

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-cv-00173

CELLPORT SYSTEMS, INC.,

Plaintiff,

v.

HTC CORPORATION,
HTC AMERICA HOLDING INC., and
HTC AMERICA, INC.,

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiff Cellport Systems, Inc., by counsel Ridley, McGreevy & Winocur P.C. and Clearman | Prebeg LLP, for its Complaint against Defendants HTC Corporation, HTC America Holding Inc., and HTC America, Inc., alleges as follows:

THE PARTIES

1. Plaintiff Cellport Systems, Inc. (hereinafter “Cellport”) is a Colorado Corporation with its corporate headquarters and principal place of business at 885 Arapahoe Avenue, Boulder, Colorado 80302.

2. Upon information and belief, HTC Corporation is a corporation organized and existing under the laws of the Republic of China, with its principal place of business at 23 Xinghua Road, Taoyuan 330, Taiwan, Republic of China.

3. Upon information and belief, HTC America Holding Inc. is a wholly-owned subsidiary of Defendant HTC Corporation, and is a corporation organized and existing under the

laws of the State of Washington, with its principal place of business at 13929 South East Eastgate Way, Suite 400, Bellevue, Washington 98005. HTC America Holding Inc. may be served with process by serving its registered agent, National Registered Agents, Inc., 1780 Barnes Boulevard SW, Building G, Tumwater, Washington 98512-0410.

4. Upon information and belief, HTC America, Inc. is a wholly-owned subsidiary of Defendant HTC America Holding Inc., and is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at 13920 South East Eastgate Way, Suite 400, Bellevue, Washington 98005. HTC America, Inc. may be served with process by serving its registered agent, National Registered Agents, Inc., 1535 Grant Street, Suite 140, Denver, Colorado 80203.

5. Throughout this pleading, and unless specifically noted otherwise, Defendants HTC Corporation, HTC America Holding Inc., and HTC America, Inc. will be referenced collectively as the “Defendants.” The term “Defendants” also includes the Defendants’ employees, agents, and all other persons or entities that the Defendants direct and/or control.

THE PATENT

U.S. Patent No. 6,122,514

6. On September 19, 2000, United States Patent No. 6,122,514, entitled “Communications Channel Selection” (the “‘514 patent”) was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘514 patent is attached as Exhibit A.

7. Pursuant to 35 U.S.C. § 282, the ‘514 patent is presumed valid.

8. Cellport is sole holder of the entire right, title, and interest in the ‘514 patent, including the right to recover damages for past, present, and future infringement.

JURISDICTION AND VENUE

9. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271 and 281. This Court has jurisdiction over the claim for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

10. Personal jurisdiction exists generally over each of the Defendants because each Defendant has sufficient minimum contacts with the forum as a result of business conducted within the State of Colorado and within the District of Colorado. Personal jurisdiction also exists specifically over each of the Defendants because each Defendant, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, or sells products or services within the State of Colorado and within the District of Colorado, that infringe the patent-in-suit.

11. On information and belief, Defendants derive substantial revenue from the sale of the Accused Products referred to in paragraph 17 of the Complaint to companies organized and existing under the laws of the State of Colorado, and/or the Defendants derive substantial revenue from products sold or distributed within this District.

12. On information and belief, the Defendants derive substantial revenue from interstate and international commerce.

13. On information and belief, the Defendants expect or should reasonably expect their actions to have consequences within this District.

14. The above acts cause injury to Cellport within this District.

15. Venue is proper in this Court under Title 28 United States Code §§ 1391(b)–(c) and 1400(b).

COUNT I: FIRST CLAIM FOR RELIEF
(INFRINGEMENT OF U.S. PATENT NO. 6,122,514)

16. Plaintiff incorporates its previous allegations by the reference.

Accused Products

17. The Defendants have been and are now making, using, selling, offering for sale within the United States, or importing into the United States, at least the following cell phone products: HTC Evo Design 4G (at least model PH44100) and other cell phones (hereinafter the “Accused Products”).

Direct Infringement

18. By so making, using, selling, or offering to sell within the United States, or importing into the United States at least the aforementioned Accused Products, the Defendants have directly infringed and continue to infringe at least claims 17, 18, 19, 20, 24, and 25 of the ‘514 patent, either literally or by equivalents.

Inducement of Infringement

19. The Defendants have had knowledge of the ‘514 patent at least since the serving of the underlying complaint in this case.

20. The Defendants knew of, should have known of, or were willfully blind towards the ‘514 patent by virtue of the ‘514 patent being well known in the industry, having been cited by at least 124 issued U.S. patents since 2000.

21. Since becoming aware of the ‘514 patent, the Defendants have continued to intentionally, actively, and knowingly provide user manuals and advertise through their websites, including but not limited to HTC.com, as well as in other ways.

22. Since becoming aware of the '514 patent, the Defendants' said user manuals and advertising have intentionally, actively, and knowingly contained and continues to contain instructions, directions, suggestions, and/or invitations that intentionally, actively, and knowingly invite, entice, lead on, influence, prevail on, move by persuasion, cause, and/or influence the public and HTC.com website users to, at least, send videos and/or pictures to others with the Accused Products.

23. Said acts of sending videos and/or pictures to others with the Accused Products, in conjunction with the data connection and/or file transmission management features in the Accused Products, directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the '514 patent.

24. Since becoming aware of the '514 patent, the Defendants were willfully blind, knew, or should have known that the users' and/or customers' acts relative to sending videos and/or pictures to others with the Accused Products, in conjunction with data connection and/or file transmission management features in the Accused Products, directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the '514 patent.

25. For these reasons, Defendants are liable for inducing infringement of the '514 patent.

Contributory Infringement

26. At least for the reasons stated above, the Defendants have knowledge of the '514 patent.

27. Since becoming aware of the '514 patent, the Defendants have intentionally, actively, and knowingly offered to sell or sold the Accused Products within the United States or imported the Accused Products into the United States.

28. The Accused Products are an apparatus used in practicing a patented process, including at least claims 1, 2, 15, and 16 of the '514 patent, either literally or through the doctrine of equivalents.

29. Since becoming aware of the '514 patent, the Defendants were willfully blind, knew, or should have known that the Accused Products were especially made or especially adapted for use in an infringement of at least claims 1, 2, 15, and 16 of the '514 patent.

30. The Accused Products are not a staple article or commodity of commerce suitable for substantial noninfringing use because data connection and/or file transmission management features are especially configured to infringe at least claims 1, 2, 15, and 16 of the '514 patent, either literally or through the doctrine of equivalents.

31. Since becoming aware of the '514 patent, the Defendants were willfully blind, knew, or should have known that the Accused Products were not a staple article or commodity of commerce suitable for substantial noninfringing use.

32. Since becoming aware of the '514 patent, the Defendants were willfully blind, knew, or should have known that the Accused Products' users' and/or customers' acts relative to sending videos and/or pictures to others with the Accused Products, in conjunction with the data connection and/or file transmission management features in the Accused Products, directly infringe, either literally or by equivalents, at least claims 1, 2, 15, and 16 of the '514 patent.

33. For these reasons, the Defendants are contributory infringers of at least claims 1, 2, 15, and 16 of the '514 patent, either literally or through the doctrine of equivalents.

Damages

34. The Defendants' acts of infringement of the '514 patent as alleged above have injured Cellport and thus Cellport is entitled to recover damages adequate to compensate it for that infringement, which in no event can be less than a reasonable royalty.

DEMAND FOR JURY TRIAL

35. Cellport hereby demands a jury trial on all claims and issues triable of right by a jury, including Defendants' affirmative defenses and counterclaims, if any.

PRAYER FOR RELIEF

WHEREFORE, Cellport prays for entry of judgment in its favor and against Defendants HTC Corporation, HTC America Holding Inc., and HTC America, Inc. declaring:

- A. That the Defendants have infringed one or more claims of the '514 patent.
- B. That the Defendants account for and pay to Cellport all damages caused by the infringement of the '514 patent, which by statute can be no less than a reasonable royalty;
- C. That Cellport be granted pre-judgment and post-judgment interest on the damages caused to it by reason of the Defendants' infringement of the '514 patent;
- D. That the case be declared exceptional pursuant to 35 U.S.C. § 285, in favor of Cellport, and that Cellport be granted its attorneys' fees in this action;
- E. That costs be awarded to Cellport;
- F. That Cellport be granted such other and further relief that is just and proper under the circumstances.

Respectfully submitted,

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