

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

PATENTMARKS COMMUNICATIONS,	)	
LLC	)	
	)	
Plaintiff,	)	
	)	C.A. No. _____
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
HTC AMERICA, INC.,	)	
	)	
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which Plaintiff PatentMarks Communications, LLC (“PMC”) makes the following allegations against HTC America, Inc. (“Defendant”):

**PARTIES**

1. PMC is a Delaware limited liability company with a registered address of 2140 S. Dupont Highway, Camden, Delaware 19934.
2. On information and belief, Defendant is a Washington corporation with its principal place of business at 13920 SE Eastgate Way, Suite 400 Bellevue, Washington 98005. Defendant has appointed National Registered Agents, Inc., 505 Union Ave. SE, Suite 120, Olympia, WA 98501, as its agent for service of process.

**JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, including § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
4. This Court has personal jurisdiction over Defendant because, among other reasons, Defendant has done business in this District, has committed and continues to commit

acts of patent infringement in this District, and has harmed and continues to harm PMC in this District, by, among other things, using, selling, offering for sale, and importing infringing products and services in this District.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because, among other reasons, Defendant is subject to personal jurisdiction in this District, has committed and continues to commit acts of patent infringement in this District. On information and belief, for example, Defendant has used, sold, offered for sale, and imported infringing products in this District.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 8,400,926**

6. PMC is the owner by assignment of United States Patent No. 8,400,926 (the “‘926 Patent”), entitled “Multi-Protocol Telecommunications Routing Optimization,” from inventors Allen D. Kaplan and William F. McCarthy, by way of a number of related applications and transfers of ownership. The application for the ‘926 Patent was filed on November 30, 2007, and is related to United States Patent 6,016,307 (Application No. 08/741,130), filed on October 31, 1996. The ‘926 Patent issued on March 19, 2013. A true and correct copy of the ‘926 Patent is attached as Exhibit A.

7. Defendant has infringed and is still infringing the ‘926 Patent, in this judicial District and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling products and services that embody the patented inventions, and will continue to do so unless enjoined by this Court. For instance, infringing smartphones made, used, imported, offered for sale, and/or sold by Defendant, include functionality that may transfer files by means of a variety of telecommunication paths, such as WiFi 802.11 a/b/g/n, 4G, 3G, and/or 2G. The particular path used by the device may depend on factors such as

availability, speed, stability, signal strength, and/or default or user preferences associated with the paths, some of which factors may be measured or calculated by a device processor. Such infringing devices include, for example, Defendant's Evo Design 4G, Merge, Droid Incredible 4G, and Evo 4G LTE smartphones.

8. By engaging in the conduct described herein, Defendant has injured PMC and is thus liable for infringement of the '926 Patent pursuant to 35 U.S.C. § 271.

9. Defendant has committed these acts of infringement without license or authorization.

10. As a result of Defendant's infringement of the '926 Patent, PMC has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

11. PMC has also suffered and will continue to suffer severe and irreparable harm unless this Court enjoins Defendant, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '926 Patent.

#### **PRAYER FOR RELIEF**

PMC respectfully requests that this Court enter:

- A. A judgment in favor of PMC that Defendant has infringed the '926 Patent;
- 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 of the '926 Patent, or such other equitable relief the Court determines is warranted;

- C. A judgment and order requiring Defendant to pay PMC its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '926 Patent as provided under 35 U.S.C. § 284;
- D. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to PMC its reasonable attorneys' fees against Defendant;
- E. A judgment and order requiring Defendant to provide an accounting and to pay supplemental damages to PMC, including without limitation, pre-judgment and post-judgment interest; and
- F. Any and all other relief to which PMC may be entitled.

**DEMAND FOR JURY TRIAL**

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

Dated: June 4, 2013

BAYARD, P.A.

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