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17 Attorneys for Plaintiffs  
18 Plantronics, Inc.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA

21 PLANTRONICS, INC., a Delaware  
22 corporation,

23 Plaintiff,

24 vs.

25 BLUEANT WIRELESS PTY., LTD., an  
26 Australian corporation, and BLUEANT  
27 WIRELESS, INC., a California corporation,

28 Defendants.

CASE NO.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

1 This is an action for patent infringement in which plaintiff Plantronics, Inc. (“Plantronics”  
2 or “Plaintiff”) makes the following allegations against defendants BlueAnt Wireless Pty., Ltd. and  
3 BlueAnt Wireless, Inc. (collectively “BlueAnt” or “Defendants”).

#### 4 **PARTIES**

5 1. Plaintiff Plantronics is a Delaware corporation with its principal place of business  
6 at 345 Encinal Street, Santa Cruz, California 95060.

7 2. On information and belief, Defendant BlueAnt Wireless Pty., Ltd. (referred to  
8 individually as “BW-AUS”) is an Australian corporation with its principal offices at L4, Building  
9 1, 658 Church Street, Richmond, Victoria, Australia 3121. BW-AUS designs, manufacturers, and  
10 imports into the U.S. and world markets headphones, headsets, speakerphones and related  
11 accessories.

12 3. Defendant BlueAnt Wireless, Inc. (referred to individually as “BW-US”) is a  
13 California corporation with its last known principal place of business at 125 South Wacker Drive,  
14 Suite 300, Chicago, Illinois 60606. On information and belief, BW-US was formed in 2007 as a  
15 subsidiary of BW-AUS and imports, markets, sells, and/or offers for sale BlueAnt products in  
16 North America, including Canada, Mexico and the U.S. on behalf of BW-AUS.

#### 17 **JURISDICTION AND VENUE**

18 4. This is an action for patent infringement arising under the patent laws of the  
19 United States, Titles 35 and 17, United States Code, including 35 U.S.C. § 1, et seq.  
20 Accordingly, the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

21 5. This Court has personal jurisdiction over BW-AUS and BW-US because each of  
22 these BlueAnt entities has committed and continues to commit acts of infringement in violation of  
23 35 U.S.C. § 271 and places infringing products into the stream of commerce, with the knowledge  
24 or understanding that such products are sold in the State of California, including in this District.  
25 The acts by BW-AUS and BW-US cause injury to Plantronics within this District. Upon  
26 information and belief, BW-AUS and BW-US derive substantial revenue from the sale of  
27 infringing products within this District, expect their actions to have consequences within this  
28 District, and derive substantial revenue from interstate and international commerce.



1 devices.

2 13. The '453 Patent represents the fruit of years of extensive investment by  
3 Plantronics in human factors research regarding headset fit, comfort, stability and acoustics,  
4 which have become critical to competitive success in the Bluetooth headset market.

5 14. The '453 Patent describes and claims a concha-style headset that uses a novel  
6 technology that engages features of the concha on the outer ear to stabilize the headset (hereafter  
7 referred to as "concha-stabilized headsets" or "concha-stabilized headset technology").

8 15. Pursuant to 35 U.S.C. § 287, Plantronics has been properly marking its concha-  
9 stabilized headset products with the '453 Patent since at least as early as July of 2009.

10 **BlueAnt's Infringing Headsets**

11 16. BlueAnt manufactures, markets, uses, imports, sells and offers for sale in the  
12 United States infringing concha-stabilized headsets, including without limitation BlueAnt headset  
13 models "Q3", "Q2", "T1", and "T2 Endure."

14 17. BlueAnt distributes, sells or offers for sale the Q3, Q2, T1, and T2 Endure  
15 headsets in the United States using various sales channels including: (i) direct online sales  
16 through the BlueAnt website (www.myblueant.com); (ii) retail sales outlets, including Best Buy,  
17 Fry's Electronics, Amazon, among others; (iii) distributors, including C2 Wireless; and (iv)  
18 wireless telecommunication service providers, including AT&T, Verizon, Sprint, and T-Mobile.  
19 These retail sales outlets, distributors, and wireless service providers in turn sell the accused  
20 BlueAnt headsets to end users in the United States.

21 18. The BlueAnt Q3, Q2, T1, and T2 Endure headsets compete with Plantronics'  
22 concha-stabilized headsets and other Plantronics' products.

23 **COUNT I**

24 **(INFRINGEMENT OF THE '453 PATENT)**

25 19. Plantronics hereby incorporates and restates the foregoing paragraphs as if fully set  
26 forth at length.

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1 **Direct Infringement of the ‘453 Patent**

2 20. BlueAnt has infringed and continues to infringe – literally and/or under the  
3 doctrine of equivalents – at least one claim of the ‘453 Patent, by, among other things, making,  
4 using, selling, offering for sale or importing in this judicial District and elsewhere in the United  
5 States concha-stabilized headsets that embody one or more of the claimed inventions of the ‘453  
6 Patent in violation of 35 U.S.C. § 271(a).

7 21. Specifically, BlueAnt directly infringes the ‘453 Patent by making, using, selling,  
8 offering for sale and/or importing concha-stabilized headsets in the United States, including  
9 without limitation the BlueAnt Q3, Q2, T1, and T2 Endure headsets, as well as other BlueAnt  
10 concha-style headset products incorporating the patented concha-stabilizer headset technology  
11 (the “Accused Headsets”). By way of example only, and without limitation, BlueAnt infringes,  
12 literally and/or under the doctrine of equivalents, at least claim 10 of the ‘453 Patent by making,  
13 using, selling, offering for sale or importing in the United States the Accused Headsets.

14 **Indirect Infringement of the ‘453 Patent**

15 22. BlueAnt also has infringed and continues to infringe indirectly by way of  
16 knowingly inducing infringement and/or contributing to the infringement of the ‘453 Patent.  
17 Among other things, BlueAnt specifically intended their customers to directly infringe in this  
18 judicial District or elsewhere in the United States one or more of the claimed inventions of the  
19 ‘453 Patent in violation of 35 U.S.C. § 271(b), and/or specifically supplied components, such  
20 components having no substantial non-infringing uses and constituting a material part of the  
21 invention, to their customers with knowledge that these components were especially made for use  
22 by the customer in a manner that directly infringe in this judicial District or elsewhere in the  
23 United States one or more claims of the ‘453 Patent in violation of 35 U.S.C. § 271(c).

24 **Inducement of Infringement of the ‘453 Patent**

25 23. Further and in the alternative to the direct infringement described above, BlueAnt  
26 has knowingly induced infringement of the ‘453 Patent. BlueAnt induced such infringement  
27 through their making, using, selling, offering for sale or importing the Accused Headsets to their  
28 customers. BlueAnt has further induced infringement of the ‘453 Patent by separately selling

1 BlueAnt “stabilizing ear gels” and/or “stabilizing eartips” for use with the Accused Headsets as  
2 well as BlueAnt Q1 and “CONNECT” concha-style headsets (the “Accused Eargels”), which  
3 combined use infringes one or more claims of the ‘453 Patent, such as claim 10.

4 24. By way of example only, the Accused Eargels comprise an ear cushion with a  
5 concha stabilizer coupled to the ear cushion and dimensioned to contact an upper concha, which  
6 infringes one or more claims of the ‘453 Patent when combined as intended with a BlueAnt  
7 concha-style headset.

8 25. BlueAnt has intentionally caused, urged, encouraged, or aided action that induced  
9 infringement, including direct infringement, of the ‘453 Patent by others, including without  
10 limitation BlueAnt’s customers, for example individual end users, as well as BlueAnt’s retail,  
11 distributor, and wireless service provider distribution channel customers including without  
12 limitation, C2 Wireless, Best Buy, Fry’s Electronics, AT&T, Sprint, and Verizon, and their  
13 respective end-user customers. Such intentional action was and is, by way of example, the selling  
14 and/or offering for sale the Accused Headsets and the BlueAnt stabilizer ear gels to BlueAnt’  
15 customers. BlueAnt specifically intended for its end user customers to use the Accused Headsets  
16 and/or the Accused Eargels to directly infringe one or more claims of the ‘453 Patent.

17 26. BlueAnt also specifically intended for their retail, distributor, and wireless service  
18 provider distribution channel customers to directly infringe one or more claims of the ‘453 Patent  
19 by further offering for sale, selling, and distributing the Accused Headsets and/or Accused  
20 Eargels to their respective end-user customers whose use also directly infringes one or more  
21 claims of the ‘453 Patent. By way of example only, BlueAnt advertises to their customers that  
22 the Accused Eargels “are designed to fit in your ear, allowing you to wear your BlueAnt Q1, Q2,  
23 Q3, T1, CONNECT or Endure headset without using the ear hook.”

24 27. As a result of its conduct, BlueAnt induced its end-user customers and BlueAnt’s  
25 retail, distributor, and wireless service provider distribution channel customers’ respective end-  
26 user customers, to sell, distribute, and/or use the Accused Headsets and/or the Accused Eargels to  
27 directly infringe the claims of the ‘453 Patent.

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## Contributory Infringement of the '453 Patent

28. Further and in the alternative to the direct and indirect infringement described above, BlueAnt is also liable for contributory infringement of the '453 Patent. BlueAnt knowingly contributes to the infringement of the '453 Patent by selling, offering for sale or importing the Accused Eargels. BlueAnt also knowingly contributes to infringement of the '453 Patent by selling, offering for sale or importing the Accused Headsets to downstream end-users.

29. The infringing Accused Eargels, separately or in combination with the Accused Headsets, have no substantial non-infringing uses. The Accused Eargels are specifically designed and intended to be used by an end-user to stabilize the headset in the user's ear. BlueAnt instructs the product end-user that the BlueAnt "stabilizer ear gels are designed to fit in your ear, allowing you to wear your BlueAnt Q1, Q2, Q3, T1, CONNECT or Endure headset without using the ear hook." When the Accused Headsets are used with the stabilizing ear gels, the headsets are designed to be used in an end-user's ear in a manner that meets each and every limitation of one or more claims of the '453 Patent, for example claim 10. The Accused Headsets with an installed Accused Eargels have no substantial non-infringing uses.

30. Similarly, the Accused Eargels are specifically designed and intended to be installed on and used by an end-user with BlueAnt's concha-style headsets. In particular, the Accused Eargels are designed and intended to be used to stabilize the Accused Headsets as well as the BlueAnt Q1 and CONNECT concha-style headsets in the end-user's ear in a manner that meets each and every limitation of one or more claims of the '453 Patent, for example claim 10. As shown above, BlueAnt instructs the product end-users that Accused Eargels are intended to be installed on and used with the Accused Headsets and the BlueAnt Q1 and CONNECT concha-style headsets. The Accused Eargels have no substantial non-infringing uses.

31. As a result, BlueAnt specifically intended the end-users of the Accused Headsets to use the headsets in a manner that directly infringes one or more claims of the '453 Patent. BlueAnt also specifically intended the end-users of the Accused Eargels to install and use the stabilizing ear gels on BlueAnt concha-style headsets in a manner that directly infringes one or more claims of the '453 Patent. BlueAnt also specifically intended the Accused Headsets and

1 Accused Eargels to be sold, offered for sale, and distributed by BlueAnt's' retail, distributor, and  
2 wireless service provider channel customers to infringe one or more claims of the '453 Patent by  
3 further offering for sale, selling, and distributing the Accused Headsets and/or Accused Eargels to  
4 their respective end-user customers who's use also directly infringes one or more claims of the  
5 '453 Patent.

6 32. The Accused Eargels that are either included as part of an Accused Headset or sold  
7 separately by BlueAnt are material to practicing the invention of the '453 Patent. As a non-  
8 limiting example, the Accused Eargels are stabilizing ear gels used to stabilize the BlueAnt  
9 concha-style headsets in an end-user's ear. The Accused Eargels comprise an ear cushion with a  
10 concha stabilizer coupled to the ear cushion and dimensioned to contact an upper concha (as  
11 recited in claim 10 of the '453 Patent), which is a material part of the invention of one or more  
12 claims of the '453 Patent.

13 33. As a result of their conduct, BlueAnt has contributed to the infringement of the  
14 '453 Patent by its end-user customers and by BlueAnt's retail, distributor, and wireless service  
15 provider distribution channel customers' respective end-user customers by selling, offering to sell  
16 and importing the Accused Headsets and/or the Accused Eargels to such customers who directly  
17 infringe the claims of the '453 Patent.

18 34. BlueAnt engaged in the foregoing conduct while it was aware of the '453 Patent at  
19 least as early as May 30, 2014, if not earlier. Because of its knowledge of the '453 Patent and its  
20 infringement thereof, BlueAnt knew or should have known that the Accused Headsets and/or  
21 Accused Eargels it supplied to its customers were specifically made for use and used by such  
22 customers to directly infringe one or more claims of the '453 Patent.

23 35. BlueAnt has committed these acts of infringement without license or authorization.

#### 24 **Willful Infringement of the '453 Patent**

25 36. On May 30, 2014, Plantronics' counsel sent a letter to BlueAnt informing it of the  
26 '453 Patent and that the Accused Headsets infringe multiple claims of the '453 Patent (the  
27 "Infringement Letter"). A true and correct copy of the Infringement Letter is attached hereto as  
28 Exhibit C (May 30, 2014 letter to BlueAnt).



1           37.     Despite this pre-suit notice, BlueAnt has continued to directly infringe and  
2 indirectly infringe by way of inducing infringement and/or contributing to the infringement of the  
3 ‘453 Patent.

4           38.     BlueAnt’s acts of infringement of the ‘453 Patent has therefore been and continues  
5 to be willful, deliberate, and in reckless disregard of Plantronics’ patent rights.

6           39.     The Infringement Letter gave BlueAnt notice of an objectively high likelihood that  
7 the Accused Headsets and the use of the Accused Eargels with BlueAnt concha-style headsets  
8 infringed one or more claims of the ‘453 Patent.

9           40.     Despite having knowledge of an objectively high likelihood that its products  
10 infringed one or more claims of the ‘453 Patent, BlueAnt has in the past and still continues to the  
11 present to import, make, use, sell, and offer for sale the infringing Accused Headsets and the  
12 Accused Eargels.

13           41.     BlueAnt’s acts of infringement of the ‘453 Patent therefore has been and continues  
14 to be willful, deliberate, and in reckless disregard of Plantronics’ patent rights.

15           42.     As a result of BlueAnt’s direct and indirect infringement of the ‘453 Patent,  
16 Plantronics has suffered monetary damages, including without limitation lost profits for diverted  
17 sales, price erosion, or both, and is entitled to a money judgment in an amount adequate to  
18 compensate for BlueAnt’s infringement, but in no event less than a reasonable royalty for the use  
19 made of the invention by BlueAnt, together with interest and costs as fixed by the Court.  
20 Plantronics will continue to suffer damages in the future unless this Court enjoins BlueAnt’s  
21 infringing activities.

22           43.     Plantronics seeks relief jointly and severally from BW-AUS and BW-US  
23 regarding their infringement of one or more claims of the ‘453 Patent by the Accused Headsets  
24 and the Accused Eargels.

25           44.     Plantronics has also suffered and will continue to suffer severe and irreparable  
26 harm unless this Court issues a permanent injunction prohibiting BlueAnt and its respective  
27 affiliates, subsidiaries, agents, servants, employees, representatives, and all others acting in active  
28 concert therewith from infringing the ‘453 Patent.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plantronics prays for judgment as follows:

3 A. Entry of judgment holding Defendants jointly and severally liable to Plaintiff for  
4 infringement of the '453 Patent;

5 B. An award of damages adequate to compensate Plantronics for BlueAnt's  
6 infringement of the '453 Patent;

7 C. A post-judgment accounting of damages for the period of infringement of the '453  
8 Patent following the period of damages established by Plaintiff at trial;

9 D. An order permanently enjoining Defendants and their respective affiliates,  
10 subsidiaries, officers, directors, agents, servants, affiliates, employees, divisions, branches,  
11 subsidiaries, parents, and all others acting in active concert or participation with them, from  
12 continued acts of infringement of the '453 Patent;

13 E. If a permanent injunction is not granted, a judicial determination of the conditions  
14 of future infringement such as a royalty bearing compulsory license or such other relief as the  
15 Court deems appropriate;

16 F. Enhanced damages under 35 U.S.C. § 284 in view of the willful and deliberate  
17 nature of Defendants' infringement of the '453 Patent;

18 G. An order declaring that this is an exceptional case with the meaning of 35 U.S.C. §  
19 285;

20 H. An award of prejudgment interest, post-judgment interest, costs and  
21 disbursements, and attorney's fees; and

22 I. Such other and further relief to as the Court deems Plaintiff may be entitled in law  
23 and equity.

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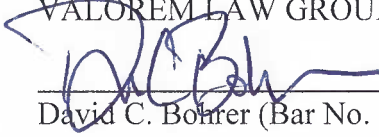
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1 **DEMAND FOR JURY TRIAL**

2 Plantronics, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury  
3 of any issues so triable by right.

4 Dated: October 15, 2014

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**CERTIFICATE OF SERVICE**

I, David C. Bohrer, am the ECF User whose identification and password are being used to file this document. I hereby certify that on October 15, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email address on file with the Clerk of the Court.

Dated: October 15, 2014

/s/ David C. Bohrer  
David C. Bohrer