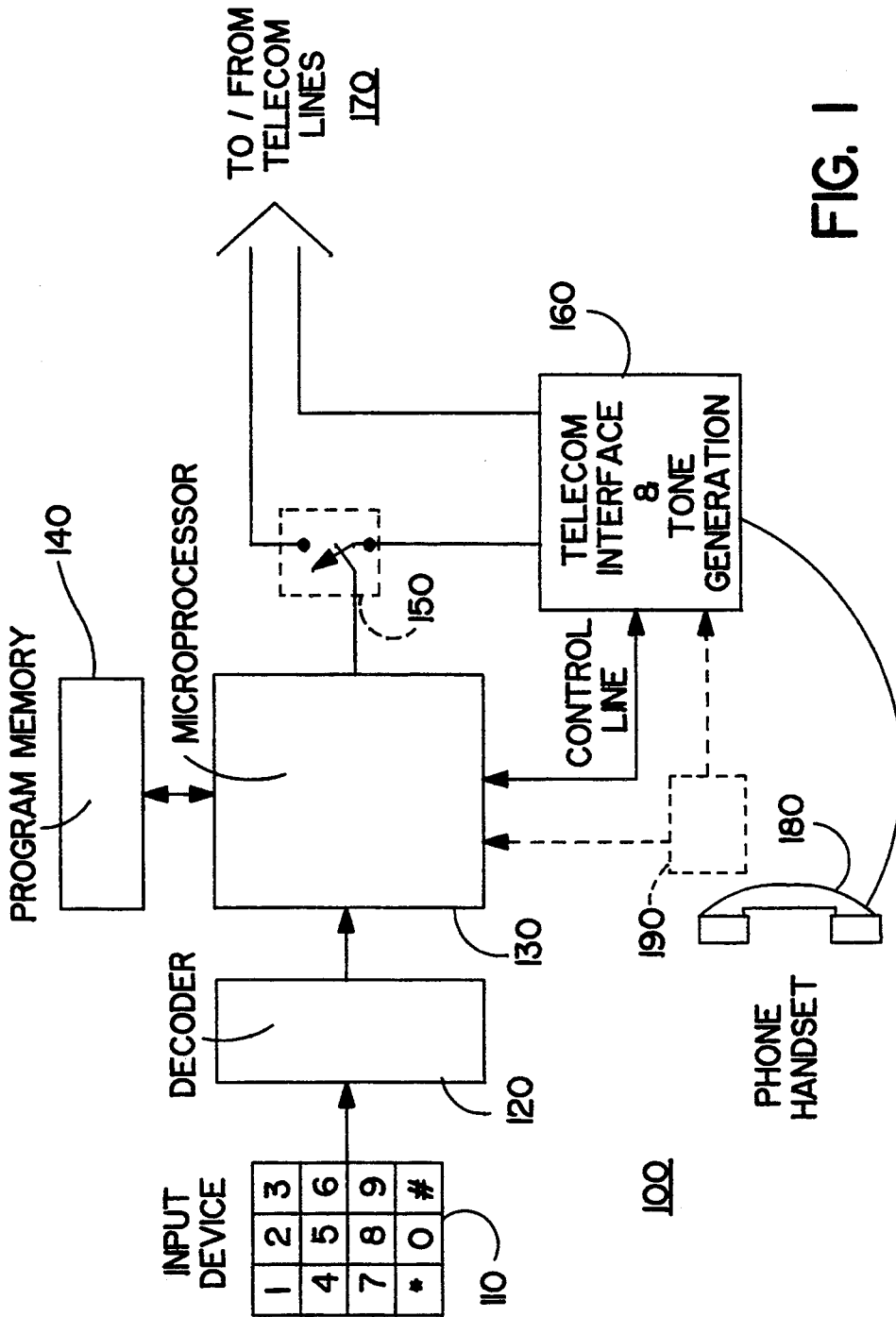


FIG. 1

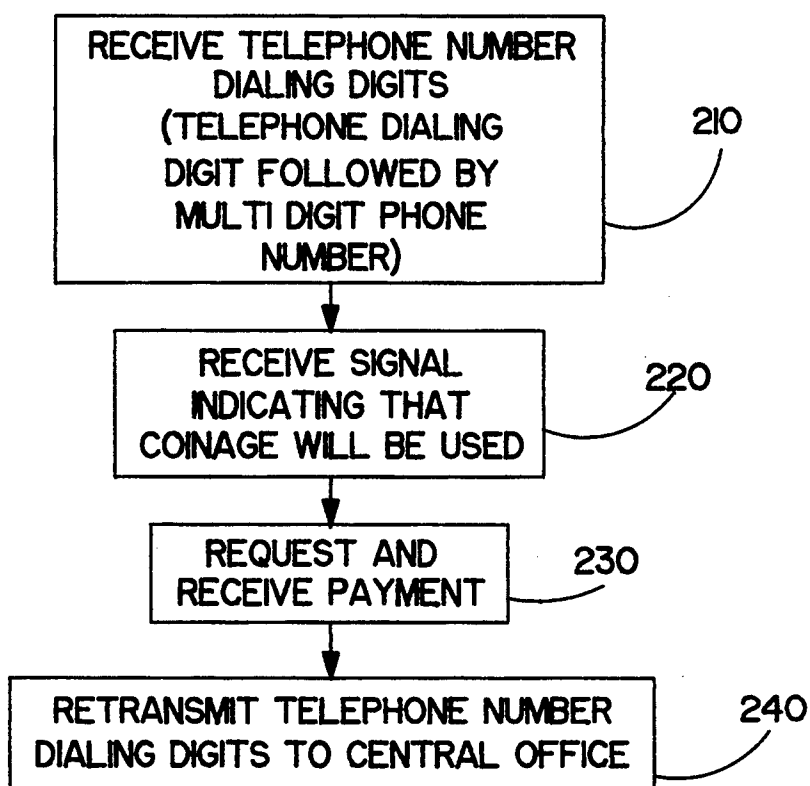


FIG. 2

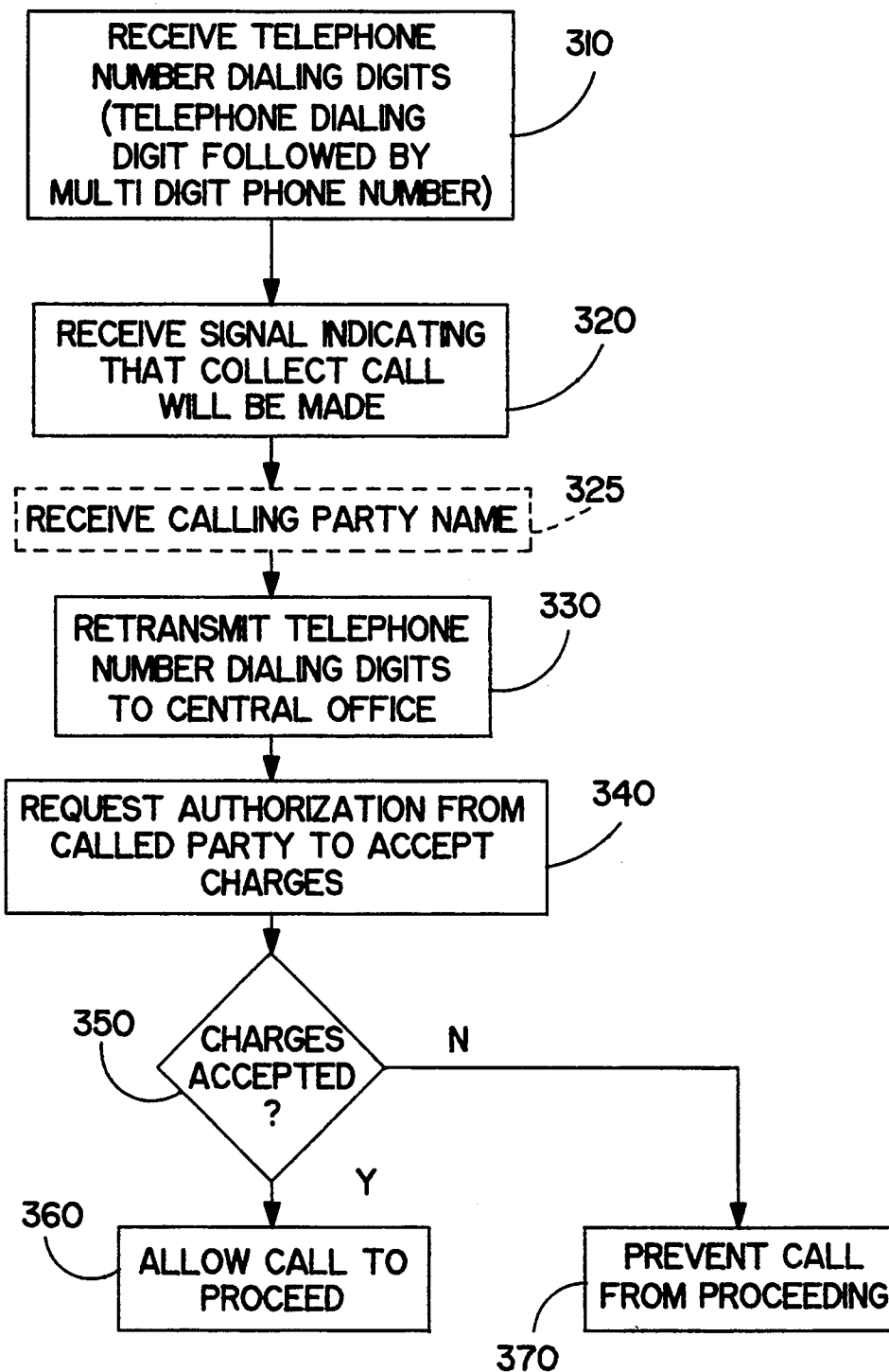


FIG. 3

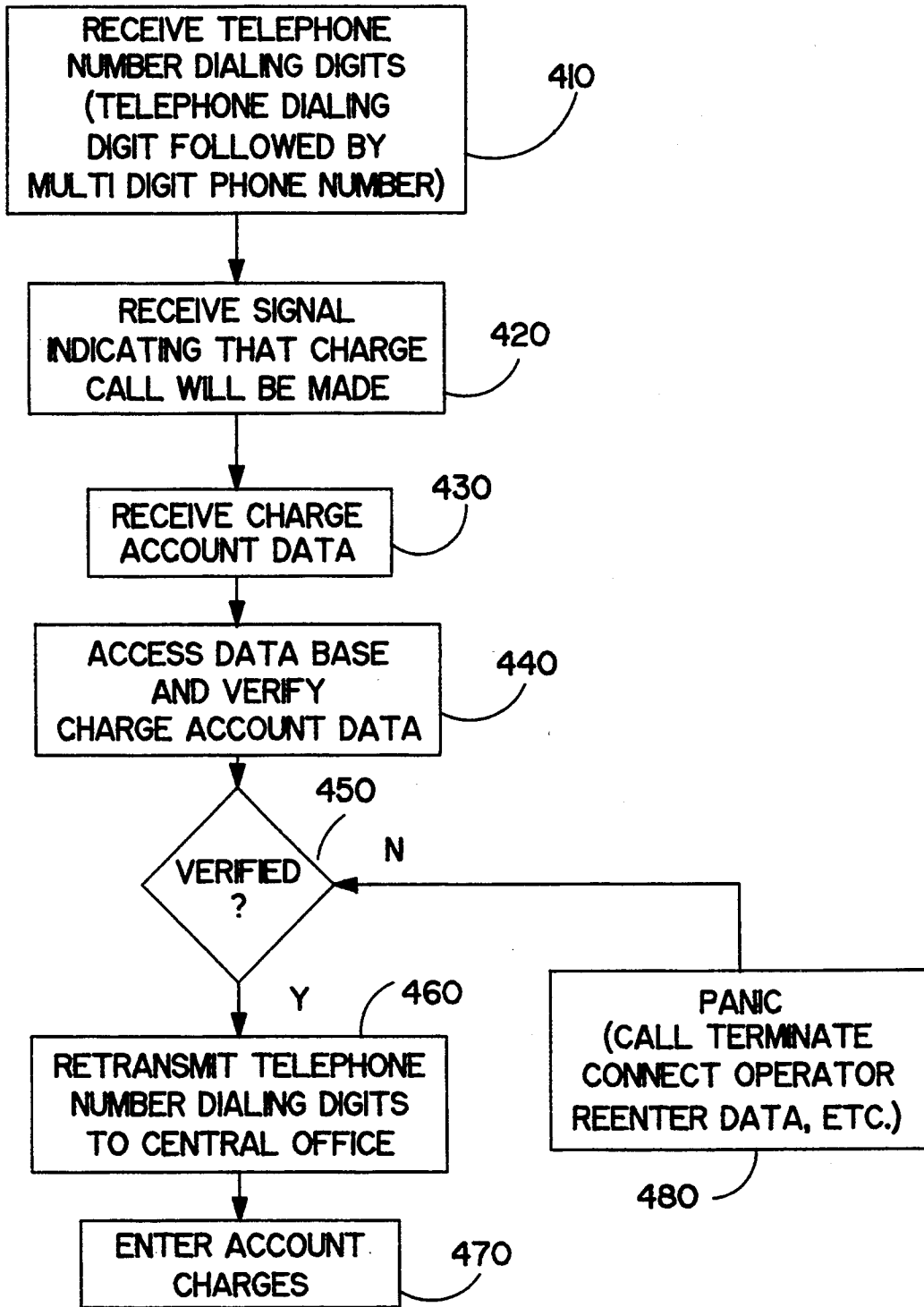


FIG. 4

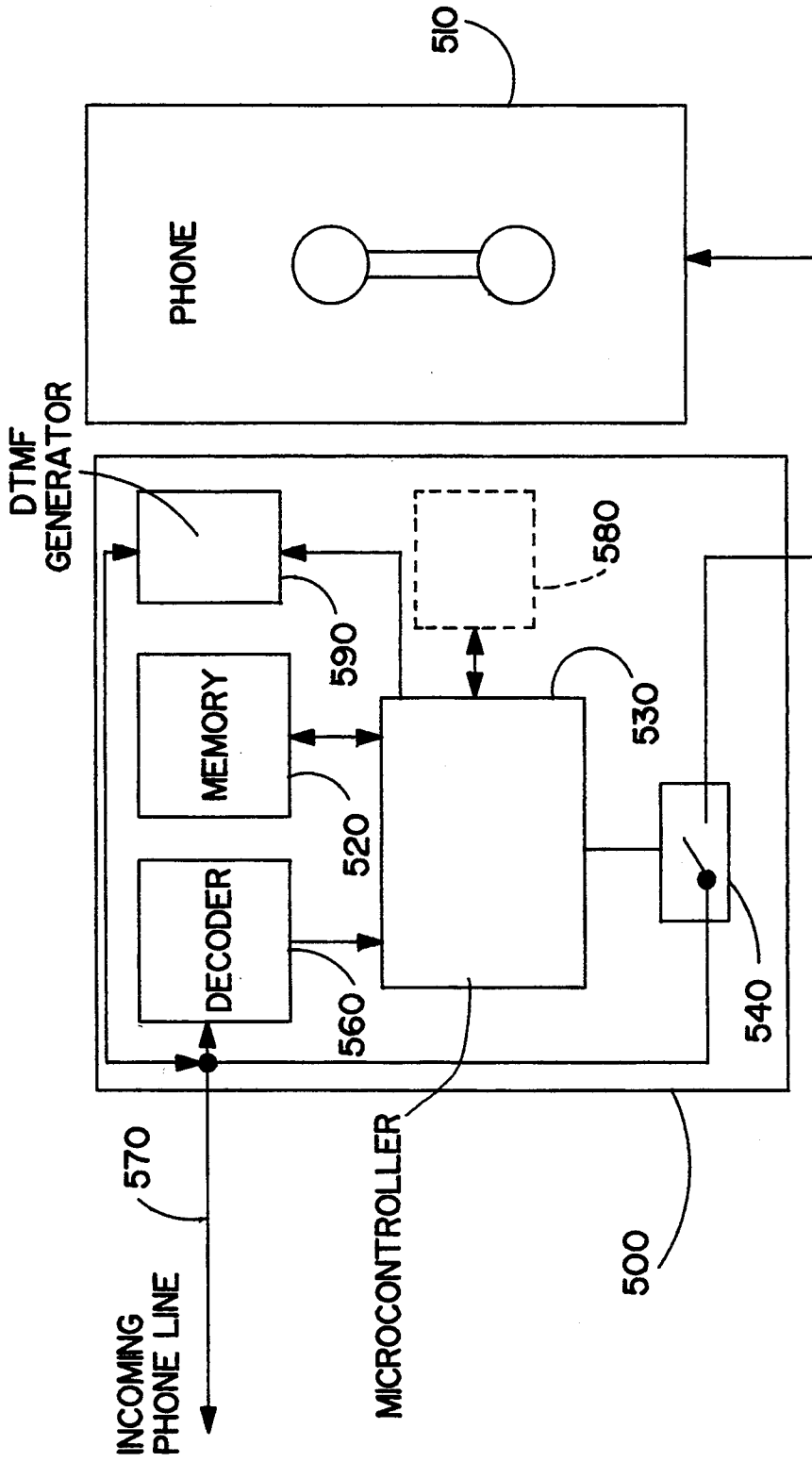


FIG. 5

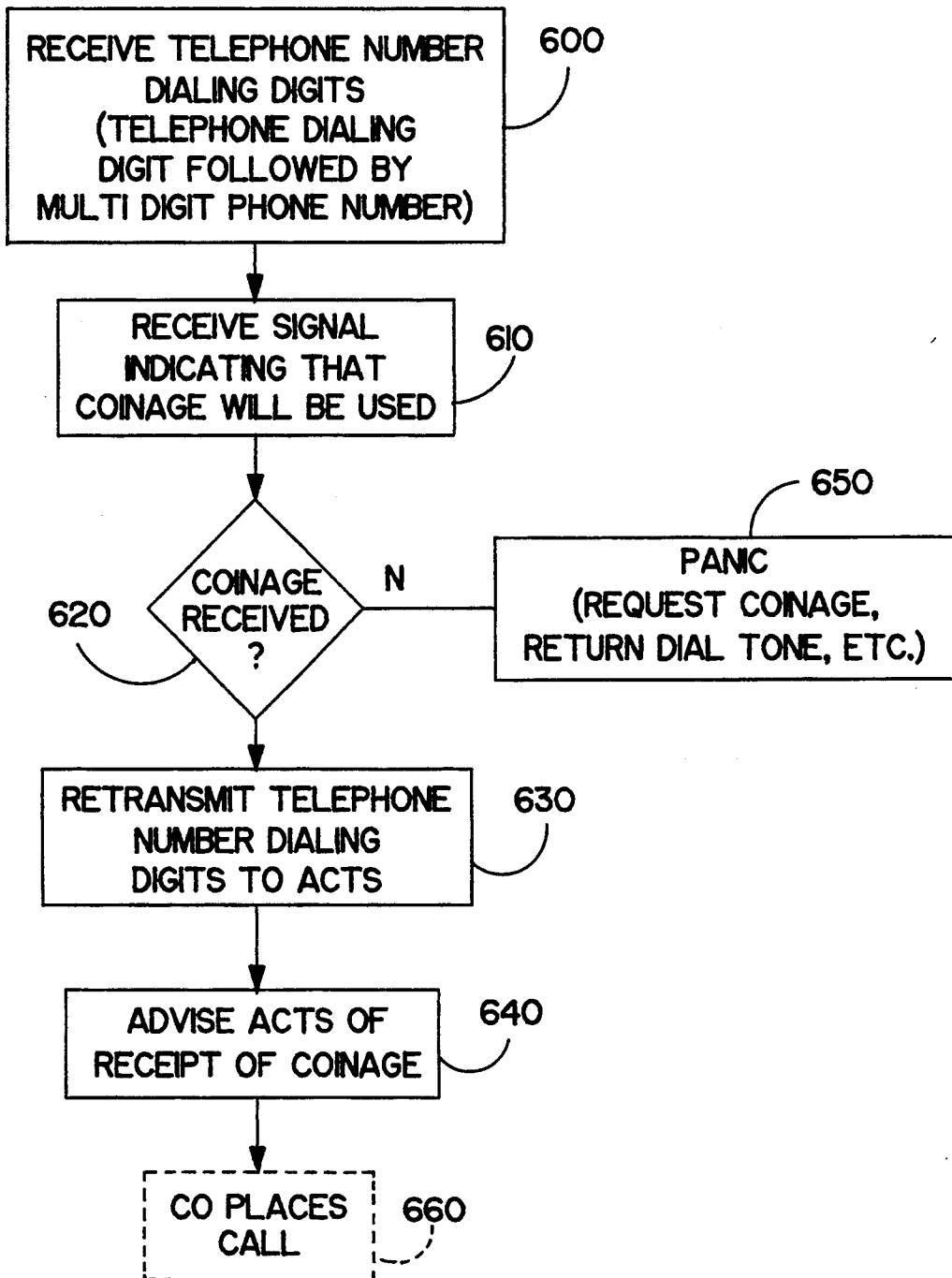


FIG. 6A

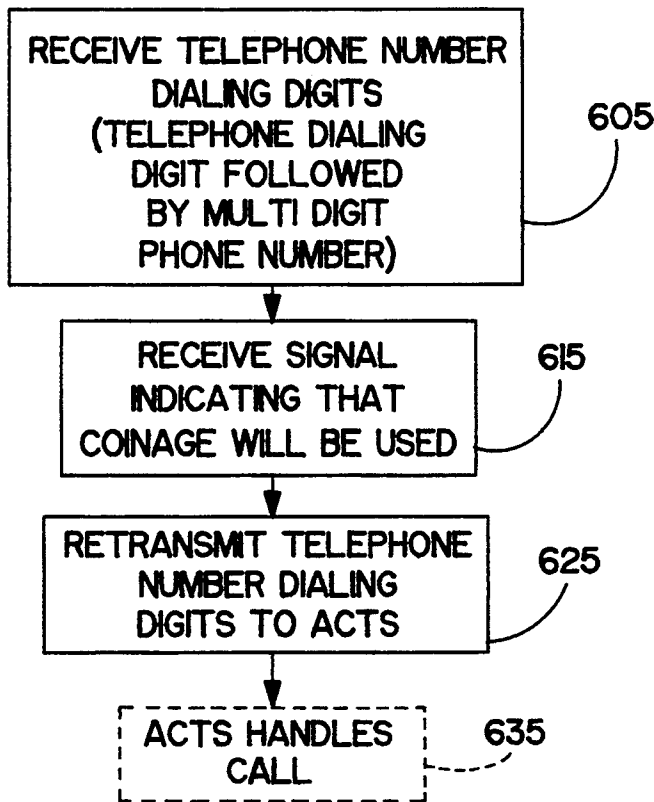


FIG. 6B

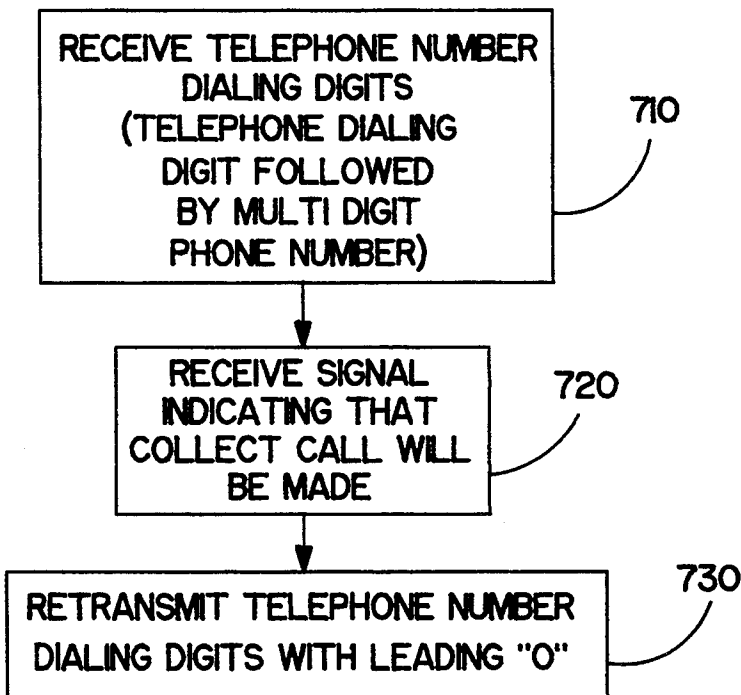


FIG. 7

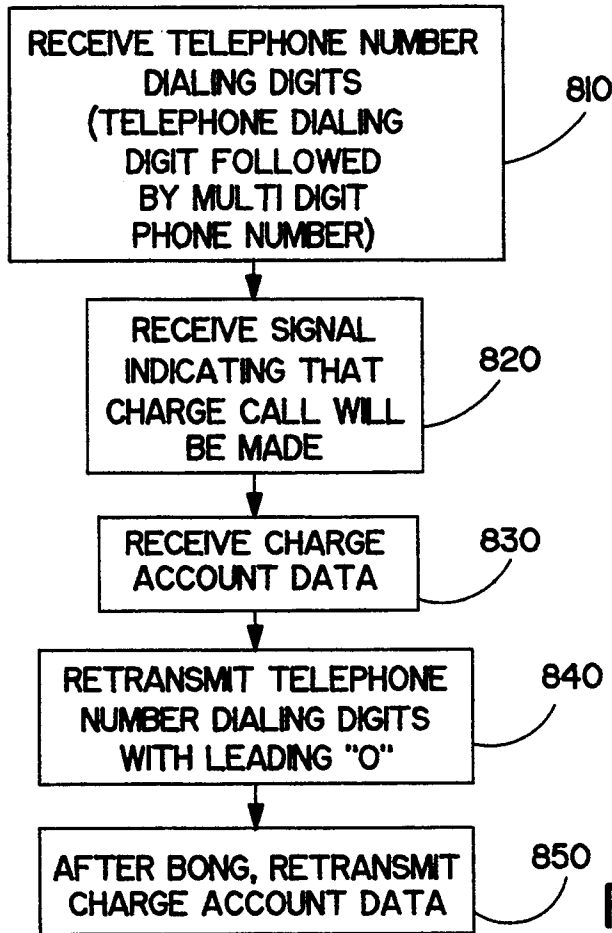


FIG. 8A

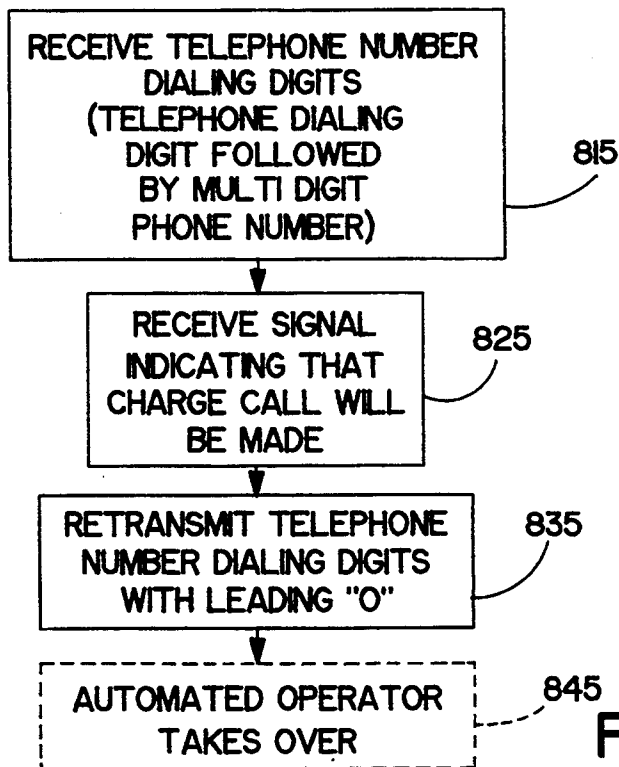


FIG. 8B

TELECOMMUNICATIONS DEVICE WITH SIMPLIFIED CALLING PROCEDURES

FIELD OF THE INVENTION

The present invention relates to telecommunication devices and more specifically to the use of telecommunication devices to place a telephone call. In particular, a method and apparatus is disclosed by which the placement of a call from a telecommunications device is simplified.

BACKGROUND OF THE INVENTION

In the present mode for operating the public telephone network, payment for a telephone call may be made through a variety of methods. A telephone call may be paid for by depositing coinage into a telecommunications device. Alternatively, by placing a collect call, a called party agrees to pay the charges associated with the telephone call. When placing a calling card call, a calling party provides an account number to which the cost associated with the telephone call will be charged. Calling card calls may be made, for example, using calling cards, credit cards and debit cards. By obtaining third party billing, a third party agrees to pay the charges associated with a telephone call between a back party and a front party.

Because of the large number of choices by which a telephone call may be paid for, some users of telecommunications devices may be confused as to the proper operation of such devices. Specifically, some such calls are prefixed by dialing digit "1". Other such calls may need to be prefixed by dialing digit "0". In still further situations, the use of a prefix will prevent proper completion of a call. Thus, the user of a telecommunications device may be confused as to the proper operation of the device.

SUMMARY OF THE INVENTION

A method is disclosed for placing a telephone call through a central office from a telecommunications device. A first plurality of signals representing a telephone dialing digit not including "0", followed by a multi-digit phone number, is received. At least one signal which indicates a desired method of making payment for the telephone call is then received. Arrangements are made for payment of the telephone call according to the desired method of payment. The telephone call is then placed by transmitting a second plurality of signals representing the multi-digit phone number to the central office.

BRIEF DESCRIPTION OF THE FIGURES

FIG. 1 is a block diagram of a smart telephone which operates in conjunction with an exemplary embodiment of the present invention.

FIG. 2 is a flow chart diagram which illustrates the use of coinage in conjunction with an exemplary embodiment of the present invention.

FIG. 3 is a flow chart diagram which illustrates the placement of a collect call in conjunction with an exemplary embodiment of the present invention.

FIG. 4 is a flow chart diagram which illustrates the use of a calling card in conjunction with an exemplary embodiment of the present invention.

FIG. 5 is a block diagram of a standard "dumb" pay telephone and an external processing system which

operates in accordance with a further exemplary embodiment of the present invention.

FIGS. 6A and 6B are flow chart diagrams which illustrate the use of coinage to place a call in accordance with further exemplary embodiments of the present invention.

FIG. 7 is a flow chart diagram which illustrates the placement of a collect call in conjunction with a further exemplary embodiment of the present invention.

FIGS. 8A and 8B are flow chart diagrams which illustrate the placement of a calling card call in conjunction with further exemplary embodiments of the present invention.

DETAILED DESCRIPTION

A standard "smart" telephone which operates in conjunction with an exemplary embodiment of the present invention is illustrated in FIG. 1. As shown in FIG. 1, a telecommunications device 100 (e.g. AT&T Public Phone 2000) is coupled to telecommunication lines 170 through telecommunication interface and tone generation circuitry 160. Item 160 may include, for example, semiconductor device TP 5088 (manufactured by International Semiconductor Corporation). Furthermore, the telecommunications interface may be implemented using circuit configurations which are well known to one skilled in the art of designing telecommunications systems.

Telecommunication line 170 may be used for a variety of different functions, for example, for interfacing to any type of commercial telephone network. Alternatively, telecommunications line 170 may be used for interfacing to any type of private network including, but not limited to, government or corporate owned networks. Furthermore, telecommunications line 170 may be used for interfacing to a limited access type network, for example, a telecommunications line which has been specifically identified by a central office (or an analogous switch) for dedicated use (e.g. pay telephone signalling protocols). Furthermore, telecommunications line 170 may be coupled to a variety of telephone networks (e.g. a cellular network). Thus, the present invention may also be used for portable (including cellular) and mass transit applications.

Switch 150 is optionally located between telecommunication interface and tone generation circuitry 160 and telecommunication lines 170. By applying an appropriate control signal to switch 150, communications between telecommunications device 100 and telecommunications lines 170 can be effectively stopped.

The control signal which is received by switch 150 originates from microprocessor 130. In an exemplary embodiment of the present invention, microprocessor 130 may be a device such as a Z80 semiconductor device available from Zilog Corporation, a 6800 semiconductor device available from Motorola Corporation, etc. Microprocessor 130 is coupled to program memory 140 in which appropriate routines for use by microprocessor 130 are stored. Exemplary programs for controlling microprocessor 130 are described below with reference to FIGS. 2, 3 and 4.

As shown in FIG. 1, input device 110 may be used for entering a plurality of digits into telecommunications device 100. Input device 110 is coupled to decoder 120. In an exemplary embodiment of the present invention, decoder 120 may be a semiconductor device 74C923 manufactured by National Semiconductor Corporation. Each digit which is entered using input device 110 is

detected by decoder 120. Decoder 120 transmits this information to microprocessor 130. Microprocessor 130 then transmits appropriate signals to telecommunications interface and tone generation 160.

Microprocessor 130 is also coupled to user interface 190. User interface 190 provides instructions to the user of telecommunications device 100. These instructions may be provided to the user by display or through phone handset 180. However, the use of user interface 190 is optional. As an alternative, instructions may simply be printed on or near the telecommunications device.

User interface 190 may also be optionally used to receive information from the user of telecommunications device 100. For example, user interface 190 may include a plurality of switches for receiving information. Alternately, user interface 190 may be optionally coupled to handset 180 and include voice recognition circuitry for receiving voice messages from a user of telecommunications device 100.

A user enters a plurality of numbers using input device 110. Based on the particular digit sequence which is entered, microprocessor 130 directs telecommunications interface and tone generation 160 to produce appropriate DTMF tones. Assuming switch 150 is in the closed position, these tones are transmitted to telecommunications lines 170.

Furthermore, in an exemplary embodiment of the present invention, numbers (or the symbols # and *) are entered using a telephone keypad. However, it is contemplated that alternative methods for entering numbers may be used in order to produce appropriate tones from telecommunication interface and tone generation circuitry 160. For example, a desired number sequence may be entered using a traditional rotary device (not shown). Alternately, a digit sequence may be stored in an information medium (not shown) (e.g. a credit card magnetic stripe, a smart card, etc.). The telecommunications device may include a reader (not shown) which is capable of reading the digit sequence (e.g. from the magnetic medium, the smart cards etc.). Alternately, a digit sequence may be spoken by the user and then converted into appropriate electronic signals by voice recognition circuitry included in user interface 190. Thus, it is understood that the digit sequence may be entered into telecommunications device 100 in a variety of ways.

Operation of an exemplary embodiment of the present invention is shown by the flow chart diagram which is illustrated in FIG. 2. The exemplary embodiment of the present invention which is illustrated in FIG. 2 may be used in conjunction with a smart telephone as illustrated, for example, by FIG. 1.

FIG. 2 illustrates exemplary operation of the telecommunications device shown in FIG. 1 when coinage is used to complete a telephone call. At step 210, telephone number dialing digits are received by microprocessor 130. These dialing digits may be received by microprocessor 130 in a variety of ways such as, for example, by depressing appropriate keys on input device 110, by sliding a magnetic card through a magnetic card reader (not shown), or by reciting the digits into a microphone which is coupled to appropriate voice recognition circuitry. At step 220, a generated signal is received which indicates that coinage will be used. This signal may be generated, for example, by depressing an appropriate pushbutton on input device 110, or on user interface 190. Alternatively, the signal may be gener-

ated by appropriate voice recognition circuitry which is optionally included in user interface 190. At step 230, adequate payment to complete the call is requested and received. The request for payment can be accomplished by printed instructions, visual instructions which appear on a display which is optionally included in user interface 190, or a message which is transmitted to a speaker within, for example, telephone handset 180. Adequate payment is received when the user inserts an appropriate amount of coinage to complete the call into a designated slot in telecommunications device 100. After appropriate mechanical and electrical systems (not shown) within telecommunications device 100 have determined that payment has been received by telecommunications device 100, then, at step 240, the telephone number dialing digits are retransmitted by microprocessor 130 to the central office (or an analogous switch). The central office may then assist in the completion of the telephone call.

A further exemplary embodiment of the present invention is illustrated by the flow chart shown in FIG. 3. The exemplary embodiment of the present invention illustrated in FIG. 3 may also be used in conjunction with the smart telephone illustrated by FIG. 1. FIG. 3 illustrates exemplary operation of the telecommunications device shown in FIG. 1 when a collect call is made. At step 310, the telephone number dialing digits are received by microprocessor 130. These dialing digits may be received in the manner set forth above with respect to FIG. 2. At step 320, a generated signal is received indicating that a collect call will be made. This signal may also be generated in a manner set forth above. At step 325, the name of the calling party is received by telecommunications device 100. This is an optional step. Again, this information can be received in a variety of ways.

At step 330, the telephone number dialing digits are retransmitted by microprocessor 130 to the central office (or an analogous switch). At step 340, authorization from the called party is requested to accept the charges. This request may be made by a voice synthesizer (not shown) which may be included in telecommunications device 100. At step 350, if the charges have been accepted (e.g. by a tone decoder receiving a tone or a voice recognizer receiving a predetermined response), then, at step 360, the call is allowed to proceed. Otherwise, at step 370, the call is terminated.

A further exemplary embodiment of the present invention is illustrated by FIG. 4. The exemplary embodiment of the present invention illustrated in FIG. 4 may be used in conjunction with a smart telephone as illustrated, for example, by FIG. 1. FIG. 4 illustrates exemplary operation of the telecommunications device shown in FIG. 1 when a charge card is used to complete a telephone call. Charge cards include, but are not limited to, credit cards, calling cards or debit cards. At step 410, telephone number dialing digits are received by microprocessor 130. Again, this may be accomplished in the manner set forth at step 210 of FIG. 2. At step 420, a generated signal is received indicating that a charge call will be made. Again, this signal can be generated in a manner similar to the manner in which signals are generated at step 220 of FIG. 2. At step 430, the charge account data is received using any of the data acquisition methods previously described. At step 440, a data base is accessed to verify the validity of the charge account data.

A database may be accessed by placing a separate telephone call to an appropriate data base. Alternatively, it is contemplated that the data base may be stored in the telecommunications device or at a remote site which is easily accessed by the telecommunications device without the need for placing a further telephone call. At step 450, if the charge account data has been verified, then, at step 460, the telephone number dialing digits are retransmitted to the central office (or an analogous switch). At step 470, the cost of the call is applied to the appropriate charge account. Again, this may be accomplished by placing a telephone call to an appropriate data base or by storing the information in the telecommunications device for later retrieval. At step 450, if the charge account data has not been verified, then, at step 480, a panic mode is entered. This panic mode may handle the inability to verify the charge account data in several ways. For example, the call may simply be terminated. Alternatively, the user may be requested to re-enter the charge account data information. The user may also be automatically connected, or given the option to be connected to a live operator for assistance in completing the call.

A further exemplary embodiment of the present invention is illustrated by FIG. 5. In FIG. 5, telecommunications device 510 is a standard "dumb" telecommunications device (e.g. without a microprocessor) which is connected to telecommunication lines 570 via interface unit 500. An exemplary "dumb" telecommunications device is AT&T Model 102 public telephone. As in the exemplary embodiment of the present invention which is illustrated by FIG. 1, telecommunications line 570 may have a variety of different functions.

The exemplary embodiment which is illustrated by FIG. 5 includes microcontroller 530 which receives instructions from memory 520. Decoder 560 receives a plurality of telephone numbers which are provided by telecommunications device 510. The telephone number sequence is converted to electrical signals which are transmitted to microcontroller 530. User interface 580 is optionally coupled to microcontroller 530. User interface 580 operates in a manner similar to that of user interface 190 of FIG. 1. DTMF generator 590 is also shown. DTMF generator 590 is capable of transmitting DTMF tones to phone line 570 responsive to signalling received from microcontroller 530. Switch 540 may be opened and then closed by microcontroller 530 in order to return dial tone to telecommunications 510.

Operation of a further exemplary embodiment of the present invention is illustrated by the flow chart diagram which is shown in FIG. 6A. The exemplary embodiment of the present invention which is illustrated in FIG. 6A may be used in conjunction with the "dumb" telephone and external processor 500 as illustrated, for example, by FIG. 5.

FIG. 6A illustrates exemplary operation of the "dumb" telephone and telecommunications device shown in FIG. 5 when coinage is used to complete a telephone call. At step 600, telephone number dialing digits which have been entered into telecommunications device 510 are received by external processor 500. At step 610, a signal is received by external processor 500 indicating that coinage will be used. This signal may be transmitted, for example, from telecommunications device 510 or user interface 580. If, at step 620, appropriate mechanical and electrical systems (not shown) within telecommunications device 510 determine that coinage has been received, then, telecommunications

device 510 transmits appropriate signals to external processor 500 indicating the receipt of coinage. Based upon these signals, if external processor 500 determines that sufficient coinage has been received in order to complete the call, then, at step 630, external processor 500 transmits the previously received telephone number dialing digits to the automatic coin telephone service (ACTS). At step 640, ACTS is advised of the receipt of coinage. Then, at step 660, the central office (or an analogous switch) allows the call to proceed. If, at step 620, coinage was not received, then, at step 650, external processor 500 enters a panic mode. In this panic mode, external processor 500 may take one of several courses of action. For example, processor 500 may request entry of appropriate coinage. Alternatively, processor 500 may simply return dial tone before ceasing execution.

An alternative manner for placing a phone call through the use of coinage is illustrated by the flow chart diagram which is shown in FIG. 6B. At step 605, telephone number dialing digits which have been entered into telecommunications device 510 are received by external processor 500. At step 615, a signal is received by external processor 500 indicating that coinage will be used. At step 625, the telephone number dialing digits are retransmitted to ACTS. Finally, at step 635, ACTS is accessed to assist in further handling of the call.

Operation of a further exemplary embodiment of the present invention is illustrated by the flow chart diagram which is shown in FIG. 7. The exemplary embodiment of the present invention which is illustrated by FIG. 7 may be used in conjunction with the "dumb" telephone and external processor 500 as illustrated, for example, by FIG. 5. FIG. 7 illustrates exemplary operation of the "dumb" telephone and telecommunications device shown in FIG. 5 when a telephone call is placed collect. At step 710, telephone number dialing digits which have been entered into telecommunications device 510 are received by external processor 500. At step 720, a signal is received by external processor 500 indicating that a collect call is being made. This signal may be transmitted, for example, from telecommunications device 510 or user interface 580. At step 730, the telephone number dialing digits are transmitted by external processor 500 to the central office (or an analogous switch). However, the retransmitted telephone number dialing digits are preceded by a dialing signal which indicates that a collect call is being made. Presently, the signal is telephone dialing number "0". The central office may then assist in the completion of billing arrangements for the telephone call.

Operation of a further exemplary embodiment of the present invention is illustrated by the flow chart which is shown in FIG. 8A. The exemplary embodiment of the present invention which is illustrated by FIG. 8A may be used in conjunction with the "dumb" telephone and external processor 500 as illustrated, for example, by FIG. 5. FIG. 8A illustrates exemplary operation of the "dumb" telephone and telecommunications device shown in FIG. 5 when a charge card is used to complete a telephone call. At step 810, telephone number dialing digits which have been entered into telecommunications device 510 are received by external processor 500. At step 820, a signal is received by external processor 500 indicating that a charge call is being made. This signal may be transmitted, for example, from telecommunications device 510 or user interface 580. At step

830, previously described data acquisition methods are used to provide charge account data to external processor 500. Charge account data comprises an account number to which the cost of the call will be billed. Exemplary charge accounts may be accessed using calling cards, charge cards, debit cards, etc. At step 840, the telephone number dialing digits are transmitted by external processor 500 to the central office (or an analogous switch). When these digits are transmitted, they are preceded by a signal which indicates that a charge call is being made. Presently, the signal in use is the telephone dialing digit "0". At step 850, the charge account data is transmitted by external processor 500 to phone line 570. The central office subsequently receives this information and bills the appropriate account.

In FIG. 8B, a flow chart diagram which illustrates a further exemplary embodiment of the present invention is shown. The exemplary embodiment of the present invention which is illustrated by FIG. 8B may be used in conjunction with the "dumb" telephone and external processor 500 as illustrated, for example, by FIG. 5. FIG. 8B illustrates exemplary operation of the "dumb" telephone and telecommunications device shown in FIG. 5 when a charge card is used to complete a telephone call. At step 815, telephone number dialing digits which have been entered into telecommunications device 510 are received by external processor 500. At step 825, external processor 500 receives a signal indicating that a charge call is being made. This signal may be transmitted, for example, from telecommunications device 510 or user interface 580. At step 835, external processor 500 transmits the telephone number dialing digits to the central office (or an analogous switch). These dialing digits are preceded by a signal which indicates that a charge call is being made. Presently, dialing digit "0" is used to indicate that a charge call is being made. After transmission of the telephone number dialing digits has been completed, at step 845, an automated operator situated, for example, at the central office, intervenes to provide for payment, arrangements through the use of the charge account. Thus, the central office participates in completing the call.

With respect to the exemplary embodiments set forth above, it is understood that the invention can be practiced over a normal pay phone channel or communications channel. Thus, it is not necessary to use an ISDN channel.

The methods illustrated by FIGS. 2, 3 and 4 may be implementable (with appropriate adaptation) with the system illustrated by FIG. 5. Also, the methods illustrated by FIGS. 6A, 6B, 7, 8A and 8B may be implementable (with appropriate adaptation) with the system, illustrated by FIG. 1. Several of the methods previously disclosed which are particularly suitable for a "smart" or a "non-coin" telephone line (e.g. a COPT line or a PAL line) may be implementable (with appropriate adaptation) for a "coin" telephone line. Furthermore, several of the methods previously disclosed which are particularly suitable for a "coin" telephone line (i.e. which provide answer supervision) may be implementable (with appropriate adaptation) for a "smart" or a "non-coin" telephone line. One skilled in the art could readily implement the necessary adaptation.

While most telephone numbers are presently entered using a three digit area code (when needed), a three digit exchange and a four digit number within the exchanger future expansion of the North American dialing plan may require a different number of telephone

dialing digits to be entered in order for a telephone call to be completed. Thus, the number of telephone number dialing digits which are entered by a user in order to complete a call may vary from the number presently required.

In addition, the present invention provides for telephone numbers to be prefixed with a telephone dialing digit other than "0" when initially entered by the user into the telecommunications device. In an exemplary embodiment of the present invention, telephone number dialing digit "1" is entered prior to entry of the remaining seven or ten telephone number dialing digits. However, it is understood that other telephone number dialing digits may be entered. In a further exemplary embodiment of the present invention, all telephone calls are prefixed by a common number regardless of the type of call being made.

Furthermore, the transmission of telephone number dialing digit "0" followed by the telephone number currently indicates to the central office that the call is being paid for through a method other than coinage. It is understood that some future signals other than the transmission of telephone number dialing digit "0", may be used.

While the invention has been described in terms of an exemplary embodiment, it is contemplated that it may be practiced as outlined above with modifications within the spirit and scope of the appended claims.

What is claimed:

1. A method for placing a telephone call through a central office from a telecommunications device according to a desired method of making payment, said method comprising the steps of:

receiving a first plurality of signals which represent a telephone dialing digit not including "0" followed by a multi-digit phone number, said telephone dialing digit being independent of the desired method of making payment;

receiving at least one further signal which indicates said desired method of making payment for said telephone call after said multi-digit phone number has been received;

providing for payment of said telephone call according to said desired method of making payment; and placing said telephone call by transmitting a plurality of Dual Tone Multiple Frequency signals representing said multi-digit phone number to said central office.

2. A method for placing a telephone call through a central office from a telecommunications device according to claim 1, wherein said at least one further signal indicates that coinage will be used to pay for said telephone call.

3. A method for placing a telephone call through a central office from a telecommunications device according to claim 1, wherein said telephone call is placed between a calling party and a called party, and wherein the step of providing for payment of said telephone call according to said desired method of making payment includes the steps of:

requesting said called party to accept responsibility for payment of said telephone call;

receiving agreement from said called party to accept responsibility for payment of said telephone call;

allowing said call to proceed if said called party agrees to accept responsibility for payment of said telephone call; and

preventing said call from proceeding if said called party does not agree to accept responsibility for payment of said telephone call.

4. A method for placing a telephone call through a central office from a telecommunications device according to claim 3, wherein the step of providing for payment of said telephone call according to said desired method of making payment includes the further steps of:

- receiving a name which identifies said calling party;
- and
- advising said called party of said name of said back party.

5. A method for placing a telephone call through a central office according to claim 1, wherein the step of providing for payment of said telephone call according to said desired method of making payment includes the steps of:

- receiving charge account data, said charge account data corresponding to a charge account to which said telephone call is to be billed;
- performing a validity verification of said charge account data;
- allowing said telephone call to be placed according to claim 1 only if said charge account data is determined to be valid.

6. A method for placing a telephone call through a central office from a telecommunications device according to a desired method of making payment, said method comprising the steps of:

- receiving a first plurality of signals which represents a telephone dialing digit not including "0" followed by a multi-digit phone number, said telephone dialing digit being independent of the desired method of making payment;
- receiving at least one further signal which indicates said desired method of making payment for said telephone call after said multi-digit phone number has been received;

transmitting a plurality of Dual Tone Multiple Frequency signals representing said multi-digit phone number to said central office; allowing said central office to complete payment arrangements for said telephone call.

7. A method for placing a telephone call through a central office from a telecommunications device according to claim 6, wherein said telecommunications device receives coinage before said plurality of Dual Tone Multiple Frequency signals representing said multi-digit phone number are transmitted to said central office.

8. A method for placing a telephone call through a central office from a telecommunications device according to claim 6, wherein said at least one further signal which indicates said desired method of making payment indicates that placement of a collect call is requested.

9. A method for placing a telephone call through a central office from a telecommunications device according to claim 8, wherein said plurality of Dual Tone Multiple Frequency signals transmitted to said central office are preceded by at least one Dual Tone Multiple Frequency signal representing telephone dialing digit "0".

10. A method for placing a telephone call through a central office from a telecommunications device according to claim 6, wherein charge account data is received by said telecommunications device and wherein said received charge account data is re-transmitted by said telecommunications device to said central office after said plurality of Dual Tone Multiple Frequency signals representing said multi-digit phone number is transmitted to said central office.

11. A method of placing a telephone call through a central office from a telecommunications device according to claim 6, wherein charge account data is received by said telecommunications device and said charge account data is transmitted to said central office as said charge account data is received.

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 5,359,643
DATED : October 25, 1994
INVENTOR(S) : John R. Gammino

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 5, line 48, delete between "telecommunications" and "510" insert --device--.

Column 9, Claim 4, line 13, delete "back" and insert --calling--.

Signed and Sealed this
Eighteenth Day of April, 1995



Attest:

BRUCE LEHMAN

Commissioner of Patents and Trademarks

Attesting Officer

Exhibit B

2. Defendants SPRINT COMMUNICATIONS COMPANY L.P., SPRINT SPECTRUM L.P., NEXTEL OPERATIONS, INC and VIRGIN MOBILE USA, L.P. (“Defendants”) were added to this action pursuant to an agreement of the parties and they regularly conduct business in this Judicial District, including a telecommunications business.

3. Joined Defendant Sprint-Nextel Corporation (“Sprint-Nextel”) previously was a defendant in this action and it regularly conducts business in this Judicial District, including a telecommunications business. Joined Defendants Unknown Sprint Subsidiaries are entities related to Sprint Nextel Corporation and upon information and belief have registered office addresses of c/o Corporation Service Company, 200 SW 30th Street, Topeka, KS 66611. Upon information and belief, Unknown Sprint Subsidiaries regularly conduct business in this judicial district, including wireless telecommunications business.

II. Jurisdiction and Venue

4. This Court has personal jurisdiction over the subject matter of this action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338, in that the claims in this action arise under the Patent Act of the United States, 35 U.S.C. § 101 et seq.

5. Venue in the Eastern District of Pennsylvania is proper pursuant to (a) 28 U.S.C. §1391(b) (2) in that a substantial part of the events or omissions giving rise to the claim occurred in this district; and (b) 28 U.S.C. §1400(b) in that this is a civil action for patent infringement and Defendants, Sprint Nextel and Unknown Sprint Subsidiaries have committed acts of patent infringement in this judicial district and have a regular and established place of business in this judicial district.

6. Defendants, Sprint Nextel and Unknown Sprint Subsidiaries regularly conduct business in the Eastern District of Pennsylvania by providing services to its customers situated

therein. Defendants, Sprint Nextel and Unknown Sprint Subsidiaries sell or lease wireless phones or sell telephone calling cards and service those cards in the Eastern District of Pennsylvania. It is these services and products, provided by Defendants, Sprint Nextel and Unknown Sprint Subsidiaries, which serve as the basis for the patent infringement claims against Defendants, Sprint Nextel and Unknown Sprint Subsidiaries.

7. Sprint Nextel's public information indicates that Defendants, Sprint Nextel and Unknown Sprint Subsidiaries infringe the patents. Mr. Gammino needs the aid of discovery to determine which entities are infringing. After a search on public documents of Sprint Nextel press releases, Sprint Nextel Website and Sprint Nextel SEC filings, Mr. Gammino has not been able to identify all the entities related to Sprint Nextel that have infringed Mr. Gammino's patents and are jointly and severally liable with Sprint. Pre-trial discovery is needed for Mr. Gammino to identify the entities that are infringing with Sprint-Nextel.

III. Invention

8. Mr. Gammino owns patents that cover methods and apparatus for intercepting potentially fraudulent telephone calls. Prior to the invention by Mr. Gammino, telephone companies in this country had a multi-billion dollar crisis, caused by uncontrollable, uncollectible and fraudulent international telephone calls. Major telecommunications companies had been unable to solve the problem which involved both technical and regulatory challenges. Mr. Gammino invented a solution that distinguishes international calls from other types of calls. The solution also distinguishes between different types of international calls and can prevent certain international calls while allowing others. The solution covers apparatus and methods which selectively prevent international calls and also provides methods which selectively enable the

establishment of a call by transmitting dialing signals for international calls to the communications pathway (the "Invention").

9. The Invention provides telecommunications companies with a tool to selectively block numerous types of international calls based on predetermined digits occurring in certain locations in the dialing sequence. The Invention also provides the tool for transmitting international calls to the communications pathway if predetermined digits do not appear in certain locations in the dialing sequence. The Invention eradicated billions of dollars in uncollectable charges and losses from fraud from the telecommunications networks in the United States.

10. Mr. Gammino filed for patent protection for the Invention. U.S. Patent No. 5,809,125 (the " '125 patent") was issued to Mr. Gammino on September 15, 1998, and U.S. Patent No. 5,812,650 (the " '650 patent") was issued to Mr. Gammino on September 22, 1998. A copy of the '125 patent is attached hereto, made a part hereof, and marked as Exhibit "A," at page 1 of attached exhibits. A copy of the '650 patent is attached hereto, made a part hereof, and marked as Exhibit "B," at p. 20.

11. Mr. Gammino's inventions have saved the telecommunication industry a fortune in what would otherwise be fraudulent or uncollectible calls. It also allows the industry to generate many millions of dollars in revenue from international service offerings. Despite these benefits Mr. Gammino's attempts to enforce his rights have been frustrated. It took him 6 years to obtain his patents, when the Board of Patent Appeals overruled all of the objections of the patent examiner. After the patents were issued only one telecommunication company paid him royalties. Thereafter, the United States District Court for the Northern District of Texas, in a case against one defendant dealing with a very narrow issue, ruled that some but not all of the claims of Mr. Gammino's patents were invalid. The ruling was very limited based on just one item of prior art

that only covers a small portion of all his claims. Nonetheless, while Mr. Gammino is free to enforce lawsuits such as this case, the decision of the Texas Court delayed Mr. Gammino's attempted enforcement of his rights and his ability to address patent infringement issues with the industry that uses his invention every day.

12. The Patents relate to methods and apparatus for selectively preventing potentially fraudulent and uncollectible international telephone calls and for selectively transmitting dialing signals for international calls to the communications pathway.

IV. Summary of Claims Enforced in this Action

13. A telephone call is initiated by dialing a sequence of signals. Each dialing sequence can be made up of a "plurality" or "group" of dialing signals. A plurality or group is a set of two or more signals. A method of the Invention determines when to transmit dialing signals based on the signals dialed in certain pluralities or groups of signals. Another method determines when to selectively prevent a telephone call based on the signals dialed in certain pluralities or groups of signals.

14. International calls can be placed by direct dialing from many types of phones, including: wireless, residence, business, hotel, hospital, pay telephone and other telephones. As an example, one way to place an international call to London, England is to dial 011 44 207 499 9000. The "011" signifies to the network that a direct dialed call is being placed, causing the international call to be billed to the line from which the call was initiated. Another example is 01 44 207 499 9000 which could also be dialed to place a call to London, England. The "01" as the first plurality tells the network to bill the call to a calling card or as a collect call and not to the line from which it was dialed.

15. If a caller wants to place a call over a carrier's network other than the carrier presubscribed to the phone, an access code is used to tell the network to route the call to that different carrier. For example, if a wireless, or other phone, is presubscribed to Sprint, but the caller wants to place the call over AT&T's network, the caller can dial 101 0288 011 44 207 499 9000. The "101" in the first plurality makes the call an "access code call" to be routed to a different carrier than the one presubscribed to the phone. The "0288" in the second plurality results in the call being routed to AT&T (0288 is AT&T's Carrier Identification Code). The "011" in the third plurality in this case results in an international call that will be billed to the line from which it is dialed. If the caller dialed 011 0288 01 44 207 499 9000, the "01" in the third plurality tells the network to bill the call to a calling card or collect and not to the line from which it was dialed.

16. The first plurality of dialing sequences used to make access code calls include but are not limited to 101, 950, and 800. The third plurality of dialing sequences used to make international calls include 01, 011, 506, 809 and the more than forty (40) other international area codes in the North American Numbering Plan. There are many permutations of dialed signals in the first plurality of dialing signals and third plurality of dialing signals that allow users of the Invention to prevent a selected group of calls or allow calls by transmitting dialing signals to the communications pathway.

17. The following are exemplary of dialed signals in the first plurality of signals and dialed signals in the third plurality of signals:

<u>First</u>	<u>Third</u>
101- 0222-	011- 41-22-730-5111
950- 1022-	0-506- 444-4402

800- 877-8000- 01- 41-21-619-0670

800- 225-5288- 1- 809- 221-2171

COUNT I

PATENT INFRINGEMENT OF CLAIMS 8-14, 22-28, 35-41 OF PATENT NO. 5,809,125

18. The averments set forth in paragraphs 1 through 17 above are incorporated herein by reference.

19. The claims enforced in Counts I and II are Claims 8-14, 22-28 and 35-41 of the '125 patent and will be referred to as "Claims 8-14, 22-28 and 35-41."

20. There are methods in Claims 8-14, 22-28 and 35-41 for selectively enabling establishment of a telephone call by transmitting dialing sequences to the communications pathway for certain international calls.

21. Claims 8-14, 22-28 and 35-41 include claims with a selective method to at least partially prevent the use of a telecommunication device. Examples of elements of Claims 8-14, 22-28, 35-41 are listed on Exhibit D, at p. 58.

A. Infringement

22. Defendants are in the telecommunications business.

23. Defendants infringe one or more of Claims 8-14, 22-28, 35-41 by using methods and apparatus in Claims 8-14, 22-28, 35-41 in its payphones, network switches, PBX lines, Centrex lines, Business Exchange lines, cell phones and cellular phone networking, including its

Mobile Telephone Switching Offices, network switches, other telecommunication switches and other telecommunications devices. Defendants' use of the Invention is massive.

24. Defendants use the method of selectively enabling an establishment of telephone calls by transmitting dialing signals used for international calling and uses the method of selectively preventing international calls.

25. As an example of infringement, Defendants use telecommunications apparatus for selectively enabling establishment of telephone calls by transmitting dialing sequences to the communications pathway if the third plurality of dialing signals are determined to not be predetermined signals which are used to accomplish international dialing and if the first plurality of dialing signals are determined to not be further predetermined signals. (Claim 10 which includes elements from Claim 8).

26. Defendants also infringe by at least partially preventing use of a telecommunications device when the third group of signal values is in a location within plurality of signal values which is used to accomplish international dialing, is found to be identical to plurality of first test signal value sequences, and if the first group of signal values is found to be identical to the plurality of second test signal value sequences. (Claim 38 which includes elements from Claim 35).

27. Plaintiff's tests of telephone calls confirm that Defendants are infringing one or more of Claims 8-14, 22-28 and 35-41.

28. Defendants' infringement of one or more of Claims 8-14, 22-28 and 35-41 is continuing across the United States. Defendants' use of the Invention dramatically increases Defendants' control over the international calls and avoids uncollectible and fraudulent calls. Defendants, with increased control over international calls, increase their base of customers,

markets its international services to the entire market place, and increases sales, revenues and income. In addition, Defendants receives millions of dollars in fees by selling calling plans, which allow customers to make international calls for an additional monthly fee and usage charges per call. Defendant makes its sales with benefit of protection from the apparatus and methods of Claims 8-14, 22-28 and 35-41 without paying Mr. Gammino a royalty.

29. Callers on Defendants' telephones can, by dialing signals, normally elect to use the Defendants' network or a competitor's network. By using one or more of apparatus or methods of Claims 8-14, 22-28 and 35-41, Defendants selectively prevent calls when the caller attempts to elect a competing network, thereby causing the customer to use the Defendants' network. Thus, Defendants' international calling business is not lost to other carriers, avoiding an erosion of international revenue. This generates revenue for Defendants that would otherwise be lost to other carriers or that could be uncollectible due to fraud.

30. As a result of the foregoing conduct, Defendants infringe one or more of Claims 8-14, 22-28, 35-41 and has caused Mr. Gammino damages as a direct and proximate result thereby.

31. Defendants are liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of Defendant's infringement of Claims 8-14, 22-28, 35-41 including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities, market erosion, and other damages.

32-33 [No longer applicable]

B. No Court Has Vacated the Legal Presumption of Validity of Claims in Counts I and II.

34. Mr. Gammino has litigated other patent infringement cases on these patents. In Gammino v. Southwestern Bell Telephone Company, L.P. ("SWB") 512 F. Supp. 2d 626 (N.D. Texas 2007), aff'd 267 Fed. Appx. 949 (Fed. Cir. 2008), cert. denied 129 S. Ct. 346 (2008) ("SWB case"), the Court ruled that asserted claims in that case were invalid on anticipation and held that "items of anticipatory prior art render[ed] the **asserted claims** of his [Gammino] patents invalid." 512 F. Supp. 2d at 629. (Emphasis supplied) The asserted claims were Claims 1, 3-7, 15, 17-21, 29, 31-34, 42-44, 47-49 of the '125 patent and Claims 1-4 of the '650 patent. See, Amended Disclosure of Asserted Claims filed in Gammino v. SWB, identifying asserted claims, attached as Exhibit C, at p. 38. The SWB Court did not consider at all or rule on claims that were unasserted in that case which are Claims 2, 8-14, 16, 22-28, 30, 35-41, 45-46 of the '125 patent. The SWB Court made it clear that it was just deciding on the asserted claims. See, 512 F. Supp. 2d at 629.

35. A finding that asserted claims are invalid, under the law as stated by the Federal Circuit does not render unasserted claims invalid. 800 Adept, Inc. v Murex Securities, Ltd., 539 F. 3d 1354 (Fed. Cir. 2008), cert. denied, 129 S. Ct. 1373 (2008). As such, Claims 8-14, 22-28 and 35-41 pursued in this case are presumed valid.

36. The prior art found in the SWB case is limited in scope and does not contain all of the elements of any of Claims 8-14, 22-28 and 35-41, precluding a finding of invalidity on anticipation. For prior art to invalidate on anticipation the prior art must have ALL the elements of the challenged claim. Schumer vs. Laboratory Computer Systems, 308 F.3d, 1304, 1315 (Fed. Cir. 2002).

The only prior art found by the SWB court is:

[t]he service blocked calls on the basis of the digits in the third plurality- if the digits in the third plurality were 011, then the call was blocked.

SWB Opinion, 512 F. Supp. 2d. at 632 (Emphasis supplied) (the "SWB Prior Art").

37. Since the SWB court made no finding on the validity of Claims 8-14, 22-28 and 35-41, those claims remain presumed valid under the law. Schumer v. Laboratory Computers Systems, 308 F.3d 1304, 1316 (Fed. Cir 2002). In addition, the SWB Prior Art reveals that it does not invalidate Claims 8-14, 22-28 and 35-41 because the SWB Prior Art does not have all of the elements of any of those claims. A listing of elements of Claims 8-14, 22-28 and 35-41 that are **not** contained in the SWB Prior Art is attached as Exhibit D, at p. 91 and incorporated herein. Examples of missing elements are:

a. The SWB Prior Art does not have elements of selectively enabling establishment of a telephone call or means for transmitting said dialing sequence to said communications pathway. Claims 8, 10.

b. The SWB Prior Art does not have elements of means for transmitting dialing sequence to communications pathway based on dialing signals in the first plurality and dialing digits in the third plurality. Claim 10 (with elements of Claim 8).

c. The SWB Prior Art does not have multiple sequences of at least partially preventing operation of telecommunications device if at least two of said plurality of signal values and any one of said respective predetermined digit sequences are found to be identical and if said further predetermined signal value is found to be identical to said further signal value. Claim 22.

d. The SWB Prior Art does not have elements of at least partially preventing use of a telecommunications device based on the first group of signal values and third group of signal values. Claim 38 (with elements of Claim 35).

38. Carlton Tolsdorf, an engineer with 37 years experience and an expert in telecommunication technologies, networks and systems, states that the SWB Prior Art does not have all of the elements of any of the Claims 8-14, 22-28 and 35-41. A copy of Mr. Tolsdorf's Declaration is attached as Exhibit E, at p. 96 and incorporated herein.

C. **The Parties' Agreement that Impacts this Litigation.**

39. Plaintiff, Defendant and other companies in the communications industry entered into an agreement dated May 7, 2007 regarding litigation that could occur between the parties to that agreement ("Litigation Agreement"), a copy of which is attached as Exhibit G, at p. 104. The attached copy of the Litigation Agreement does not have signatures, however, the parties did execute the Litigation Agreement and Plaintiff hereby states that Exhibit G was signed by all parties on the signature lines at the end of the document.

40. The Litigation Agreement provides that Mr. Gammino's litigation against the other parties to the Litigation Agreement, including Defendant, would be dismissed without prejudice and during a tolling period Plaintiff would not sue Defendant and all statutes of limitations and all other rules of law or equity of similar nature were tolled. Exhibit G, Paragraphs 2 and 4, at p. 104.

41. The Litigation Agreement provides that for claims asserted in the prior action, the filing of this action is deemed to relate back to the date of the filing of the prior lawsuit. Exhibit G, Paragraph 5, at p. 104.

42. The Litigation Agreement provides that in an action such as this action all parties shall act in good faith to reach an agreement of a scheduling order to propose to the court "which would include at least 60 days to complete discovery." Exhibit G, Paragraph 6, at p. 104.

43. The Litigation Agreement provides that "if the '125 and '650 patents" are declared invalid that Mr. Gammino will not commence an action against Defendant. Exhibit G, Paragraph 2, at p. 104. The requirement for the prevention of a lawsuit is that **both** the '125 patent and '650 patent must have been declared invalid. Both patents were not declared invalid and thus that requirement was not met. Under basic patent law, validity is determined on a case by case basis

and the unasserted claims in the SWB case, Claims 2, 8-14, 16, 22-28, 30, 35-41, 45-46 of the '125 patent, were not declared invalid. Under the law on case by case evaluation for validity, the '125 patent is valid for the enforcement of valid Claims 2, 8-14, 16, 22-28, 30, 35-41, 45-46 of the '125 patent. In this case there are 26 claims that have not been declared invalid and in fact no decision has ever been rendered on those 26 claims.

44. The Defendants are not parties to the Litigation Agreement and the "not-to-sue" provision states that it applies to the defendants in that case (Exhibit G. Paragraph 2, at p. 104) which did not include the Defendants. The not-to-sue provision gives no protection to the Defendants.

WHEREFORE, Plaintiff John R. Gammino prays that Defendants be adjudged to have infringed one or more Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;

- (a) that Defendants be adjudged to have infringed and induced infringement of one or more of Claims 8-14 22-28, 35-41 of the United States Letters Patent No. 5,809,125;
- (b) that Defendants and respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be immediately, preliminarily and permanently enjoined from infringing Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;
- (c) that Mr. Gammino be awarded damages against Defendants for the infringement of Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;

- (d) that the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;
- (e) that Mr. Gammino be awarded punitive and exemplary damages against Defendants;
- (f) that an assessment be awarded to plaintiff of interest on the damages so computed;
- (g) that the Court award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. §285; and
- (h) that John R. Gammino receives such other and further relief as this Honorable Court shall deem just and proper.

COUNT II

INDUCEMENT TO INFRINGE CLAIMS 8-14, 22-28, 35-41 OF UNITED STATES PATENT NO. 5,809,125

45. The averments set forth in paragraphs 1 through 44 above are incorporated herein by reference.

46. The acts of Defendants constitute an active inducement of its mobile telephone customers, other customers and other entities or persons operating in the telecommunications industry to infringe one or more of Claims 8-14, 22-28, 35-41 and Defendants have caused Mr. Gammino damages as a direct and proximate result thereby. Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the infringement including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities and other damages.

WHEREFORE, Plaintiff John R. Gammino prays:

- (a) that Defendants be adjudged to have infringed and induced infringement of one or more of Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;
- (b) that Defendants and respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be immediately, preliminarily and permanently enjoined from infringing and inducing infringement of Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;
- (c) that Mr. Gammino be awarded damages against Defendants for infringement of and inducement of infringement of Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;
- (d) that the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of Claims 8-14, 22-28, 35-41 of the United States Letters Patent No. 5,809,125;
- (e) that John R. Gammino be awarded punitive and exemplary damages against Defendant and Unknown Sprint Subsidiaries;
- (f) that an assessment be awarded to Plaintiff of interest on the damages so computed;
- (g) that the Court award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. §285; and
- (h) that John R. Gammino receives such other and further relief as this Honorable Court shall deem just and proper.

COUNT III

**PATENT INFRINGEMENT OF CLAIMS 3, 17, 31 OF UNITED STATES
PATENT NO. 5,809,125 AND CLAIMS 2 AND 4 OF UNITED STATES PATENT
NUMBER 5,812,650**

47. The averments in paragraphs 1 through 46 above are incorporated herein by reference.

48. Defendants infringe Claims 3, 17, 31 of the '125 patent and Claims 2 and 4 of the '650 patent and those claims are referred to as "Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent."

49. Claims 3, 17, 31 of '125 patent and 2 and 4 of '650 patent include a selective method to prevent a telephone call and a method to transmit dialing sequences to the communications pathway and to allow calls.

A. Infringement

50. Defendants infringe one or more of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent by using methods and apparatus of those claims in its payphones, network switches, PBX lines, Centrex lines, Business Exchange lines, cell phones and cellular phone networking, including its Mobile Telephone Switching Offices, network switches, other telecommunication switches and other telecommunications devices.

51. Defendants infringe by preventing telephone calls based on the dialing signals in the first plurality and third pluralities of dialing signals by preventing calls with the one or more of the methods in Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent.

52. As an example, Claim 3 prevents establishment of a telephone call if the third plurality of dialing signals are determined to be in a location to accomplish international dialing

and be respective predetermined signals; and if first plurality of dialing signals are determined to be further respective predetermined signals.

53. Plaintiff's tests of telephone calls confirm that Defendants are infringing one or more of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent.

54. Defendants' infringement of one or more of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent is continuing across the United States. Defendant's use of the Invention dramatically increases Defendants' control over the international calls and avoids uncollectible and fraudulent calls. Defendants, with increased control over international calls, increases its base of customers, markets its international services to the entire market place, and increases sales, revenues and income. In addition, Defendants receive millions of dollars in fees by selling calling plans, which allow customers to make international calls for an additional monthly fee and usage charges per call. Defendants make their sales with benefit of protection from the apparatus and methods of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent without paying Mr. Gammino a royalty.

55. Callers on Defendants, telephones can, by dialing signals, normally elect to use the Defendants' network or a competitor's network. By using one or more of apparatus or methods of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent, Defendants selectively prevent calls when the caller attempts to elect a competing network, thereby causing the customer to use the Defendants' network. Thus, Defendants' international calling business is not lost to other carriers, avoiding an erosion of international revenue. This generates revenue for Defendants that would otherwise be lost to other carriers.

56. Defendants infringe one or more of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent and have caused Mr. Gammino damages as a direct and proximate result of the infringement.

57. Defendants are liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of Defendants' infringement of one or more of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent, including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities and other damages.

58-59 [Left vacant -- related to Unknown Sprint Subsidiaries and they have been replaced in this Count by Defendants]

B. The SWB Court's Finding of Invalidity of Claims Without a Finding of Invalidating Prior Art Is Not Binding in this Case.

60. Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent were held invalid in Gammino v. Southwestern Bell Telephone Company, L.P., 512 F. Supp. 2d 626, 632 (N.D. Texas 2007), *aff'd* 267 Fed. Appx. 949 (Fed. Cir. 2008), cert. denied 129 S. Ct. 346 (2008) ("SWB case"), however, that finding does not qualify for a collateral estoppel defense under the patent validity/collateral estoppel law in the United States Supreme Court case of Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 333, 334 (1971). Under Blonder-Tongue, a collateral estoppel defense on the validity of a claim fails if the court rendering the prior decision on validity, "wholly failed to grasp the technical subject matter and issues in suit In the end, decision will necessarily rest on the trial courts' sense of justice and equity." 402 U.S. at 333-334.

61. The SWB court's decision lacks a grasp of the technical subject matter and issues and ignored the requirement that to invalidate a claim, prior art must have all the elements of the challenged claim. The SWB court found claims invalid on anticipation without necessary prior art

that has all the elements of those claims. That finding is contrary to hornbook law. Schumer vs. Laboratory Computer Systems, 308 F.3d, 1304, 1315 (Fed. Cir. 2002).

62. The SWB decision lacks a grasp of patent validity issues as the entire decision does not analyze or discuss Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent and the elements of those claims. The SWB court did not even mention that Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent had elements of blocking based on the first plurality of dialing digits and third plurality of dialing digits. To invalidate those claims the prior art had to have elements that include blocking based on the first plurality and third plurality. The only prior art found by the SWB court does not have the required elements:

[t]he service blocked calls on the basis of the digits in the third plurality- if the digits in the third plurality were A011, then the call was blocked.

SWB Opinion, 512 F. Supp. 2d. at 632 (Emphasis supplied).

63. SWB Prior Art cannot invalidate Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent because the SWB Prior Art does not have the elements of prevent calls based on the first plurality of dialing digits and third plurality of dialing digits which are elements of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent. The prior art blocked based on the third plurality and not on the combination of the first and third plurality.

64. To give collateral estoppel effect to the SWB court's holding of invalidity of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent when the SWB court did not find any invalidating prior art would be contrary to "justice and equity" as stated by the United States Supreme Court in Blonder-Tongue.

65. Plaintiff is an individual who has been struggling since 1992 to attain his patents and to receive fair compensation for his patented invention from large telecommunication

companies. Mr. Gammino has not had his day in court for a decision from a judge or jury on whether the telecommunication companies are infringing his patents. The gigantic international fraud problem has been significantly neutralized, and the billions of dollars in fraud that were headlines prior to his invention are rarely, if ever, mentioned today.

66. Carlton Tolsdorf, an engineer with 37 years experience and an expert in telecommunication technologies, networks and systems, states that the SWB Prior Art does not have all the elements of any of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent. Mr. Tolsdorf's Second Declaration is attached as Exhibit F and incorporated herein.

C. The Parties' Agreement that Impacts this Litigation

67. A summary of some terms of the Litigation Agreement are set forth in Paragraphs 39 to 43 above and are incorporated herein by reference. In short, the Litigation Agreement provides for a dismissal without prejudice of prior litigation between Plaintiff and Defendant, a tolling period of litigation and the running of statutes of limitations, a relation back for the filing of this complaint to the date of the filing of the earlier complaint and good faith efforts to reach an agreement of a scheduling order including at least 60 days to complete discovery. Exhibit G, Paragraph 6, at p. 72.

68. The Litigation Agreement provides that "if the '125 and '650 patents" are declared invalid that Mr. Gammino will not commence an action against Defendant. Exhibit G, Paragraph 2, at p. 72. The requirement for the prevention of a law suit provision is that **both** the '125 patent and '650 patent must be declared invalid. That requirement is not met. Validity is determined on a case by case basis and the unasserted claims in the SWB case, Claims 2, 8-14, 16, 22-28, 30, 35-41, 45-46 of the '125 patent, were not declared invalid. In this case there are 26 claims that have not been declared invalid. Under the law on case by case evaluation for validity, the '125

patent is valid for the enforcement of valid Claims 2, 8-14, 16, 22-28, 30, 35-41, 45-46 of the '125 patent. This lawsuit is not prohibited because the necessary requirement of both patents being invalid is not present.

69. The Defendants are not parties to the Litigation Agreement and the "not-to-sue" provision states that it applies to the defendants in that case (Exhibit G, Paragraph 2, at p. 72) which did not include the Defendants here. The not-to-sue provision gives no protection to the Defendants.

[70, 71 not used]

WHEREFORE, Plaintiff John R. Gammino prays:

- (a) that Defendants be adjudged to have infringed one or more Claims 3, 17, 31 of the United States Letters Patent No. 5,809,125; and Claims 2 and 4 of the United States Letters Patent No. 5,812,650;
- (b) that Defendants and its respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be immediately, preliminarily and permanently enjoined from infringing Claims 3, 17, 31 of the United States Letters Patent No. 5,809,125 and Claims 2 and 4 of the United States Letters Patent No. 5,812,650;
- (c) that Mr. Gammino be awarded damages against Defendants for their infringement of Claims 3, 17, 31 of the United States Letters Patent No. 5,809,125 and Claims 2 and 4 of the United States Letters Patent 5,812,650;
- (d) that the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of Claims 3,17,31 of the

United States Letters Patent No. 5,809,125 and Claims 2 and 4 of the United States Letters Patent No. 5,812,650;

- (e) that John R. Gammino be awarded punitive and exemplary damages against Defendants;
- (f) that an assessment be awarded to Plaintiff of interest on the damages so computed;
- (g) that the Court award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. §285; and
- (h) that John R. Gammino receives such other and further relief as this Honorable Court shall deem just and proper.

COUNT IV

INDUCEMENT TO INFRINGE CLAIMS 3, 17, 31 OF UNITED STATES PATENT NO. 5,809,125 AND CLAIMS 2 AND 4 OF UNITED STATES PATENT NUMBER 5,812,650

72. The averments set forth in paragraphs 1 through 69 above are incorporated herein by reference.

73. The actions of Defendants constitute an active inducement of its mobile telephone customers, other customers and other entities or persons operating in the telecommunications industry to infringe one or more of Claims 3, 17, 31 of the '125 patent and 2 and 4 of the '650 patent and have caused Mr. Gammino damages as a direct and proximate result thereby. Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr.

Gammino as a result of the infringement including lost income, profits, and/or royalties, the elimination and/or reduction of business opportunities and other damages.

WHEREFORE, Plaintiff John R. Gammino prays:

- (a) that Defendants be adjudged to have infringed one or more Claims 3, 17, 31 of the United States Letters Patent No. 5,809,125; and Claims 2 and 4 of the United States Letters Patent No. 5,812,650;
- (b) that Defendants and its respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be immediately, preliminarily and permanently enjoined from infringing Claims 3, 17, 31 of the United States Letters Patent No. 5,809,125 and Claims 2 and 4 of the United States Letters Patent No. 5,812,650;
- (c) that Mr. Gammino be awarded damages against Defendants for their infringement of Claims 3, 17, 31 of the United States Letters Patent No. 5,809,125 and Claims 2 and 4 of the United States Letters Patent 5,812,650;
- (d) that the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of Claims 3,17,31 of the United States Letters Patent No. 5,809,125 and Claims 2 and 4 of the United States Letters Patent No. 5,812,650;
- (e) that John R. Gammino be awarded punitive and exemplary damages against Defendants;

- (f) that an assessment be awarded to Plaintiff of interest on the damages so computed;
- (g) that the Court award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. §285; and
- (h) that John R. Gammino receives such other and further relief as this Honorable Court shall deem just and proper.

COUNT V

**PATENT INFRINGEMENT OF THE CLAIMS OF UNITED STATES
PATENT NO. 5,359,643**

74. The averments in paragraphs 1-73 above are incorporated herein by reference.

75. Mr. Gammino is the patent holder of U.S. Patent No. 5,359,643 (the “ ‘643 patent”) which was issued to Mr. Gammino on October 25, 1995. A copy of the ‘643 patent is attached as Exhibit H at page 110 of attached exhibits. There are methods described in the claims for the ‘643 patent placing telephone calls through a central office from a telecommunications device according to a desired method of making payment.

76. Defendants, Sprint Nextel and Unknown Subsidiaries infringe one or more of claims of the ‘643 patent by using methods and apparatus in payphones, network switches, PBX lines, Centrex lines, Business Exchange lines, cell phones and cellular phone networking, including its Mobile Telephone Switching Offices, network switches, other telecommunication switches and other telecommunications devices. Defendants, Sprint Nextel and Unknown Subsidiaries use the methods described in the claims for placing a telephone call through a central office from a telecommunications device according to a desired method of making payment.

77. The Website of Defendants, Sprint Nextel and Unknown Subsidiaries states instructions to make calls on a product named "FONCARD," going back to February 2004 or earlier. The instructions on the Website on use of the FONCARD confirm the infringement.

78. The use by Defendants, Sprint Nextel and Unknown Subsidiaries of the patented invention in patent '643 allows it to sell calling cards and promote the use of its system. By selling calling cards, Defendant increases its base of customers, thereby increasing sales, revenue and income.

79. As a result of the foregoing conduct, Defendants, Sprint Nextel and Unknown Subsidiaries infringe one or more of the claims of the '643 patent and have caused Mr. Gammino damages as a direct and proximate result thereby.

80. Defendants, Sprint-Nextel and Unknown Sprint Subsidiaries are liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of their infringement of one or more Claims of the '643 patent, including lost income, profits, and/or royalties and other damages.

81. There is no litigation history on the '643 patent. Mr. Gammino's suspicion of infringement of the claims of the '643 patent was triggered by information received by Mr. Gammino from discovery in this case and his subsequent evaluation revealed that one or more of the claims are being infringed.

WHEREFORE, Plaintiff John R. Gammino prays:

- (a) That Defendants, Sprint Nextel and Unknown Subsidiaries be adjudged to have infringed one or more claims of the United States Letter Patent No. 5,359,643;

(b) That Defendants, Sprint-Nextel and Unknown Sprint Subsidiaries and respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be immediately, preliminarily and permanently enjoined from infringing the claims of the United States Letter Patent No. 5,359,643;

(c) That Mr. Gammino be awarded damages against Defendants, Sprint-Nextel and Unknown Sprint Subsidiaries for the infringement of one or more of the claims of United States Letter Patent No. 5,359,643;

(d) That the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of one or more of claims of the United States Letter Patent No. 5,359,643;

(e) That Mr. Gammino be awarded punitive and exemplary damages;

(f) That an assessment be awarded to plaintiff of interest on the damages so computed;

(g) That the Court award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. §285; and

(h) That John R. Gammino receives such other and further relief as this Honorable Court shall deem just and proper.

Count VI

**INDUCEMENT TO INFRINGE CLAIMS OF UNITED STATES
PATENT NO. 5,359,643**

82. The averments set forth in paragraphs 1 through 81 above are incorporated herein by reference.

83. The acts of Defendants, Sprint-Nextel and Unknown Sprint Subsidiaries constitute an active inducement of its calling card customers, other customers and other entities or persons operating in the telecommunications industry to infringe one or more claims of the '643 patent, causing Mr. Gammino damages as a direct and proximate result thereby. Defendants, Sprint-Nextel and Unknown Sprint Subsidiaries are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the infringement including lost income, profits, and/or royalties and other damages.

WHEREFORE, Plaintiff John R. Gammino prays:

- (a) That Defendants, Sprint Nextel and Unknown Subsidiaries be adjudged to have infringed and induced infringement of one or more claims of the United States Letter Patent No. 5,359,643;
- (b) That Defendants, Sprint-Nextel and Unknown Sprint Subsidiaries and respective officers, agents, servants, employees and attorneys, and those person in active concert or participation with them who receive actual notice of the

Order, be immediately, preliminarily and permanently enjoined from infringing and inducing the infringement of the claims of the United States Letter Patent No. 5,359,643;

- (c) That Mr. Gammino be awarded damages against Defendants, Sprint-Nextel and Unknown Sprint Subsidiaries for the inducement of the infringement of one or more of the claims of United States Letter Patent No. 5,359,643;
- (d) That the damages in this judgment be trebled in accordance with 35 U.S.C. §284 for the willful and deliberate infringement of one or more of claims of the United States Letter Patent No. 5,359,643;
- (e) That Mr. Gammino be awarded punitive and exemplary damages;
- (f) That an assessment be awarded to plaintiff of interest on the damages so computed;
- (g) That the Court award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. §285; and
- (h) That John R. Gammino receives such other and further relief as this Honorable Court shall deem just and proper.

BY: s/wmmullineaux
William M. Mullineaux, Esquire
Attorney I.D. No. 40964
Brian Discount, Esquire
Attorney I.D. No. 307976
Astor Weiss Kaplan & Mandel LLP
200 South Broad Street Suite 600
Philadelphia, PA 19102
(215) 893-4956
(215) 790-0509 fax

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

John R. Gammino	:	
	:	
Plaintiff	:	CIVIL ACTION NO.
	:	2:10-CV-02493-CMR
v.	:	
	:	
	:	Honorable Cynthia M. Rufe
Sprint Communications Company L.P.	:	
Sprint Spectrum L.P.	:	
Nextel Operations, Inc.	:	
Virgin Mobile USA, L.P.	:	
	:	
Defendants	:	
	:	
Sprint Nextel Corporation	:	
Unknown Sprint Subsidiaries	:	
	:	
Joined Defendants	:	
	:	

**Stipulation Regarding Plaintiff’s Second Amended Complaint and Deadlines
Relating to the Amendment to the Complaint**

Plaintiff JOHN R. GAMMINO (“Plaintiff”) states and stipulates, and Defendants SPRINT COMMUNICATIONS COMPANY L.P., SPRINT SPECTRUM L.P., NEXTEL OPERATIONS, INC., VIRGIN MOBILE USA, SPRINT NEXTEL CORPORATION and UNKNOWN SPRINT SUBSIDIARIES (“Defendants”) stipulate, regarding Plaintiff’s Second Amended Complaint and deadlines relating to the amendment to the Complaint, as follows.

Plaintiff states that:

1. Plaintiff John R. Gammino is moving for (a) a leave to file a Second Amended Complaint to amend the Caption pursuant to F.R.Civ.P. 15(a), and (b) an approval of the

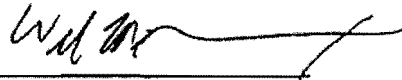
Court of terms of the below-listed stipulation of the parties on the timing of deadlines in connection with amendments to the Complaint.

2. Plaintiff requests leave to file the Second Amended Complaint to amend the caption to add to the list of parties in the caption three existing defendants, Sprint Spectrum L.P., Nextel Operations, Inc. and Virgin Mobile USA, L.P.

The parties stipulate that without conceding jurisdiction:

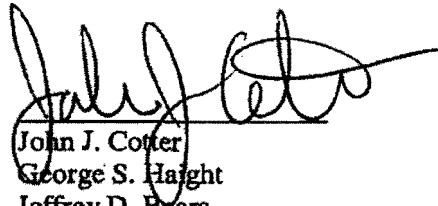
1. Defendants are not required to respond to the Amended Complaint (Dkt 47) and the deadline for the Defendants to answer or move in response to the Second Amended Complaint shall be January 25, 2011 or five days after the Court approves Plaintiff's Motion for Leave to File a Second Amended Complaint, whichever happens later.
2. Plaintiff shall inform the court that upon the court granting the relief sought in Plaintiff's Motion for Leave to File a Second Amended Complaint, Plaintiff's Motion for Leave to File Amended Complaint (Dkt 45) should be denied as moot.
3. Without prejudice to defendants' right to challenge the amended complaint or second amended complaint on any other ground, the Amended Complaint filed on December 22, 2010 and entered on December 23, 2010 (Dkt 47) and the Second Amended Complaint (attached to Plaintiff's Motion for Leave to File a Second Amended Complaint) are deemed to have complied with the timing requirements in the Court's Scheduling Order of October 6, 2010 (Dkt 22).

STIPULATED AND AGREED TO THIS 13th DAY OF JANUARY, 2011 BY:



William M. Mullineaux
Brian Discount
Astor Weiss Kaplan & Mandel LLP
200 South Broad Street, Suite 600
Philadelphia, PA 19102
Telephone: (215) 893-4956
Facsimile: (215) 790-0509

Attorneys for Plaintiff
John R. Gammino



John J. Cotter
George S. Haight
Jeffrey D. Bears
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111-2950
Telephone: (617) 261-3100
Facsimile: (617) 261-3175

Attorneys for All Defendants

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>JOHN R. GAMMINO, Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SPRINT COMMUNICATIONS CO. L.P., et al., Defendants.</p>	: : : : : : : : : : : : : :	<p>CIVIL NO. 10-2493</p>
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ORDER

AND NOW, this 28th day of July 2011, upon consideration of Defendant’s Motion to Dismiss New Patent Counts V and VI of the Second Amended Complaint [doc. no. 57], Plaintiff’s Opposition [doc. no. 64], Defendant’s Reply [doc. no. 70] and Plaintiff’s Sur-reply [doc. no. 79], it is hereby **ORDERED** that Defendant’s Motion to Dismiss is **GRANTED**.¹

It is so **ORDERED**.

BY THE COURT:

/s/ **Cynthia M. Rufe**

HON. CYNTHIA M. RUFÉ

¹ Sprint moves to Dismiss Counts V and VI of Plaintiff’s Second Amended Complaint. These counts add claims of infringement and inducement to infringe U.S. Patent No. 5,359,643 (the ’643 Patent), and were not included in Gammino’s original complaint. Gammino amended his complaint to include Counts V and VI—with the consent of the parties and leave of the Court—on December 22, 2010. See Scheduling Order [Doc. No. 22] (specifying that the “Deadline to amend pleadings as to parties and claims” would be December 22, 2010); Pl.’s Mot. for Permission to File Am. Compl. at 1 [Doc. No. 45]. On January 21, Gammino filed a Second Amended Complaint, which addressed an issue in the case caption. See Pl.’s Mot. for Leave to File a Second Am. Compl. at 2 [Doc. 52]. On March 3, 2011, this Court stayed discovery relating to the ’643 Patent until resolution of the instant Motion to Dismiss. Discovery relating to the ’125 and ’650 patent has continued on schedule, and closed on May 4, 2011. Order (Mar. 25, 2011) [Doc. No. 85].

Defendants move to dismiss Counts V and VI “pursuant to Rule 12 of the Federal Rules of Civil Procedure.” Arguing that dismissal of these counts will promote efficiency, Sprint contends that Plaintiff’s Second Amended Complaint adds subject matter unrelated to the rest of the litigation, and will slow the proceedings. Def.’s Mot. 1–2. They explain that although discovery for the new patent will need to start from the beginning, discovery for the ’125 and ’650 patent has proceeded apace. Further, unlike the ’125 and ’650 patents, which have already been extensively litigated, the ’643 patent has no litigation history. Def.’s Reply 5.

Although Plaintiff opposed Sprint’s Motion on the papers, during the April 21, 2011 Motions hearing, he stated: “I think your Honor should do whatever you think is best for the Court’s administration. If you want these to be separate, we’ll dismiss it, we’ll go file another complaint.” Tr. 88:1–5. Given the radically different procedural posture of Counts V and VI, and in light of Plaintiff’s acknowledgment, the Court will dismiss these Counts without prejudice.