

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

2013 OCT 14 P 5 00

CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

AUTOMATED TRACKING
SOLUTIONS, LLC,

Plaintiff,

v.

TELETRACKING TECHNOLOGIES, INC.,
AND RADARFIND CORPORATION,

Defendants.

Case No.: 1:12cv1304
GBL/IDD

Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Automated Tracking Solutions, LLC (“ATS”), by counsel and pursuant to Federal Rule of Civil Procedure 8(a), alleges the following in support of its Complaint against Defendants TeleTracking Technologies, Inc. (“TeleTracking Technologies”) and RadarFind Corporation (“RadarFind”) (collectively, “Defendants”) for patent infringement:

PARTIES

1. Plaintiff Automated Tracking Solutions, LLC is a Delaware limited liability company with its principal place of business located at 8500 Fort Hunt Rd., Alexandria, VA 22308.

2. Upon information and belief, TeleTracking Technologies, Inc. is a Delaware corporation with its principal place of business at 336 Fourth Avenue, Pittsburgh, PA 15222. Upon information and belief, Defendant RadarFind Corporation is a wholly owned subsidiary of TeleTracking Technologies, Inc.

3. Upon information and belief, RadarFind Corporation is a Delaware corporation with its principal place of business located at 2100 Gateway Centre Boulevard, Suite 150, Morrisville, NC 27560. Upon information and belief, RadarFind Corporation is a wholly owned subsidiary of Defendant TeleTracking Technologies, Inc.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, this Court has personal jurisdiction over TeleTracking Technologies and RadarFind because TeleTracking Technologies and RadarFind regularly and purposefully avail themselves of the privilege of conducting business activities in the Commonwealth of Virginia and this judicial district by, among other things, offering their products and services to customers, business affiliates and/or partners located in this judicial district. In addition, upon information and belief, personal jurisdiction is proper because TeleTracking Technologies and RadarFind have committed acts of direct infringement and/or indirect infringement in this judicial district.

6. In addition, TeleTracking Technologies and RadarFind have agreed not to challenge venue or jurisdiction in the Eastern District of Virginia in connection with this litigation. A true and correct copy of the countersigned letter memorializing this agreement is attached as Exhibit 1.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because TeleTracking Technologies and RadarFind are subject to personal jurisdiction in this judicial district and have committed acts of direct infringement and/or indirect infringement in this judicial district.

8. In addition, TeleTracking Technologies and RadarFind have agreed not to challenge venue or jurisdiction in the Eastern District of Virginia in connection with this litigation. A true and correct copy of the countersigned letter memorializing this agreement is attached as Exhibit 1.

FACTUAL BACKGROUND

9. Inventory control was conventionally performed primarily by hand or not at all. As a result, businesses often faced significant shrinkage of inventory and increased labor costs as employees searched for missing items.

10. Dr. Fred H. Sawyer initially founded F.H.S. Systems Engineering & Technical Services, Ltd. to develop and integrate new RFID technology into these manual processes. In 2005, Dr. Sawyer founded Automated Tracking Solutions Incorporated, which became ATS when Adam S. Malamut, Scott D. Liebling, and Ronald L. Dubrow joined on August 14, 2007, to continue the development and integration of RFID technology.

11. Dr. Sawyer has been a resident of Alexandria, Virginia, since 1984. He was born and grew up in Norfolk, Virginia and attended college at Virginia State University, obtaining a degree in Physics in 1962. Dr. Sawyer also obtained a doctorate in Operations Research in 1977 from the George Washington University with a concentration in queuing theory, and a master's degree in Electrical Engineering in 1987 from Penn State University. He is the majority owner of ATS.

12. Dr. Sawyer invented processes and systems that permit identification, tracking, location, and/or surveillance of tagged objects at the item level anywhere in a facility or area. As part of his work at ATS, Dr. Sawyer designed and built an operable system for performing these functions.

13. Dr. Sawyer filed for multiple patents to protect these inventions at the United States Patent and Trademark Office (“USPTO”).

14. Dr. Sawyer is the sole named inventor in United States Patent Nos. 7,551,089, 7,834,765, and 7,834,766 (collectively the “Patents-in-Suit”) and has assigned the Patents-in-Suit to ATS.

FIRST CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 7,551,089

15. The allegations of Paragraphs 1-14 are incorporated herein by reference.

16. ATS is the assignee and sole owner of all right, title, and interest in United States Patent No. 7,551,089 (“the ’089 patent”), entitled “Method and Apparatus for Tracking Objects and People,” which issued on June 23, 2009. A true and correct copy of the ’089 patent is attached hereto as Exhibit 2.

17. Defendants TeleTracking Technologies and RadarFind have been infringing, continue to infringe, induce others to infringe, and/or contribute to the infringement by others of, claims 49-62 of the ’089 patent through at least the acts of making, using, selling, offering for sale, and/or importing infringing products and services, either literally or under the doctrine of equivalents. TeleTracking Technologies and RadarFind’s infringing products and services include, without limitation, the RadarFind Real Time Location System (RTLS), including asset tags, patient tags, readers, collectors, server, and RadarFind Software Suite including RadarFind database, location engine, and reporting software and the TeleTracking Real Time Locating System (RTLS) including asset tags, asset status tags, patient tags, temperature tags, staff badge tags, handwashing alert tags, collectors, beacons, servers including location servers, and AssetTracking applications and the TeleTracking Capacity Management Suite of applications.

18. Defendants' acts of infringement have injured and damaged ATS.

19. Defendants' infringement has caused irreparable injury to ATS and will continue to cause irreparable injury until Defendants are enjoined by this Court from further infringement.

20. On July 28, 2011, ATS filed a Complaint for Patent Infringement against Defendants in this Court (the "Awarepoint Action"). That Complaint included as an exhibit a true and correct copy of the '089 patent.

21. On or about August 22, 2011, Defendants were served with a copy of the Complaint in the Awarepoint Action, which included ATS's allegations of patent infringement of the '089 patent and a copy of the '089 patent.

22. On October 13, 2011, a request for *Ex Parte* Reexamination of claims 49-62 of the '089 patent was filed with the USPTO.

23. On November 7, 2011, the USPTO granted the request for *Ex Parte* Reexamination of claims 49-62 of the '089 patent.

24. On January 13, 2012, Defendants were dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure from the Awarepoint Action.

25. On January 17, 2012 Plaintiff filed a Complaint for Patent Infringement against Defendants in this Court, 1:12-cv-00053(GBL)(IDD), (the "TeleTracking I Action"). That Complaint included as an exhibit a true and correct copy of the '089 patent.

26. On or about February 2, 2012, Defendants were served with a copy of the Complaint in the TeleTracking I Action, which included ATS's allegations of patent infringement of the '089 patent and a copy of the '089 patent.

27. On June 12, 2012, Plaintiff and Defendants agreed to a stipulated dismissal without prejudice of the TeleTracking I Action. The parties agreed to the dismissal pending the

resolution of the pending reexamination of United States Patent Nos. 7,551,089, 7,834,765, 7,834,766, and 6,933,849. Additionally, Defendants agreed to be estopped from raising any of the invalidity arguments raised in the pending reexamination requests in any subsequent district court litigation. A true and correct copy of the countersigned letter memorializing that agreement is attached as Exhibit 1.

28. On June 12, 2012, a stipulation of voluntary dismissal without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure was filed in the TeleTracking I Action.

29. On June 12, 2012, the Court ordered the voluntary dismissal without prejudice of the TeleTracking I Action.

30. On August 14, 2012, the USPTO issued an *Ex Parte* Reexamination Certificate confirming all reexamined claims of the '089 patent. A true and correct copy of that certificate is attached as Exhibit 3.

31. There was an objectively high likelihood that Defendants were and continue to infringe the '089 patent.

32. The risk of infringement was so clear that Defendants knew or should have known of the high likelihood that Defendants were and continue to infringe the '089 patent.

33. Upon information and belief, Defendants have not taken any action to end their infringement of the '089 patent.

34. Upon information and belief, Defendants' continued infringement of the '089 patent is willful and deliberate.

35. Upon information and belief, at least one of Defendants' customers, business affiliates and/or partners is directly infringing the '089 patent.

36. Upon information and belief, Defendants have taken actions that caused, encouraged, or aided one or more of Defendants' customers, business affiliates and/or partners to directly infringe the '089 patent.

37. Upon information and belief, Defendants have had knowledge that their actions induced the conduct of their customers, business affiliates and/or partners, or have willfully remained blind to such knowledge.

38. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendants have had actual knowledge of the '089 patent and, with such knowledge, have continued to cause, encourage, or aid one or more of Defendants' customers, business affiliates and/or partners to directly infringe the '089 patent.

39. Upon information and belief, Defendants have acted with the specific intent to induce one or more of their customers, business affiliates and/or partners to infringe the '089 patent.

40. Upon information and belief, Defendants are inducing infringement of the '089 patent by their customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(b).

41. Upon information and belief, Defendants offer to sell within the United States, sell within the United States, or import into the United States a component of an infringing apparatus to one or more of their customers, business affiliates and/or partners. The component is one or a combination of the Asset tags, patient tags, readers, collectors, server, and RadarFind Software Suite including RadarFind database, location engine, and reporting software (the "Component").

42. Upon information and belief, the Component is being used during direct infringement by one or more of Defendants' customers, business affiliates and/or partners.

43. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

44. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendants know or should know that the Component is made or especially adapted for use in the infringing apparatus, at least because Defendants had specific notice and knowledge of the '089 patent and the infringement alleged in the Awarepoint and TeleTracking I Actions.

45. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

46. Upon information and belief, Defendants are contributing to the infringement of the '089 patent by one or more of Defendants' customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(c).

SECOND CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 7,834,765

47. The allegations of Paragraphs 1-46 are incorporated herein by reference.

48. ATS is the assignee and sole owner of all right, title, and interest in United States Patent No. 7,834,765 ("the '765 patent"), entitled "Method and Apparatus for Tracking Objects and People," which issued on November 16, 2010. A true and correct copy of the '765 patent is attached hereto as Exhibit 4.

49. Defendants TeleTracking Technologies and RadarFind have been infringing, continue to infringe, induce others to infringe, and/or contribute to the infringement by others of, claims 1-59 of the '765 patent through at least the acts of making, using, selling, offering for sale, and/or importing infringing products and services, either literally or under the doctrine of equivalents. TeleTracking Technologies and RadarFind's infringing products and services

include, without limitation, the RadarFind Real Time Location System (RTL), including asset tags, patient tags, readers, collectors, server, and RadarFind Software Suite including RadarFind database, location engine, and reporting software and the TeleTracking Real Time Locating System (RTL) including asset tags, asset status tags, patient tags, temperature tags, staff badge tags, handwashing alert tags, collectors, beacons, servers including location servers, and AssetTracking applications and the TeleTracking Capacity Management Suite of applications.

50. Defendants' acts of infringement have injured and damaged ATS.

51. Defendants' infringement has caused irreparable injury to ATS and will continue to cause irreparable injury until Defendants are enjoined by this Court from further infringement.

52. On July 28, 2011, ATS filed a Complaint for Patent Infringement against Defendants in this Court (the "Awarepoint Action"). That Complaint included as an exhibit a true and correct copy of the '765 patent.

53. On or about August 22, 2011, Defendants were served with a copy of the Complaint in the Awarepoint Action, which included ATS's allegations of patent infringement of the '765 patent and a copy of the '765 patent.

54. On October 27, 2011, a corrected request for *Ex Parte* Reexamination of claims 1-59 of the '765 patent was filed with the USPTO.

55. On December 16, 2011, the USPTO granted the request for *Ex Parte* Reexamination of claims 1-59 of the '765 patent.

56. On January 13, 2012, Defendants were dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure from the Awarepoint Action.

57. On January 17, 2012 Plaintiff filed a Complaint for Patent Infringement against Defendants in this Court (the “TeleTracking I Action”). That Complaint included as an exhibit a true and correct copy of the ’765 patent.

58. On or about February 2, 2012, Defendants were served with a copy of the Complaint in the TeleTracking I Action, which included ATS’s allegations of patent infringement of the ’765 patent and a copy of the ’765 patent.

59. On June 12, 2012, Plaintiff and Defendants agreed to a stipulated dismissal without prejudice of the TeleTracking I Action. The parties agreed to the dismissal pending the resolution of the pending reexamination of United States Patent Nos. 7,551,089, 7,834,765, 7,834,766, and 6,933,849. Additionally, Defendants agreed to be estopped from raising any of the invalidity arguments raised in the pending reexamination requests in any subsequent district court litigation. A true and correct copy of the countersigned letter memorializing that agreement is attached as Exhibit 1.

60. On June 12, 2012, a stipulation of voluntary dismissal without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure was filed in the TeleTracking I Action.

61. On June 12, 2012, the Court ordered the voluntary dismissal without prejudice of the TeleTracking I Action.

62. On September 4, 2012, the USPTO issued an *Ex Parte* Reexamination Certificate confirming all reexamined claims of the ’765 patent. A true and correct copy of that certificate is attached as Exhibit 5.

63. There was an objectively high likelihood that Defendants were and continue to infringe the ’765 patent.

64. The risk of infringement was so clear that Defendants knew or should have known of the high likelihood that Defendants were and continue to infringe the '765 patent.

65. Upon information and belief, Defendants have not taken any action to end their infringement of the '765 patent.

66. Upon information and belief, Defendants' continued infringement of the '765 patent is willful and deliberate.

67. Upon information and belief, at least one of Defendants' customers, business affiliates and/or partners is directly infringing the '765 patent.

68. Upon information and belief, Defendants have taken actions that caused, encouraged, or aided one or more of Defendants' customers, business affiliates and/or partners to directly infringe the '765 patent.

69. Upon information and belief, Defendants have had knowledge that their actions induced the conduct of their customers, business affiliates and/or partners, or have willfully remained blind to such knowledge.

70. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendants have had actual knowledge of the '765 patent and, with such knowledge, have continued to cause, encourage, or aid one or more of Defendants' customers, business affiliates and/or partners to directly infringe the '765 patent.

71. Upon information and belief, Defendants have acted with the specific intent to induce one or more of their customers, business affiliates and/or partners to infringe the '765 patent.

72. Upon information and belief, Defendants are inducing infringement of the '765 patent by their customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(b).

73. Upon information and belief, Defendants offer to sell within the United States, sell within the United States, or import into the United States a component of an infringing apparatus to one or more of their customers, business affiliates and/or partners. The component is one or a combination of the Asset tags, patient tags, readers, collectors, server, and RadarFind Software Suite including RadarFind database, location engine, and reporting software (the “Component”).

74. Upon information and belief, the Component is being used during direct infringement by one or more of Defendants’ customers, business affiliates and/or partners.

75. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

76. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendants know or should know that the Component is made or especially adapted for use in the infringing apparatus, at least because Defendants had specific notice and knowledge of the ’765 patent and the infringement alleged in the Awarepoint and TeleTracking I Actions.

77. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

78. Upon information and belief, Defendants are contributing to the infringement of the ’765 patent by one or more of Defendants’ customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(c).

THIRD CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 7,834,766

79. The allegations of Paragraphs 1-78 are incorporated herein by reference.

80. ATS is the assignee and sole owner of all right, title, and interest in United States Patent No. 7,834,766 (“the ’766 patent”), entitled “Method and Apparatus for Tracking Objects and People,” which issued on November 16, 2010. A true and correct copy of the ’766 patent is attached hereto as Exhibit 6.

81. Defendants TeleTracking Technologies and RadarFind have been infringing, continue to infringe, induce others to infringe, and/or contribute to the infringement by others of, claims 1-42 and 44-67 of the ’766 patent through at least the acts of making, using, selling, offering for sale, and/or importing infringing products and services, either literally or under the doctrine of equivalents. TeleTracking Technologies and RadarFind’s infringing products and services include, without limitation, the RadarFind Real Time Location System (RTLTS), including asset tags, patient tags, readers, collectors, server, and RadarFind Software Suite including RadarFind database, location engine, and reporting software and the TeleTracking Real Time Locating System (RTLTS) including asset tags, asset status tags, patient tags, temperature tags, staff badge tags, handwashing alert tags, collectors, beacons, servers including location servers, and AssetTracking applications and the TeleTracking Capacity Management Suite of applications.

82. Defendants’ acts of infringement have injured and damaged ATS.

83. Defendants’ infringement has caused irreparable injury to ATS and will continue to cause irreparable injury until Defendants are enjoined by this Court from further infringement.

84. On July 28, 2011, ATS filed a Complaint for Patent Infringement against Defendants in this Court (the “Awarepoint Action”). That Complaint included as an exhibit a true and correct copy of the ’766 patent.

85. On or about August 22, 2011, Defendants were served with a copy of the Complaint in the Awarepoint Action, which included ATS's allegations of patent infringement of the '766 patent and a copy of the '766 patent.

86. On November, 2011, a corrected request for *Ex Parte* Reexamination of claims 1-67 of the '766 patent was filed with the USPTO.

87. On December 2, 2011, the USPTO granted the request for *Ex Parte* Reexamination of claims 1-67 of the '766 patent.

88. On January 13, 2012, Defendants were dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure from the Awarepoint Action.

89. On January 17, 2012 Plaintiff filed a Complaint for Patent Infringement against Defendants in this Court (the "TeleTracking I Action"). That Complaint included as an exhibit a true and correct copy of the '766 patent.

90. On or about February 2, 2012, Defendants were served with a copy of the Complaint in the TeleTracking I Action, which included ATS's allegations of patent infringement of the '766 patent and a copy of the '766 patent.

91. On June 12, 2012, Plaintiff and Defendants agreed to a stipulated dismissal without prejudice of the TeleTracking I Action. The parties agreed to the dismissal pending the resolution of the pending reexamination of United States Patent Nos. 7,551,089, 7,834,765, 7,834,766, and 6,933,849. Additionally, Defendants agreed to be estopped from raising any of the invalidity arguments raised in the pending reexamination requests in any subsequent district court litigation. A true and correct copy of the countersigned letter memorializing that agreement is attached as Exhibit 1.

92. On June 12, 2012, a stipulation of voluntary dismissal without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure was filed in the TeleTracking I Action.

93. On June 12, 2012, the Court ordered the voluntary dismissal without prejudice of the TeleTracking I Action.

94. On October 5, 2012, the USPTO issued an *Ex Parte* Reexamination Certificate confirming all reexamined claims of the '766 patent as amended. A true and correct copy of that certificate is attached as Exhibit 7.

95. There was an objectively high likelihood that Defendants were and continue to infringe the '766 patent.

96. The risk of infringement was so clear that Defendants knew or should have known of the high likelihood that Defendants were and continue to infringe the '766 patent.

97. Upon information and belief, Defendants have not taken any action to end their infringement of the '766 patent.

98. Upon information and belief, Defendants' continued infringement of the '766 patent is willful and deliberate.

99. Upon information and belief, at least one of Defendants' customers, business affiliates and/or partners is directly infringing the '766 patent.

100. Upon information and belief, Defendants have taken actions that caused, encouraged, or aided one or more of Defendants' customers, business affiliates and/or partners to directly infringe the '766 patent.

101. Upon information and belief, Defendants have had knowledge that their actions induced the conduct of their customers, business affiliates and/or partners, or have willfully remained blind to such knowledge.

102. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendants have had actual knowledge of the '766 patent and, with such knowledge, have continued to cause, encourage, or aid one or more of Defendants' customers, business affiliates and/or partners to directly infringe the '766 patent.

103. Upon information and belief, Defendants have acted with the specific intent to induce one or more of their customers, business affiliates and/or partners to infringe the '766 patent.

104. Upon information and belief, Defendants are inducing infringement of the '766 patent by their customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(b).

105. Upon information and belief, Defendants offer to sell within the United States, sell within the United States, or import into the United States a component of an infringing apparatus to one or more of their customers, business affiliates and/or partners. The component is one or a combination of the Asset tags, patient tags, readers, collectors, server, and RadarFind Software Suite including RadarFind database, location engine, and reporting software (the "Component").

106. Upon information and belief, the Component is being used during direct infringement by one or more of Defendants' customers, business affiliates and/or partners.

107. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

108. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendants know or should know that the Component is made or especially adapted for use in the infringing apparatus, at least because Defendants had specific notice and knowledge of the '766 patent and the infringement alleged in the Awarepoint and TeleTracking I Actions.

109. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

110. Upon information and belief, Defendants are contributing to the infringement of the '766 patent by one or more of Defendants' customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. A judgment against Defendants as to infringement of the Patents-in-Suit as alleged above;
2. A permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, subsidiaries, parents, licensees, assigns, and customers, and all others acting in concert or participating with them, from further acts of infringement, inducing infringement, and/or contributing to the infringement of the Patents-in-Suit as alleged above;
3. A judgment against Defendants for money damages sustained as a result of Defendants' infringement of the Patents-in-Suit, as alleged above, in an amount as provided under 35 U.S.C. § 284, to be no less than a reasonable royalty with interest and costs;
4. An accounting for infringing sales not presented at trial and an award by this Court of additional damages for any such infringing sales;
5. An award of pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;

6. A judgment ordering Defendants to pay enhanced damages pursuant to 35 U.S.C. § 284, including but not limited to a judgment against Defendants for treble damages for willful infringement of the Patents-in-Suit;

7. A finding that this case is an exceptional case pursuant to 35 U.S.C. § 285 and award ATS its costs and reasonable attorneys' fees incurred in connection with this action; and

8. Such other and further relief as this Court finds just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully requests a trial by jury pursuant to FED. R. CIV. P. 38 of all issues in this action so triable.

Date: November 14, 2012

Respectfully submitted,

By: _____

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