

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

MESSAGE NOTIFICATION
TECHNOLOGIES LLC,

Plaintiff,

v.

AVAYA INC.,

Defendant.

C.A. No. 13-1878-GMS

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Message Notification Technologies LLC files this first amended complaint against the above-named defendant, alleging, based on its own knowledge with respect to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

1. Plaintiff Message Notification Technologies LLC (“MessageTech”) is a limited liability company formed under the laws of the State of Delaware, with a principal place of business in Wilmington, Delaware.

2. Defendant Avaya Inc. (“Avaya”) is a Delaware corporation with a principal place of business in California. Avaya can be served with process by serving its registered agent: The Corporation Trust Company; Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.

JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, defendant is incorporated in this district, has transacted business in this district, and/or has committed and/or induced acts of patent infringement in this district.

5. Defendant is subject to this Court’s specific and general personal jurisdiction under due process and/or the Delaware Long Arm Statute due at least to defendant’s having been incorporated in this forum and/or defendant’s substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 5,944,786

6. On August 31, 1999, United States Patent No. 5,944,786 (“the ’786 patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention titled “Automatic Notification of Receipt of Electronic Mail (E-mail) via Telephone System without Requiring Log-On to E-mail Server.”

7. MessageTech is the owner of the ’786 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the ’786 patent against infringers, and to collect damages for all relevant times.

8. Avaya had knowledge of the '786 patent at least from the filing date and/or service date of the original complaint against it for infringement of the '786 patent.

9. In addition, Avaya had knowledge of the '786 patent at least from March 16, 1998 when it or its affiliates cited the patent in its application for U.S. Patent No. 6,167,254, a patent with named inventors David L. Chavez, Jr. and Larry J. Hardouin, originally assigned to "Avaya Technology Corp.," that was prosecuted by John C. Moran.

10. Upon information and belief, Avaya Technology Corp. is a subsidiary, affiliate, and/or former name of Avaya.

11. Upon information and belief, David L. Chavez, Jr. is or was "Avaya's Chief Technical Officer in the World-Wide Sales Organization. He has 22 years of professional experience and holds 60 patent awards (and many more pending). David is responsible for Avaya's award-winning and market-leading IP communications architecture and the creator of the next generation Avaya Aura® architecture." See cached copy of <http://www.avaya.com/archives/author/david-chavez>, available at http://webcache.googleusercontent.com/search?q=cache:BrULrgC_LfIJ:www.avaya.com/blogs/archives/author/david-chavez/+&cd=3&hl=en&ct=clnk&gl=us (last visited Jan. 17, 2014).

12. Upon information and belief, Larry J. Hardouin is or was employed by Avaya prior to the filing of the original complaint. *See* U.S. Pat. No. 8,484,704 (listing Avaya Inc. as original assignee, Larry J. Hardouin as a co-inventor with David L. Chavez, and a priority date in 2009 and filing date in 2010).

13. David L. Chavez and Larry J. Hardouin had knowledge of the '786 patent after they filed the application for U.S. Pat. No. 6,167,254 and brought that knowledge with them to Avaya.

14. Upon information and belief, John C. Moran worked for Avaya at some time prior to the filing of the original complaint. *See* U.S. Pat. No. 6,628,948 (listing John C. Moran as co-inventor with David L. Chavez, Jr. for a patent originally assigned to Avaya Technology Corp); *see also* PTO PAIR listing for U.S. Pat. No. 6,167,254, Address & Attorney/Agent tab (listing current Correspondence Address Name as "Avaya Inc." and one of Avaya Inc.'s Attorneys/Agents as John Moran, Reg # 30782).

15. John C. Moran acquired knowledge of the '786 patent during his prosecution of the 254 patent and brought that knowledge with him when he worked for Avaya.

16. Avaya also acquired knowledge of the '786 patent when it became the correspondence addressee for the 254 patent. *See* PTO PAIR listing for U.S. Pat. No. 6,167,254, Address & Attorney/Agent tab (listing current Correspondence Address Name as "Avaya Inc.").

17. Avaya infringed¹ one or more claims of the '786 patent and is being accused of doing so both directly and indirectly.

18. Avaya, either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale unified messaging systems/products/services that,

¹ MessageTech accuses Avaya of past, present, and future infringement. All allegations of infringement or acts leading to infringement are made in the past tense, rather than also in the present and future tense, strictly for simplicity's sake.

upon receipt of an email, actuate a voice mail system to send an e-mail notification signal to a telephone node (including at least systems/products/services under following designations: Avaya Unified Messenger, Avaya Communication Manager, Avaya Aura Messaging) that infringed one or more claims of the '786 patent.

19. To the extent that Avaya acted in conjunction with others, including its customers and/or suppliers, in its infringement, these others are contractually or otherwise obliged to Avaya to carry out their acts.

20. Avaya's customers and/or suppliers directly made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale unified messaging systems/products/services that, upon receipt of an email, actuate a voice mail system to send an e-mail notification signal to a telephone node (including at least systems/products/services under following designations: Avaya Unified Messenger, Avaya Communication Manager, Avaya Aura Messaging) that infringed one or more claims of the '786 patent.

21. Avaya induced infringement and/or contributed to the infringement of one or more of the claims of the '786 patent by its customers and/or suppliers.

22. Avaya took active steps, directly and/or through contractual relationships with others, to cause infringement with both knowledge of the '786 patent, the specific intent to cause its customers and/or suppliers (e.g., manufacturers of computer and telecommunications equipment, companies selling message management software) to make, use, sell, import, or otherwise provide the accused systems/products/services in a manner that infringed the '786 Patent, and knowledge that these acts by its customers and/or suppliers constituted infringement. Such steps by Avaya included, among other

things, advising or directing its customers and/or suppliers to make, use, sell, or import the accused systems/products/services in an infringing manner; advertising and promoting the use of the accused systems/products/services in an infringing manner; and/or distributing instructions that guide users to use the accused systems/products/services in an infringing manner. Avaya, being involved in the relevant telecom hardware and software systems of its customers and/or suppliers, had sufficiently detailed knowledge of the related activities of its customers and/or suppliers to know that these acts constituted infringement yet took the above steps to cause infringement regardless.

23. The accused systems/products/services contain hardware and software components that are especially designed to be used in conjunction with other devices or systems that may not be provided by Avaya. These other devices or systems may include: email servers and clients; telephone hardware; and voice servers. To the extent Avaya did not provide these other devices and systems, it took active steps, directly and/or through contractual relationships, to cause infringement by its customers and/or suppliers, including, among other things, advising or directing others to integrate such other devices and systems with accused systems/products/services; advertising and promoting the use by others of the accused systems/products/services with such other devices and systems; and distributing instructions that guide users to integrate the accused systems/products/services with such other devices and systems.

24. The accused systems/products/services have hardware and/or software components that are especially designed and/or adapted to be used with such other devices and systems in carrying out unified messaging functionality, as seen by how prominently the unified messaging feature is promoted by Avaya on its website and marketing

literature. These components in the Accused Products constitute a material part of the invention of one or more asserted claims of the '786 patent and are not staple articles of commerce suitable for substantial non-infringing use. These distinct and separate components are used only to perform the unified messaging functionality and not any other functionality.

25. For the reasons stated above, Avaya infringed the '786 patent both directly and indirectly.

26. Avaya's infringement was willful at least from the date it had knowledge of the '786 patent, as Avaya knew or should have known of the risk of infringement from that point in time. Avaya acted in the face of "an objectively high likelihood that its actions constituted infringement of a valid patent" or with reckless disregard of that likelihood.

27. MessageTech has been, is being, and will continue to be damaged as a result of the infringing conduct by defendant alleged above. Thus, defendant is liable to MessageTech in an amount that adequately compensates MessageTech for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

MessageTech hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

MessageTech requests that the Court find in its favor and against the defendant and that the Court grant MessageTech the following relief:

a. Judgment that one or more claims of the '786 patent have been infringed, either literally and/or under the doctrine of equivalents, by defendant and/or by others to

whose infringement defendant has contributed and/or by others whose infringement has been induced by defendant;

b. A permanent injunction enjoining defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing infringement of, or contributing to infringement of the '786 patent;

c. Judgment that defendant account for and pay to MessageTech all damages to and costs incurred by MessageTech because of defendant's infringing activities and other conduct complained of herein;

d. That MessageTech be granted pre-judgment and post-judgment interest on the damages caused by defendant's infringing activities and other conduct complained of herein;

e. That this Court declare this an exceptional case and award MessageTech its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

f. That MessageTech be granted such other and further relief as the Court may deem just and proper under the circumstances.

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