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SPH AMERICA, LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SPH AMERICA, LLC,

Plaintiff,

vs.

SPRINT CORPORATION,

Defendant.

Case No. **'13CV2319 MMABGS**

COMPLAINT FOR PATENT INFRINGEMENT

Jury Trial Demanded

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq*. in which Plaintiff SPH America, LLC ("SPH" or "Plaintiff") makes the following allegations against Defendant Sprint Corporation ("Sprint" or "Defendant").

I. PARTIES

1. Plaintiff SPH America, LLC is a Virginia limited liability company having a principal place of business at 8133 Leesburg Pike, Suite 310, Vienna, Virginia 22182.

2. On information and belief, Defendant Sprint is a Delaware Corporation with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas.

II. JURISDICTION AND VENUE

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

4. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the California Long Arm Statute, due to having availed itself of the rights and benefits of California by engaging in activities, including: (i) conducting substantial business in this forum; and (ii) engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in California and in this Judicial District.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). On information and belief, Defendant has engaged in activities including: transacting business in this district and purposefully directing its business activities, including the sale of infringing goods, to this district.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. RE 40,385

6. Plaintiff SPH realleges and incorporates by reference paragraphs 1-5 above, as if fully set forth herein.

7. Plaintiff SPH is the exclusive licensee of United States Patent No. RE 40,385 ("the '385 patent") titled "Orthogonal Complex Spreading Method For Multichannel And Apparatus Thereof." The '385 patent was duly and legally issued by the United States Patent and Trademark Office on June 17, 2008. SPH is the exclusive licensee, possessing all substantial rights, to the '385 patent pursuant to a license from the Electronics and Telecommunications Research Institute, a South Korean non-profit research organization, the owner of the '385 patent.

8. On information and belief, Sprint operates a wireless communications network, and sells mobile handsets for use on a wireless network. On information and belief, Sprint also offers wireless communications services and sells mobile handsets for use on a wireless network through its Boost mobile brand.

9. On information and belief, Sprint has infringed and continues to infringe the '385 patent by, among other things, making, using, offering for sale, and/or selling unlicensed systems, and products and/or services related thereto, covered by one or more claims of the '385 patent. Such unlicensed products include, by way of example and without limitation, mobile phones made by Samsung, including without limitation the Samsung Galaxy S4, Galaxy S III, and Galaxy Rush, mobile phones made by Blackberry, including, without limitation the Blackberry Bold 9930 and Blackberry Curve 9310, mobile phones made by ZTE, including, without limitation the Fury, Sprint Vital, Boost Force, and Warp Sequent, and mobile phones made by Kyocera, including, without limitation the Rise, Hydro EDGE, Torque, and Milano, all of which are covered by one or more claims of the '385 patent, including but not limited to claim 31. By making, using, offering for sale, and/or selling such systems, and products and/or services related

thereto, covered by one or more claims of the '385 patent, Sprint has injured SPH and is liable to SPH for infringement of the '385 patent pursuant to 35 U.S.C. § 271.

10. Sprint was placed on notice of its infringement of the '385 Patent no later than approximately February 10, 2012 as a result of a letter from SPH to Sprint specifically identifying the '385 Patent and informing Sprint of its infringing conduct.

11. On information and belief, Sprint has also infringed the '385 patent by inducing others, including users of unlicensed wireless handsets on its networks, to infringe one or more claims of the '385 patent in violation of 35 U.S.C. § 271(b).

12. On information and belief, Sprint takes active steps to induce its customers and network users to infringe the '385 patent by taking affirmative steps to encourage and facilitate direct infringement by others with knowledge of that infringement, such as, upon information and belief, by importing, offering for sale, and/or selling products and/or services that when used as intended infringe the '385 patent. For example, and without limitation, on information and belief, Sprint advertises that customers can utilize mobile devices to communicate using its network services for 3G communications that Sprint enables pursuant to CDMA2000 technology. Since at least the time of the written communications from SPH in February 2012, Sprint has had actual knowledge of the '385 patent and that the use of products and services by its customers constituted direct infringement of the '385 patent. Despite this knowledge, Sprint has continued to offer these services, to facilitate and encourage infringing use of its services, and to encourage its customers to use products and services from Sprint in a manner that infringes the '385 patent.

13. On information and belief, Sprint has also infringed the '385 patent by contributing to the infringement of others, including users of unlicensed wireless

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handsets on its networks, to infringe one or more claims of the '385 patent in violation of 35 U.S.C. § 271(c).

14. On information and belief, Sprint sells devices that are a component of the patented invention of the '385 patent or an apparatus for use in practicing a patented process of the '385 patent and they are especially made or especially adapted for use in infringement of the '385 patent. In particular, the unlicensed mobile handsets sold and offered for sale by Sprint are apparatus for use in practicing one or more claimed processes of the '385 patent and are especially made or especially adapted for use in practicing one or more claimed processes of the '385 patent, including through use in communications using CDMA2000 technology. Sprint sold these unlicensed devices despite its knowledge that they were especially made or especially adapted for use in infringement of the '385 patent. Sprint was put on notice of the infringing nature of these goods since at least the time of the written communications from SPH in February 2012.

15. Sprint undertook its actions of, *inter alia*, making, using, offering for sale, and/or selling unlicensed systems, and products and/or services related thereto despite an objectively high likelihood that such activities infringed the '385 patent, which has been duly issued by the United States Patent and Trademark Office, and is presumed valid. Since at least the time of the written communications from SPH in February 2012, Sprint has been aware of an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '385 patent and that the '385 patent is valid. Despite that knowledge, on information and belief, Sprint has continued its infringing activities. As such, Sprint willfully infringed the '385 patent.

16. As a result of Sprint's infringement of the '385 patent, Plaintiff SPH has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Sprint's infringement, but in no event less than a reasonable royalty for the use made of the invention by Sprint, enhancement of

damages due to Sprint's willful infringement, and interest and costs as fixed by the Court.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 5,960,029

17. Plaintiff SPH realleges and incorporates by reference paragraphs 1-16 above, as if fully set forth herein.

18. Plaintiff SPH is the exclusive licensee of United States Patent No. 5,960,029 ("the '029 patent") titled "Coherent Dual-Channel QPSK Modulator/Demodulator For CDMA Systems, And Modulating/Demodulating Methods Therefor." The '029 patent was duly and legally issued by the United States Patent and Trademark Office on September 28, 1999. SPH is the exclusive licensee, possessing all substantial rights, to the '029 patent pursuant to a license from the Electronics and Telecommunications Research Institute, a South Korean non-profit research organization, the owner of the '029 patent.

19. On information and belief, Sprint operates a wireless communications network, and sells mobile handsets for use on a wireless network. On information and belief, Sprint also offers wireless communications services and sells mobile handsets for use on a wireless network through its Boost mobile brand.

20. On information and belief, Sprint has infringed and continues to infringe the '029 patent by, among other things, making, using, offering for sale, and/or selling unlicensed systems, and products and/or services related thereto, covered by one or more claims of the '029 patent. Such unlicensed products include, by way of example and without limitation, mobile phones made by Samsung, including without limitation the Samsung Galaxy S4, Galaxy S III, and Galaxy Rush, mobile phones made by Blackberry, including, without limitation the Blackberry Bold 9930 and Blackberry Curve 9310, mobile phones made by ZTE, including, without limitation the Fury, Sprint Vital, Boost Force, and Warp Sequent, and mobile phones made by Kyocera, including, without limitation the

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Rise, Hydro EDGE, Torque, and Milano, all of which are covered by one or more claims of the '029 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling such systems, and products and/or services related thereto, covered by one or more claims of the '029 patent, Sprint has injured SPH and is liable to SPH for infringement of the '029 patent pursuant to 35 U.S.C. § 271.

21. Sprint was placed on notice of its infringement of the '029 Patent no later than approximately February 10, 2012 as a result of a letter from SPH to Sprint specifically identifying the '029 Patent and informing Sprint of its infringing conduct.

22. On information and belief, Sprint has also infringed the '029 patent by inducing others, including users of unlicensed wireless handsets on its networks to infringe one or more claims of the '029 patent in violation of 35 U.S.C. § 271(b).

23. On information and belief, Sprint takes active steps to induce its customers and network users to infringe the '029 patent by taking affirmative steps to encourage and facilitate direct infringement by others with knowledge of that infringement, such as, upon information and belief, by importing, offering for sale, and/or selling products and/or services that when used as intended infringe the '029 patent. For example, and without limitation, on information and belief, Sprint advertises that customers can utilize mobile devices to communicate using its network services for 3G communications that Sprint enables pursuant to CDMA2000 technology. Since at least time of the written communications from SPH in February 2012, Sprint has had actual knowledge of the '029 patent and that the use of products and services by its customers constituted direct infringement of the '029 patent. Despite this knowledge, Sprint has continued to offer these services, to facilitate and encourage infringing use of its services, and to encourage its customers to use products and services from Sprint in a manner that infringes the '029 patent.

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24. On information and belief, Sprint has also infringed the '029 patent by contributing to the infringement of others, including users of unlicensed wireless handsets on its networks, to infringe one or more claims of the '029 patent in violation of 35 U.S.C. § 271(c).

25. On information and belief, Sprint sells devices that are a component of the patented invention of the '029 patent or an apparatus for use in practicing a patented process of the '029 patent and they are especially made or especially adapted for use in infringement of the '029 patent. In particular, the unlicensed mobile handsets sold and offered for sale by Sprint are apparatus for use in practicing one or more claimed processes of the '029 patent and are especially made or especially adapted for use in practicing one or more claimed processes of the '029 patent, including through use in communications using CDMA2000 technology. Sprint sold these unlicensed devices despite its knowledge that they were especially made or especially adapted for use in infringement of the '029 patent. Sprint was put on notice of the infringing nature of these goods since at least the time of the written communications from SPH in February 2012.

26. Sprint undertook its actions of, *inter alia*, making, using, offering for sale, and/or selling unlicensed systems, and products and/or services related thereto despite an objectively high likelihood that such activities infringed the '029 patent, which has been duly issued by the United States Patent and Trademark Office, and is presumed valid. Since at least the time of the written communications from SPH in February 2012, Sprint has been aware of an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '029 patent and that the '029 patent is valid. Despite that knowledge, on information and belief, Sprint has continued its infringing activities. As such, Sprint willfully infringed the '029 patent.

27. As a result of Sprint's infringement of the '029 patent, Plaintiff SPH has suffered monetary damages and is entitled to a money judgment in an amount

adequate to compensate for Sprint's infringement, but in no event less than a reasonable royalty for the use made of the invention by Sprint, enhancement of damages due to Sprint's willful infringement, and interest and costs as fixed by the Court.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff SPH respectfully requests that this Court enter:

1. A judgment in favor of Plaintiff SPH that Sprint has infringed, either literally and/or under the doctrine of equivalents, the '385 patent and the '029 patent;

2. A judgment in favor of Plaintiff SPH that Sprint has induced infringement of the '385 patent and the '029 patent;

3. A judgment in favor of Plaintiff SPH that Sprint has contributed to the infringement of the '385 patent and the '029 patent;

4. A judgment in favor of Plaintiff SPH that Sprint has willfully infringed the '385 patent and the '029 patent;

5. A judgment and order requiring Sprint to pay Plaintiff SPH its damages, costs, expenses, and pre-judgment and post-judgment interest as provided under 35 U.S.C. § 284 for Sprint's infringement of the '385 patent and the '029 patent;

6. A judgment and order for treble damages pursuant to 35 U.S.C. § 284;

7. A judgment and order that this case is exceptional and requiring Sprint to pay Plaintiff SPH reasonable experts' fees and attorneys' fees pursuant to 35 U.S.C. § 285; and

8. Any and all other relief as the Court may deem appropriate and just under the circumstances.

IV. DEMAND FOR JURY TRIAL

Plaintiff SPH requests a trial by jury of any issues so triable.

DATED: September 26, 2013

RUSS, AUGUST & KABAT
Larry C. Russ
Marc A. Fenster
Brian D. Ledahl
Alexander C.D. Giza

By: /s Brian D. Ledahl
Brian D. Ledahl
Attorneys for Plaintiff
SPH America, LLC

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
SPH America, LLC

(b) County of Residence of First Listed Plaintiff Fairfax County, VA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Russ, August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025 Telephone: 310-826-7474

DEFENDANTS
Sprint Corporation

County of Residence of First Listed Defendant Johnson County, Kansas
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

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II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ☒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
35 U.S.C. s. 271
Brief description of cause:
Patent Infringement

VII. REQUESTED IN COMPLAINT: ❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P. **DEMAND $**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE Hon. Cathy Ann Bencivengo DOCKET NUMBER 09cv02535 CAB (KSC)

DATE
09/26/2013

SIGNATURE OF ATTORNEY OF RECORD
/s Brian D. Ledahl

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE