

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

MESSAGE NOTIFICATION  
TECHNOLOGIES LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

C.A. No. 13-1881-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 Microsoft Corporation (“Microsoft”) is a Washington corporation with a principal place of business in Washington. Microsoft can be served with process by serving its registered agent: Corporation Service Company; 2711 Centerville Rd, Ste. 400, Wilmington, DE 19808

**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. Microsoft 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, Microsoft had knowledge of the '786 patent through its membership with RPX Corporation ("RPX"), the original assignee of U.S. Pat. No. 8,588,213 (the "'213 patent"). The '786 patent was cited during the prosecution of the '213 patent as prior art. This citation occurred in an Information Disclosure Statement transmitted to the PTO on Aug. 28, 2011 (and received at the PTO on Aug. 29, 2011). The '786 patent's status as prior art cited during prosecution of the '213 patent is reflected on the face of the '213 patent as-issued.

10. Microsoft joined RPX in or around Jan. 27, 2010. *See* <http://www.marketwatch.com/story/microsoft-joins-group-to-counter-patent-trolls-2010-01-27>.

11. RPX acquires intellectual property rights on behalf of its members.  
According to its website:

Our market-based solution dramatically reduces patent-related costs for client companies by sharing risk across our network. We aggregate capital from annual subscription fees to acquire dangerous patents and patent rights, with each RPX client receiving a license to every asset we own.

RPX Corporation, Main Page, <http://www.rpxcorp.com/> (last visited Jan. 17, 2014).

12. RPX also offers patent advisory services to its members. According to its website:

Our insight into the patent market allows RPX to serve as an extension of a client's in-house legal team to better inform its long-term IP strategy. As necessary, we schedule client briefings to discuss our assessments of open market opportunities, relevant litigation landscape activity, key players and trends, as well as to provide specific technical and strategic analyses on potential threats.

RPX Corporation, Client Relations, <http://www.rpxcorp.com/rpx-client-relations> (last visited Jan. 17, 2014).

13. On information and belief, RPX notifies and advises its members on those patents it has or will have intellectual property rights in.

14. On information and belief, RPX notified and advised Microsoft of RPX's prosecution of the '213 patent.

15. On information and belief, Microsoft inquired into the intellectual property rights held by or projected to be held by RPX.

16. On information and belief, Microsoft inquired into RPX's prosecution of the '213 patent.

17. Microsoft thus acquired knowledge of the prosecution of the '213 patent. And through this knowledge, Microsoft acquired knowledge of the '786 patent at or around Aug. 28, 2011, when the '786 patent was cited as prior art in an Information Disclosure Statement, if not earlier.

18. Microsoft infringed<sup>1</sup> one or more claims of the '786 patent and is being accused of doing so both directly and indirectly.

19. Microsoft, 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, 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

---

<sup>1</sup> MessageTech accuses Microsoft 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.

designation: Unified Messaging Voice Access) that infringed one or more claims of the '786 patent.

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

21. Microsoft'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 designation: Microsoft Unified Messaging Voice Access) that infringed one or more claims of the '786 patent.

22. Microsoft 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.

23. Microsoft 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 Microsoft 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. Microsoft, 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.

24. 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 Microsoft. These other devices or systems may include: email servers and clients; telephone hardware; and voice servers. To the extent Microsoft 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.

25. 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 Microsoft 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.

26. For the reasons stated above, Microsoft infringed the '786 patent both directly and indirectly.

27. Microsoft's infringement was willful at least from the date it had knowledge of the '786 patent, as Microsoft knew or should have known of the risk of infringement from that point in time. Microsoft 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.

28. 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.

January 17, 2014

OF COUNSEL:

Zachariah S. Harrington  
Matthew Antonelli  
Larry D. Thompson, Jr.  
Kris Y. Teng  
ANTONELLI, HARRINGTON & THOMPSON LLP  
4200 Montrose Blvd., Ste. 430  
Houston, TX 77006  
(713) 581-3000  
zac@ahtlawfirm.com  
matt@ahtlawfirm.com  
larry@ahtlawfirm.com  
kris@ahtlawfirm.com

BAYARD, P.A.

/s/ Sara E. Bussiere  
Richard D. Kirk (rk0922)  
Stephen B. Brauerman (sb4952)  
Vanessa R. Tiradentes (vt5398)  
Sara E. Bussiere (sb5725)  
222 Delaware Avenue, Suite 900  
P.O. Box 25130  
Wilmington, DE 19899  
(302) 655-5000  
rkirk@bayardlaw.com  
sbrauerman@bayardlaw.com  
vtiradentes@bayardlaw.com  
sbussiere@bayardlaw.com

*Attorneys for Plaintiff Message Notification  
Technologies LLC*