

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BROADSOFT, INC.,)
)
 Plaintiff,)
) C.A. No. _____
 v.)
)
 CALLWAVE COMMUNICATIONS, LLC,) **JURY TRIAL DEMAND**
)
 Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff BroadSoft, Inc. (“BroadSoft” or “Plaintiff”) files the following Complaint for Declaratory Judgment against Defendant CallWave Communications, LLC (“CallWave”) and, in support thereof, alleges as follows:

THE PARTIES

1. Plaintiff BroadSoft is a Delaware corporation with its principal place of business at 9797 Washingtonian Boulevard, Suite 350, Gaithersburg, Maryland 20878. BroadSoft provides voice over IP (VoIP) application software and services to clients worldwide, that enable mobile, fixed-line and cable service providers to offer Unified Communications over their Internet Protocol networks.

2. On information and belief, Defendant CallWave is a Delaware limited liability corporation with its principal place of business at 20 Morse Road, Newton, Massachusetts 02460. CallWave is a non-practicing entity that is in the business of licensing and enforcing patents through litigation. On information and belief, CallWave has, since December 2012, filed at least seven separate complaints in this district.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35, United States Code.

4. This is a civil action for declaratory relief under the Declaratory Judgment Act, 28

U.S.C. §§ 2201 and 2202.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because Plaintiff's claims for declaratory relief arise under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.*

6. This Court has personal jurisdiction over CallWave because: (i) on information and belief, CallWave is a limited liability corporation organized and existing under the laws of the State of Delaware; (ii) CallWave has designated an agent for service of process in Delaware; (iii) CallWave has availed itself of this jurisdiction by filing multiple lawsuits in this District; and (iv) the declaratory judgment claims asserted by BroadSoft arise out of a patent infringement action filed by CallWave in this District against users of BroadSoft software. Accordingly, CallWave has voluntarily availed itself of the laws and regulations of Delaware and this District, and the assertion of personal jurisdiction over CallWave comports with traditional notions of fair play and substantial justice.

7. Venue in this judicial district is proper under 28 U.S.C. § 1391(b), 1391(c) and 1400(b).

PATENTS-IN-SUIT

8. CallWave is the purported owner of U.S. Patent Nos. 8,351,591 (the "591 patent"), 7,822,188 (the "188 patent"), 7,636,428 (the "428 patent") and 8,064,588 (the "588 patent") attached as Exhibits A–D, respectively (collectively, the "CallWave Patents"). The CallWave Patents relate generally to methods of placing calls from a call processing system in response to a request and methods for allowing a user to screen a call.

RELATED FACTS IN SUPPORT OF DECLARATORY JUDGMENT JURISDICTION

9. On or about January 11, 2013, CallWave filed a Complaint for Patent Infringement in this District against Telovations, Inc. ("Telovations"), a former BroadSoft customer and software licensee, alleging that Telovations infringes the '591 patent through its manufacture, use, sale, offer for sale, and/or importation of the "Telovations Mobility" product (the "CallWave Litigation"). *See CallWave Comms. Inc. v. Telovations, Inc.*, No. 1:13-cv-

00074, D.I. 1.

10. On information and belief, Telovations is a Tampa, Florida-based communications service provider that delivers hosted voice solutions to businesses.

11. On or about February 25, 2013, CallWave filed a First Amended Complaint for Patent Infringement adding Bright House Networks, LLC (“Bright House”) as an additional named defendant and alleging that Telovations and Bright House infringe the ‘591 patent through their manufacture, use, sale, offer for sale, and/or importation of the “Mobility” product. *See id.* (D.I. 9) CallWave also added allegations that Telovations and Bright House infringe the ‘188 patent through their manufacture, use, sale, offer for sale, and/or importation of the Mobility product.

12. On information and belief, Bright House is the sixth largest owner and operator of cable systems in the U.S. and the second largest in Florida with technologically advanced systems located in five states including Florida, Alabama, Indiana, Michigan and California, serving more than 2.4 million customers.

13. CallWave has provided to Telovations and Bright House a draft Second Amended Complaint for Patent Infringement (“the proposed SAC”) and stated its intention to seek leave of this Court to file that amended pleading. The proposed SAC adds allegations that Telovations and Bright House infringe the ‘428 and ‘588 patents through their manufacture, use, sale, offer for sale, and/or importation of the “Mobility” product. (Ex. E.)

14. On August 31, 2007, BroadSoft and Telovations entered into a license agreement (the “License Agreement”) through which BroadSoft licensed certain BroadSoft software to Telovations.

15. The License Agreement contained an indemnification clause that stated in relevant part, “BroadSoft agrees to defend at its expense any and all claims made or action brought against Customer based on an allegation that the Software or its usage, infringes a patent, copyright, trade secret, or other intellectual proprietary right.”

16. On information and belief, Bright House and Telovations announced on November 25, 2012 that the two companies had entered into an agreement whereby Bright House would acquire all of the assets of Telovations effective December 31, 2012.

17. Effective as of December 31, 2012, Telovations, Bright House and BroadSoft entered into an assignment agreement whereby Telovations assigned to Bright House its right, title and interest in, to and under the License Agreement.

18. Because of the License Agreement and subsequent assignment agreement, both Telovations and Bright House have sought defense and indemnification from BroadSoft for the CallWave Litigation.

19. Telovations and Bright House have asserted that the accused product is rebranded BroadSoft software licensed to Telovations and Bright House under the License Agreement. BroadSoft intends to defend and indemnify Telovations and Bright House against allegations of infringement by CallWave to the extent required under the License Agreement, including against any allegations by Callwave directed solely to functionality performed by BroadSoft software.

20. BroadSoft believes that the BroadSoft software licensed to Telovations, Bright House and other customers and the use thereof by BroadSoft customers do not infringe any valid claim of the patents-in-suit, and that BroadSoft and its customers and licensees, including Telovations and Bright House, should be free to make, use, sell and/or offer to sell the BroadSoft products accused by CallWave.

21. Based on the foregoing, there is a substantial actual and justiciable controversy between BroadSoft and CallWave as to alleged infringement and validity of the patents-in-suit which is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '591 PATENT

22. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 21 of this Complaint as though fully set forth herein.

23. Plaintiff's accused products do not directly infringe any valid and enforceable claim of the '591 patent.

24. Plaintiff has not induced, and does not now induce, infringement of any valid and enforceable claim of the '591 patent.

25. Plaintiff has not contributorily infringed, and does not now contributorily infringe, any valid claim of the '591 patent.

26. An actual and justiciable case or controversy exists between Plaintiff and CallWave as to whether Plaintiff's accused products infringe the '591 patent, which requires a declaration of rights by this Court.

27. Plaintiff is entitled to a judicial determination and declaration that Plaintiff has not infringed and is not infringing, directly, indirectly, contributorily, by active inducement or otherwise, any valid and enforceable claim of the '591 patent.

COUNT II
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '188 PATENT

28. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 27 of this Complaint as though fully set forth herein.

29. Plaintiff's accused products do not directly infringe any valid and enforceable claim of the '188 patent.

30. Plaintiff has not induced, and does not now induce, infringement of any valid and enforceable claim of the '188 patent.

31. Plaintiff has not contributorily infringed, and does not now contributorily infringe, any valid claim of the '188 patent.

32. An actual and justiciable case or controversy exists between Plaintiff and CallWave as to whether Plaintiff's accused products infringe the '188 patent, which requires a declaration of rights by this Court.

33. Plaintiff is entitled to a judicial determination and declaration that Plaintiff has not

infringed and is not infringing, directly, indirectly, contributorily, by active inducement or otherwise, any valid and enforceable claim of the '188 patent.

COUNT III
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '428 PATENT

34. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 33 of this Complaint as though fully set forth herein.

35. Plaintiff's accused products do not directly infringe any valid and enforceable claim of the '428 patent.

36. Plaintiff has not induced, and does not now induce, infringement of any valid and enforceable claim of the '428 patent.

37. Plaintiff has not contributorily infringed, and does not now contributorily infringe, any valid claim of the '428 patent.

38. An actual and justiciable case or controversy exists between Plaintiff and CallWave as to whether Plaintiff's accused products infringe the '428 patent, which requires a declaration of rights by this Court.

39. Plaintiff is entitled to a judicial determination and declaration that Plaintiff has not infringed and is not infringing, directly, indirectly, contributorily, by active inducement or otherwise, any valid and enforceable claim of the '428 patent.

COUNT IV
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '588 PATENT

40. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Plaintiff's accused products do not directly infringe any valid and enforceable claim of the '588 patent.

42. Plaintiff has not induced, and does not now induce, infringement of any valid and enforceable claim of the '588 patent.

43. Plaintiff has not contributorily infringed, and does not now contributorily infringe, any valid claim of the '588 patent.

44. An actual and justiciable case or controversy exists between Plaintiff and CallWave as to whether Plaintiff's accused products infringe the '588 patent, which requires a declaration of rights by this Court.

45. Plaintiff is entitled to a judicial determination and declaration that Plaintiff has not infringed and is not infringing, directly, indirectly, contributorily, by active inducement or otherwise, any valid and enforceable claim of the '588 patent.

COUNT V
DECLARATORY JUDGMENT OF INVALIDITY OF THE '591 PATENT

46. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 45 of this Complaint as though fully set forth herein.

47. An actual and justiciable case or controversy exists between Plaintiff and CallWave concerning the invalidity of the '591 Patent, which requires a declaration of rights by this Court.

48. The '591 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

49. On information and belief, CallWave contends that each and every claim of the '591 patent is valid.

50. Plaintiff is entitled to a judicial determination and declaration that one or more claims of the '591 patent is invalid.

COUNT VI
DECLARATORY JUDGMENT OF INVALIDITY OF THE '188 PATENT

51. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 50 of this Complaint as though fully set forth herein.

52. An actual and justiciable case or controversy exists between Plaintiff and CallWave concerning the invalidity of the '188 Patent, which requires a declaration of rights by this Court.

53. The '188 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

54. On information and belief, CallWave contends that each and every claim of the '188 patent is valid.

55. Plaintiff is entitled to a judicial determination and declaration that one or more claims of the '188 patent is invalid.

COUNT VII
DECLARATORY JUDGMENT OF INVALIDITY OF THE '428 PATENT

56. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 55 of this Complaint as though fully set forth herein.

57. An actual and justiciable case or controversy exists between Plaintiff and CallWave concerning the invalidity of the '428 Patent, which requires a declaration of rights by this Court.

58. The '428 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

59. On information and belief, CallWave contends that each and every claim of the '428 patent is valid.

60. Plaintiff is entitled to a judicial determination and declaration that one or more claims of the '428 patent is invalid.

COUNT VIII
DECLARATORY JUDGMENT OF INVALIDITY OF THE '588 PATENT

61. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 60 of this Complaint as though fully set forth herein.

62. An actual and justiciable case or controversy exists between Plaintiff and CallWave concerning the invalidity of the '588 Patent, which requires a declaration of rights by this Court.

63. The '588 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United State Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

64. On information and belief, CallWave contends that each and every claim of the '588 patent is valid.

65. Plaintiff is entitled to a judicial determination and declaration that one or more claims of the '588 patent is invalid.

WHEREFORE, Plaintiff requests that the Court enter a judgment in its favor and against CallWave as follows:

A. Entry of an Order of this Court declaring that BroadSoft's products do not infringe any of the CallWave Patents, and that BroadSoft, by its actions neither infringes, induces nor contributes to the infringement of the patent by others;

B. Entry of an Order enjoining CallWave, its agents, servants, officers, directors, employees, attorneys, privies, representatives, successors, assigns, and parent and subsidiary entities, and any and all persons in act of concert or participation with any of them, from threatening to assert or asserting any of the CallWave Patents against BroadSoft, its agents, employees, licensees or customers;

C. Entry of an Order of this Court assessing all costs associated with this

action to CallWave;

D. Entry of an Order of this Court declaring this case exceptional and awarding BroadSoft its reasonable attorneys' fees and costs; and

E. All other relief, both interim and permanent, as is just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff BroadSoft, Inc. hereby demands a trial by jury of all issues triable of right by a jury.

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