IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COX COMMUNICATIONS, INC.,	
Plaintiff,	**Civil Action No.: 1:15-cv-1657-AT**
v.	**JURY TRIAL DEMANDED**
AT&T SERVICES, INC.,	
Defendant.	

DEFENDANT AT&T SERVICES, INC.'S FIRST AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS IN RESPONSE TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Defendant AT&T Services, Inc. ("AT&T") hereby submits its First Amended Answer, Defenses, and Counterclaims to Plaintiff Cox Communications, Inc.'s ("Cox") Complaint for Patent Infringement ("Complaint") of Patent Numbers 7,992,172 ("the '172 patent"), 8,332,889 ("the '889 patent"), and 5,999,970 ("the '970 patent") (collectively, the "Patents-in-Suit").

GENERAL DENIAL

Unless specifically admitted below, AT&T denies each and every allegation in the Complaint.

THE PARTIES[1]

1. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint and therefore denies the same.

2. AT&T admits that AT&T Inc. is a Delaware corporation having a principal place of business in Dallas, TX. AT&T Inc. has been dismissed without prejudice from this case. AT&T denies all remaining allegations contained in paragraph 2.

3. AT&T admits that AT&T Services, Inc. is a Delaware corporation having a principal place of business in Dallas, TX. AT&T admits that AT&T Services, Inc. may be served through its agent, CT Corporation System, at 1201 Peachtree Street NE, Atlanta, GA 30361. AT&T denies all remaining allegations contained in paragraph 3.

NATURE OF ACTION

4. Paragraph 4 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, AT&T admits only that the Complaint purports to assert claims for patent infringement. AT&T specifically denies that it has committed or continues to

[1] The headings in the Complaint are reproduced herein for the convenience of the reader. To the extent such headings include or infer allegations, they are denied.

commit any wrongful acts, including direct or indirect infringement of any valid, enforceable claim of any of the Patents-in-Suit. AT&T also denies that Cox is entitled to any monetary damages or other relief requested in its Complaint. AT&T denies all remaining allegations contained in paragraph 4 to the extent they relate to AT&T.

JURISDICTION AND VENUE

5. Paragraph 5 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, AT&T admits that this Court has subject matter jurisdiction over this dispute based upon the Patent Laws of the United States, Title 35, United States Code, and by Title 28, United States Code, § 1331 and § 1338(a). AT&T admits only that based on the allegations in the Complaint, venue may be established in this Court under 28 U.S.C. § 1391 and § 1400, but it is not convenient. Venue would be more properly established in a district that would better serve the convenience of the witnesses and parties and the interests of justice.

6. AT&T denies the allegations contained in paragraph 6 of the Complaint.

BACKGROUND

7. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint and therefore denies the same.

8. AT&T admits that it provides the U-Verse service to subscribers. AT&T also admits that it provides rental and installation services to its U-Verse subscribers. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint as pled and therefore denies the same.

9. AT&T admits that the ’172 patent states as its title “Method and Systems for Multicast Using Multiple Transport Streams,” and that Exhibit A to the Complaint appears to be a copy of the ’172 patent. AT&T admits that on its face, the ’172 patent lists an issue date of Aug. 2, 2011, a filing date of Oct. 4, 2000, and an Application No. of 09/679,210. AT&T lacks information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 9 and therefore denies the same.

10. AT&T admits that the ’889 patent states as its title “Generating a Personalized Video Mosaic in a Cable Services Network,” and that Exhibit B to the Complaint appears to be a copy of the ’889 patent. AT&T admits that on its

face, the ’889 patent lists an issue date of Dec. 11, 2012, a filing date of Feb. 9, 2007, and an Application No. of 11/704,700. AT&T lacks information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 and therefore denies the same.

11. AT&T admits that the ’970 patent states as its title “Access System and Method for Providing Interactive Access to an Information Source Through a Television Distribution System,” and that Exhibit C to the Complaint appears to be a copy of the ’970 patent. AT&T admits that on its face, the ’970 patent lists an issue date of Dec. 7, 1999, a filing date of Apr. 10, 1996, and an Application No. of 08/630,397. AT&T lacks information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11 and therefore denies the same.

12. AT&T admits that the ’172 patent, ’889 patent, and ’970 patent are referred to collectively as the Patents-in-Suit in the Complaint. AT&T lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint and therefore denies the same.

13. AT&T denies the allegations of paragraph 13 of the Complaint.

14. AT&T denies the allegations of paragraph 14 of the Complaint.

15. AT&T denies the allegations of paragraph 15 of the Complaint.

COUNT I
Infringement of U.S. Patent No. 7,992,172

16. AT&T repeats and reasserts its responses set forth in paragraphs 1 through 15 above as though fully set forth herein.

17. AT&T denies the allegations contained in paragraph 17 of the Complaint. AT&T specifically denies that it has committed or continues to commit any wrongful acts, including direct or indirect infringement of any valid, enforceable claim of any of the Patents-in-Suit.

18. AT&T denies the allegations contained in paragraph 18 of the Complaint.

19. AT&T denies the allegations contained in paragraph 19 of the Complaint.

20. AT&T denies the allegations contained in paragraph 20 of the Complaint.

21. AT&T denies the allegations contained in paragraph 21 of the Complaint.

22. AT&T denies the allegations contained in paragraph 22 of the Complaint.

23. AT&T denies the allegations contained in paragraph 23 of the Complaint.

COUNT II
Infringement of U.S. Patent No. 8,332,889

24. AT&T repeats and reasserts its responses set forth in paragraphs 1 through 15 above as though fully set forth herein.

25. AT&T denies the allegations contained in paragraph 25 of the Complaint. AT&T specifically denies that it has committed or continues to commit any wrongful acts, including direct or indirect infringement of any valid, enforceable claim of any of the Patents-in-Suit.

26. AT&T denies the allegations contained in paragraph 26 of the Complaint.

27. AT&T denies the allegations contained in paragraph 27 of the Complaint.

28. AT&T denies the allegations contained in paragraph 28 of the Complaint.

29. AT&T denies the allegations contained in paragraph 29 of the Complaint.

30. AT&T denies the allegations contained in paragraph 30 of the Complaint.

31. AT&T denies the allegations contained in paragraph 31 of the Complaint.

COUNT III
Infringement of U.S. Patent No. 5,999,970

32. AT&T repeats and reasserts its responses set forth in paragraphs 1 through 15 above as though fully set forth herein.

33. AT&T denies the allegations contained in paragraph 33 of the Complaint. AT&T specifically denies that it has committed or continues to commit any wrongful acts, including direct or indirect infringement of any valid, enforceable claim of any of the Patents-in-Suit.

34. AT&T denies the allegations contained in paragraph 34 of the Complaint.

35. AT&T denies the allegations contained in paragraph 35 of the Complaint.

36. AT&T denies the allegations contained in paragraph 36 of the Complaint.

37. AT&T denies the allegations contained in paragraph 37 of the Complaint.

38. AT&T denies the allegations contained in paragraph 38 of the Complaint.

39. AT&T denies the allegations contained in paragraph 39 of the Complaint.

PRAYER FOR RELIEF

AT&T denies that Cox is entitled to any requested relief. To the extent not expressly addressed above, the factual allegations in the Complaint are denied.

DEMAND FOR JURY TRIAL

This sentence contains a demand for jury trial to which no response is required.

DEFENSES

40. Subject to its responses above, and upon information and belief, AT&T alleges and asserts the following defenses in response to the allegations of the Complaint. Regardless of how such defenses are listed herein, AT&T undertakes the burden of proof only as to those defenses that are deemed affirmative defenses as a matter of law. In addition to the defenses described below, AT&T specifically reserves all rights to allege additional defenses pursuant to any docket control order or that become known through the course of this action including, but not limited to, inequitable conduct.

First Defense

(Invalidity)

41. The claims of the "Patents-in-Suit are invalid and/or unenforceable under one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

Second Defense

(Non-Infringement)

42. AT&T's actions with respect to the use, sale or offer for sale of accused services or products or any other accused activity do not, either literally or under the doctrine of equivalents, directly, jointly, or indirectly infringe, contribute to the infringement, or induce the infringement of any properly construed, valid and/or enforceable claims of the Patents-in-Suit.

Third Defense

(Prosecution History Estoppel)

43. Plaintiff's claims are barred by the doctrine of prosecution history estoppel based on amendments, statements, admissions, omissions, representations, disclaimers and/or disavowals made during prosecution of the Patents-in-Suit.

Fourth Defense

(Damages Statutorily Limited)

44. AT&T alleges on information and belief that any claim for damages for patent infringement by Plaintiff is limited by 35 U.S.C. § 287 to only those damages occurring after proper and sufficient notice of infringement of the Patents-in-Suit to AT&T.

Fifth Defense

(Laches, Waiver, and Estoppel)

45. Plaintiff's claims are barred by equitable doctrines including the doctrine of laches, waiver, and estoppel due to Plaintiff's knowledge of AT&T's allegedly infringing actions, and its unjustified failure to pursue infringement claims diligently and timely from the time it became aware that it supposedly had claims against AT&T. AT&T has been both economically and materially prejudiced from Plaintiff's inexcusable lack of diligence, including (without limitation) through the loss of records of third parties pertaining to the prior art, and the unreliability of the memories of witnesses who otherwise possess knowledge of the technology at issue. As a result, Plaintiff is barred under the doctrine of laches, wavier, and/or estoppel from recovering any compensation or remedy for alleged infringement of the Patents-in-Suit by AT&T.

Sixth Defense

(Inducement Damages Limited to Notice Date)

46. AT&T alleges that any claim for damages for alleged inducement is limited to only those damages occurring after proper and sufficient notice of alleged infringement of the Patents-in-Suit to AT&T.

Seventh Defense

(Contributory Damages Limited to Notice Date)

47. AT&T alleges that any claim for damages for alleged contributory infringement is limited to only those damages occurring after proper and sufficient notice of alleged infringement to of the Patents-in-Suit to AT&T.

Eighth Defense

(No Injunctive Relief)

48. Plaintiff is not entitled to any form of injunctive relief because Plaintiff has not suffered, and will not suffer, irreparable harm because of AT&T's conduct. Plaintiff has an adequate remedy at law, and the balance of hardship and the public interest do not favor injunctive relief. AT&T further denies that Plaintiff could suffer damage as alleged by Plaintiff, or meet the applicable standard to warrant an injunction.

Ninth Defense

(Failure to Mark)

49. To the extent that Cox, Cox's predecessors in interest to the Patents-in-Suit, and/or their respective licensees failed to properly mark any of their relevant products as required by 35 U.S.C. § 287, or otherwise failed to give proper notice that AT&T's actions allegedly infringed the Patents-in-Suit, AT&T is not

liable to Cox for the acts alleged to have been performed before AT&T received actual notice that it was allegedly infringing the Patents-in-Suit.

Tenth Defense

(License and Patent Exhaustion)

50. Cox's claims are barred, in whole or in part, to the extent that any allegedly infringing products are supplied, directly or indirectly to AT&T by an entity or entities having express or implied licenses to one or more of the Patents-in-Suit, that AT&T is licensed to practice one or more of the Patents-in-Suit, and/or under the doctrine of patent exhaustion.

Other Defenses

51. AT&T reserves all defenses under rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery or further factual investigation in this case.

DEFENDANT AT&T'S COUNTERCLAIMS

The Parties

1. AT&T Services, Inc. ("AT&T") is a Delaware corporation having a principal place of business in Dallas, TX.

2. Based on its assertions, Cox Communications, Inc. ("Cox") is a Georgia corporation having a principal place of business in Atlanta, Georgia.

Jurisdiction and Venue

3. This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 100 et seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, based on an actual justiciable controversy between Counterclaimant and Cox. This Court has subject matter over these Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, and 2201.

4. Cox has consented to personal jurisdiction for this action in this district by filing the Complaint in this action in this Court.

5. To the extent venue of the main action is found to be proper, venue for these counterclaims is also proper in this district pursuant to 28 U.S.C. § 1391(b) and (c). Venue would be more properly established in a district that would better serve the convenience of the witnesses and parties and the interests of justice.

Factual Background

6. Cox alleges in the Complaint that it is the owner of United States Patent Nos. 7,992,172 ("the '172 patent"), 8,332,889 ("the '889 patent"), and 5,999,970 ("the '970 patent") (collectively, the "Patents-in-Suit").

7. Cox has expressly charged AT&T with infringement of the Patents-in-Suit by filing the Complaint. AT&T has denied these allegations. Thus, for at least these reasons, there exists an actual controversy between the parties regarding these patents.

COUNTERCLAIM COUNT I

Invalidity of U.S. Patent No. 7,992,172

8. AT&T realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.

9. Cox has asserted that AT&T infringes the '172 patent.

10. An actual controversy exists between Cox and AT&T regarding the validity of the '172 patent.

11. On information and belief, each and every claim of the '172 patent is invalid for failure to comply with the conditions and requirements for patentability specified in, but not limited to, 35 U.S.C. §§ 101-103, and/or 112 in effect at the time the patent issued.

COUNTERCLAIM COUNT II

Invalidity of U.S. Patent No. 8,332,889

12. AT&T realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.

13. Cox has asserted that AT&T infringes the ’889 patent.

14. An actual controversy exists between Cox and AT&T regarding the validity of the ’889 patent.

15. On information and belief, each and every claim of the ’889 patent is invalid for failure to comply with the conditions and requirements for patentability specified in, but not limited to, 35 U.S.C. §§ 101-103, and/or 112 in effect at the time the patent issued.

COUNTERCLAIM COUNT III

Invalidity of U.S. Patent No. 5,999,970

16. AT&T realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.

17. Cox has asserted that AT&T infringes the ’970 patent.

18. An actual controversy exists between Cox and AT&T regarding the validity of the ’970 patent.

19. On information and belief, each and every claim of the ’970 patent is invalid for failure to comply with the conditions and requirements for patentability

specified in, but not limited to, 35 U.S.C. §§ 101-103, and/or 112 in effect at the time the patent issued.

COUNTERCLAIM COUNT IV

Non-infringement of U.S. Patent No. 7,992,172

20. AT&T realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.

21. Cox has asserted that AT&T infringes the ’172 patent.

22. An actual controversy exists between Cox and AT&T regarding infringement of the ’172 patent.

23. AT&T has not infringed, and does not infringe any valid, enforceable claim of the ’172 patent literally, directly, jointly, contributorily, by way of inducement, and/or under the doctrine of equivalents.

COUNTERCLAIM COUNT V

Non-infringement of U.S. Patent No. 8,332,889

24. AT&T realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.

25. Cox has asserted that AT&T infringes the ’889 patent.

26. An actual controversy exists between Cox and AT&T regarding infringement of the ’889 patent.

27. AT&T has not infringed, and does not infringe any valid, enforceable claim of the ’889 patent literally, directly, jointly, contributorily, by way of inducement, and/or under the doctrine of equivalents.

COUNTERCLAIM COUNT VI

Non-infringement of U.S. Patent No. 5,999,970

28. AT&T realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.

29. Cox has asserted that AT&T infringes the ’970 patent.

30. An actual controversy exists between Cox and AT&T regarding infringement of the ’970 patent.

31. AT&T has not infringed, and does not infringe any valid, enforceable claim of the ’970 patent literally, directly, jointly, contributorily, by way of inducement, and/or under the doctrine of equivalents.

PRAYER FOR RELIEF

WHEREFORE, AT&T prays this Court enter judgment:

A. dismissing the Complaint with prejudice and denying each and every prayer for relief contained therein;

B. declaring that none of the claims of the Patents-in-Suit are directly, jointly, or indirectly infringed by the use, sale, or offer for sale of any of AT&T’s

services or products or any other activity attributable to AT&T, either literally or under the doctrine of equivalents;

C. declaring that the claims of the Patents-in-Suit are invalid;

D. declaring that this case is "exceptional" within the meaning of 35 U.S.C. § 285, and that all costs and expenses of this action, including reasonable attorneys' fees, be awarded to AT&T;

E. declaring that Cox is not entitled to any injunctive relief against AT&T; and

F. granting AT&T such further relief as this Court may deem necessary, just, or proper.

JURY DEMAND

In accordance with Federal Rule of Civil Procedure 38(b), Defendant and Counterclaimant AT&T demands a trial by jury on all issues so triable.

Dated: September 8, 2015

Respectfully submitted,

/s/ Anthony L. Cochran
Anthony L. Cochran
Georgia Bar No. 172425
CHILIVIS, COCHRAN, LARKINS,
& BEVER, LLP
3127 Maple Drive, NE
Atlanta, Georgia 30305
Tel. (404) 233-4171
Fax (404) 261-2842
alc@cclblaw.com

/s/ Theodore Stevenson, III
Theodore Stevenson, III
Lead Attorney
Texas State Bar No. 19196650
Admitted *pro hac vice*
tstevenson@mckoolsmith.com
Ashley N. Moore
Texas State Bar No. 24074748
Admitted *pro hac vice*
amoore@mckoolsmith.com
Mitchell R. Sibley
Texas State Bar No. 24073097
Admitted *pro hac vice*
msibley@mckoolsmith.com
MCKOOL SMITH, P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: (214) 978-4000
Telecopier: (214) 978-4044

Kevin P. Hess
Texas State Bar No. 24087717
Admitted *pro hac vice*
khess@mckoolsmith.com
MCKOOL SMITH, P.C.

300 W. 6th Street, Suite 1700
Austin, Texas 78701

ATTORNEYS FOR DEFENDANT AT&T SERVICES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2015, I electronically filed the foregoing Defendant AT&T Services, Inc.'s First Amended Answer, Defenses and Counterclaims in Response to Plaintiff's Complaint for Patent Infringement with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

/s/ Anthony L. Cochran
Anthony L. Cochran

CERTIFICATE OF OPPOSING PARTY'S CONSENT

I hereby certify that per Federal Rule of Civil Procedure 15(a)(2), on August 24, 2015 attorneys for Cox Communications provided written consent for AT&T Services, Inc. to amend its original Answer, Defenses, and Counterclaims in Response to Plaintiff's Complaint for Patent Infringement.

/s/ Anthony L. Cochran
Anthony L. Cochran