

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

TLI COMMUNICATIONS LLC,

Plaintiff,

v.

AV AUTOMOTIVE, L.L.C. and
APPLE INC.

Defendants.

Civil Action No.

1:14-cv-00136
(TSE/JOO)

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TLI Communications LLC (“TLI”) files this Complaint for Patent Infringement against AV Automotive, L.L.C. (“AV Automotive”) and Apple Inc. (“Apple”), wherein, pursuant to 35 U.S.C. §§ 271 and 281, Plaintiff seeks a judgment of infringement by Defendants of U.S. Patent Nos. 6,038,295 (the “295 Patent”), damages resulting therefrom pursuant to 35 U.S.C. § 284, as well as a preliminary and permanent injunction of the infringing activity pursuant to 35 U.S.C. § 283, and such other relief as the Court deems just and proper, and in support thereof alleges as follows:

The Parties

1. Plaintiff TLI is a Delaware limited liability company with its principal place of business at 3422 Old Capitol Trail, Suite 72, Wilmington, Delaware 19808.

2. Defendant AV Automotive, L.L.C. is a limited liability company organized under the laws of the State of Virginia, with its principal place of business at 1902 Association Drive, Reston, Virginia 20191. AV Automotive operates several car dealerships in the Northern

Virginia region, including BMW of Alexandria, 499 South Pickett Street Alexandria, Virginia 22304.

3. Defendant Apple Inc. is a corporation organized and existing under the laws of California, with a place of business at 1 Infinite Loop, Cupertino, California 95014.

Jurisdiction and Venue

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns infringement of a United States patent.

6. This Court has personal jurisdiction over AV Automotive because AV Automotive is located in this district and it conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business in this district, engaging in other persistent courses of conduct in this district and/or deriving substantial revenue from goods and services provided to individuals in this district. Further, this Court has personal jurisdiction over AV Automotive because it is a Virginia corporation and it has purposely availed itself of the privileges and benefits of the laws of the State of Virginia.

7. Venue is proper in this judicial district as to AV Automotive pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, AV Automotive is subject to personal jurisdiction in this district, AV Automotive is located in this district, AV Automotive has facilities and employees in this district, and AV Automotive has committed and continues to commit acts of patent infringement in this district.

8. This Court has personal jurisdiction over Apple because Apple conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business in this district, engaging in other persistent courses of conduct in this district, deriving substantial revenue from goods and services provided to individuals in this district, maintaining continuous and systematic contacts with this district, and/or purposely availing itself of the privileges of doing business in Virginia.

9. Venue is proper in this judicial district as to Apple pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Apple is subject to personal jurisdiction in this district and Apple has committed and continues to commit acts of patent infringement in this district. For example, Apple has used, sold, offered for sale, and/or imported infringing products and services in this district. Apple, for example, provides infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district, and, to the extent any claim is construed to require a system, (i) Apple puts that system into use in this district by providing infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district and elsewhere, (ii) Apple provides key components of the system to its users in this district and thus contributorily infringes the '295 Patent in this district and elsewhere, and/or (iii) Apple induces its users to use the system and to put the system into use, and thus induces infringement of the '295 Patent in this district and elsewhere.

10. Joinder is proper under 35 U.S.C. § 299 because, and as explained further below, AV Automotive and Apple are jointly and severally liable for infringement arising out of the same series of transactions or occurrences related to the use of the same infringing platform. Questions and facts common to all defendants will arise in the action.

The Patent-in-Suit

11. TLI is the owner of the '295 Patent entitled "Apparatus and Method for Recording, Communicating and Administering Digital Images," which the United States Patent & Trademark Office lawfully and duly issued on March 14, 2000. A true and correct copy of the '295 Patent is attached hereto as Exhibit A.

Factual Background

12. Dr. Heinz Mattes is the named inventor of the '295 patent.

13. The '295 patent has a priority date of June 17, 1996. The '295 patent was originally assigned to Siemens Aktiengesellschaft of Munich, Germany. TLI is the current owner of the '295 patent via assignment.

14. In the mid 1990's, Dr. Mattes, while working as a scientist for Siemens, recognized that mobile telephony and digital photography, each then in their infancy, would likely become more and more popular. Dr. Mattes recognized that mobile telephones could be integrated with digital cameras, resulting in a proliferation of the quantity of digital images that could and would be taken.

15. Dr. Mattes invented a revolutionary way of communicating and recording such digital images, which allowed numerous images to be simply and quickly recorded, tracked, accessed and transmitted.

16. In 1996, Dr. Mattes' invention was among the winners of a Siemens idea competition, leading to Siemens initiating a project to develop a cellular telephone with an integrated camera.

17. The '295's patented inventions are applicable to the uploading and organization of digital images from a telephone. Over the past few years, smart cellular telephones that

incorporate sophisticated digital cameras have exploded in popularity, as has social media. Today, hundreds of millions of digital images are uploaded onto computer servers and social media websites every day, including onto Apple. Apple's products use the '295's patented technology, without license or authority, to classify those images so that they can be easily uploaded, stored, organized, retrieved and shared.

Apple's Infringing Products

18. Apple provides computer, cellular phone and web based products and services, including without limitation its iCloud, iPhoto, iMovie and Photo Stream products. Apple purports that the iPhone is used in 97% of the Fortune 500 and 91% of the Global 500, and IDC market research indicates that the iPhone holds 59% of the enterprise market.¹

19. Apple purports that "Photo automatically organizes your photos and videos by year, by collection and by moment."² In addition, Apple purports that "iCloud lets you share what you want [w]ith the people you choose" and that users can create "a shared photo stream for your [] vacation and you can see snapshots and videos from everyone in your group."³

20. Apple offers websites, software and downloadable applications, especially designed for mobile devices having telephones, including iPhone mobile telephones, and other mobile telephone platforms, which allow telephone users to easily characterize and upload digital images to Apple servers. Apple image-uploading software is preloaded on mobile devices having telephones, and its website can be directly accessed from many mobile telephones, which also uploads digital images characterized with user-information. Apple also provides mobile telephones. In addition, Apple provides downloadable applications, which also provide for

¹ <http://www.businessinsider.com/apples-enterprise-sales-unbelievable-2014-1>.

² iPhone User Guide for iOS 7 Software at 71.

³ <http://www.apple.com/icloud/>.

uploading digital images to Apple servers. Apple entices its users to upload digital images by providing easy-to-use platforms and instructions, and Apple stores and archives the digital images uploaded to its servers using the characterization information provided by its users. As a result, visitors are attracted to Apple where they can easily view, retrieve and share those images, resulting in more visitors to Apple, the purchase of additional Apple products and services, and increased Apple revenues.

21. So that these digital images could be captured, uploaded, stored and organized, Apple fashioned products and processes that employ TLI's patented technology. The infringing products include, but are not limited to, the products and processes that Apple uses to capture, upload, store and organize the digital images it receives from mobile devices having telephones.

AV Automotive's Infringing Products

22. AV Automotive uses social media to promote its products and services.⁴

23. Among other things, AV Automotive markets its products and services, and promotes its business, by using mobile devices having telephones, including without limitation the Apple iPhone 5c and Apple iPhone 5, to capture digital images and to upload them to remote servers, including without limitation to Apple servers or to servers operated on Apple's behalf.⁵ AV Automotive captures digital images on mobile devices having telephones, including the iPhone 5c, and it uploads those images to databases where those images are archive and stored,

⁴ See, for example, <http://www.bmwofalexandria.com/>;
<https://www.facebook.com/BMWofAlexandriaArlington>; <https://twitter.com/BMWofAlexandria>;
<http://www.pinterest.com/bmwofalexandria>;
<https://plus.google.com/+BMWofAlexandriaArlington/posts#+BMWofAlexandriaArlington/posts>;
<http://instagram.com/bmwofalexandria#>.

⁵ See, for example, https://www.facebook.com/BMWofAlexandriaArlington/photos_stream;
<https://twitter.com/BMWofAlexandria/media>;
<https://plus.google.com/+BMWofAlexandriaArlington/posts#+BMWofAlexandriaArlington/photos>;
<http://www.pinterest.com/bmwofalexandria>;
<http://instagram.com/bmwofalexandria#>.

including to Apple's databases. Those images are uniquely identified and characterized by AV Automotive, or persons acting on AV Automotive's behalf, and can be easily accessed on the databases using those identifiers and characterizations.⁶ Such actions of uploading digital images from mobile devices infringe one or more claims of the '295 Patent.

CLAIM FOR RELIEF

COUNT I

(Apple's Infringement of the '295 Patent)

24. TLI incorporates by reference paragraphs 1 through 23 of the Complaint as if set forth here in full.

Direct Infringement

25. Apple has been and is currently directly infringing one or more claims of the '295 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the aforementioned platforms that upload and store digital images from mobile devices having telephones. For example, and without limitation, Apple has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. Apple's infringement includes, without limitation, (i) making and using the apparatus of claim 1 and claims dependent thereon, and (ii) practicing the method of claim 17 and claims dependent thereon.

26. Specifically, Apple's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto Apple servers (or onto servers operated on or for Apple's behalf ("Apple servers")), (ii) its testing of its Apple products by uploading images from mobile devices having telephones onto Apple servers within the

⁶ See *id.*

United States, and (iii) its maintaining Apple servers that categorize and store images that were uploaded via mobile devices having telephones. Apple also directs and/or controls its employees, executives, customers and agents to use the aforementioned digital image uploading platforms to upload images from mobile devices having telephones onto Apple servers within the United States.

27. To the extent that claim 1 of the '295 Patent is construed to require a system with a claim element not practiced by Apple, Apple would also directly infringe claim 1 at least because it directs and/or controls the practicing of all claim elements or because it places the invention into service. For example, Apple provides mobile telephones, websites, platforms and pre-loaded software to mobile telephone users that provide and enable image uploading, thereby putting the invention into service.⁷ Moreover, Apple directs and/or controls the practicing of all claim elements, as shown for example, by Apple entering into contracts with its users, Apple instructing its users how to upload digital images from mobile devices having telephones, Apple providing mobile devices with telephones that include image-uploading software and platforms, Apple automatically syncing digital images from mobile devices having telephones onto its servers, Apple automatically uploading digital images from mobile devices having telephones onto its servers, Apple automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Apple

⁷ See, for example, <http://www.apple.com/icloud/features/> (“ . . . everything is kept up to date on everyone’s devices automatically. . . . When you take a photo . . . iCloud automatically pushes it to all your iOS devices, iPhoto or Aperture on your Mac. . . .”); *id.* (“Whether you have one Apple device or five, iCloud takes care of everything. And you barely have to do a thing.”); iPhone User Guide for iOS 7 Software at 17 (“Use My Photo Stream to send photos you take with your iPhone to your other devices, automatically.”); <http://support.apple.com/kb/HT5902>; <http://support.apple.com/kb/PH12068>.

automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

28. To the extent that claim 17 of the '295 Patent is construed to require a method with a step not practiced by Apple, Apple would also directly infringe claim 17 at least because it directs and/or controls the practicing of all claimed steps. Apple directs and/or controls the practicing of all claim elements, as shown for example, by Apple providing mobile telephones to users, Apple entering into contracts with its users, Apple instructing its users how to upload digital images from mobile devices having telephones, Apple providing mobile devices with telephones that include image-uploading software and platforms, Apple automatically syncing digital images from mobile devices having telephones onto its servers, Apple automatically uploading digital images from mobile devices having telephones onto its servers, Apple automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Apple automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

29. At least as a result of the computer software and hardware that performs these activities, Apple is liable for literal direct infringement of the '295 Patent pursuant to 35 U.S.C. § 271(a).

30. To the extent that any fact finder deems any of the elements of the '295 patent claims not literally satisfied by the structure or use of the Apple platform, these elements are satisfied under the doctrine of equivalents.

Indirect Infringement

31. Alternatively, and in addition to its liability for direct infringement of the '295 Patent, Apple is also liable for indirectly infringing the '295 Patent in this judicial district and

elsewhere in the United States by inducing direct infringement in violation of 35 U.S.C. § 271(b) and contributing to direct infringement in violation of 35 U.S.C. § 271(c).

32. Apple has been aware of the '295 Patent since at least November 20, 2013, when it was served with the complaint in the action filed on November 18, 2013.

33. Upon Apple's gaining knowledge of the '295 patent, it was, or became, apparent to Apple that the operation of its digital image uploading platforms and software resulted in infringement of the '295 Patent. Apple has continued to engage in the aforementioned activities constituting inducement of infringement, notwithstanding its knowledge (or willful blindness thereto) that the activities it was inducing result in infringement of the '295 Patent.

34. The direct infringement induced and contributed to by Apple includes at least the uploading of digital images from mobile devices having telephones to Apple servers by end users acting alone or in combination with Apple. For example, and without limitation, to the extent that claim 1 is construed to require a system with the system placed into service by a user who uploads digital images from a mobile device having a telephone (and it is determined that Apple does not direct and/or control that user), the user would be considered to be a direct infringer of claim 1. Apple knows that these users are infringing the '295 Patent and Apple has specific intent to encourage the users to infringe the '295 Patent. As another example, to the extent that claim 17 is construed to require a method with steps performed by one or more entities other than Apple, for example, a user (and it is determined that Apple does not direct and/or control these entities), Apple induces those entities to perform those infringing acts, knowing that the acts constitute infringement of the '295 Patent and with specific intent to encourage those acts and encourage infringement.

35. Apple encourages direct infringement of the '295 Patent at least by widely publicizing its social network, by providing image-uploading tools via its website, by providing image-uploading software, by providing pre-loaded image uploading software on mobile devices having telephones, by providing mobile devices having telephones and cameras, by automatically syncing images from mobile devices having telephones, by automatically tagging images uploaded from mobile devices having telephones, by automatically characterizing images with user information when uploaded from mobile devices having telephones, by providing image storage, by storing images uploaded from mobile devices having telephones according to user-characterization information, by providing image-uploading, downloadable applications for mobile devices having telephones, and by providing instructions for conducting the directly infringing use of uploading digital images from mobile devices.⁸

36. Apple induces infringement at least by encouraging, facilitating and instructing users to use the '295 Patent's inventions by uploading digital images to Apple servers from mobile devices having telephones. Apple does this by providing image uploading software and platforms (including pre-loaded, downloadable and/or directly accessible via Apple websites software and platforms, and mobile telephones having cameras) to its users, and by instructing its users how to upload images to Apple servers, thereby inducing the use of the claimed inventions.

37. Apple is inducing infringement of the '295 Patent by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale the aforementioned Apple image uploading platforms in a manner that constitutes infringement of one or more claims of the '295 Patent, knowing that such activities infringe at least one claim of the '295 Patent, and with the

⁸ See, for example, iPhone User Guide for iOS 7 Software at 71-79; https://support.Apple.com/plus/answer/1047374?hl=en&ref_topic=3049663.

knowledge and specific intent to encourage, direct and facilitate those infringing activities, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials.⁹

38. By inducing its customers', suppliers', users', agents' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Apple image uploading platforms, Apple has been and is now indirectly infringing under 35 U.S.C. § 271(b) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

39. Apple contributes to the '295 Patent's direct infringement by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, sell and/or offer for sale Apple's aforementioned image uploading platforms and services that constitutes infringement of at least claims 1 and 17 of the '295 Patent. For example, to the extent that any claim is construed to require a system, Apple provides components, including mobile telephones having cameras, image-uploading, pre-loaded software, websites and/or downloadable applications, for use in systems, which facilitate the uploading of digital images from mobile devices having telephones. Apple knows that such products constitute a material part of the inventions of the '295 Patent, knows those products to be especially made or adapted to infringe the '295 Patent, and knows that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use. Apple knows that by providing such components to its customers, its customers will infringe at least

⁹ See, e.g., <http://concierge.apple.com/reservation/us/en/va/R211/workshop> (Workshop scheduled for February 7, 2014 at the Apple store, MacArthur Center, Norfolk, Virginia where Apple employees will teach users "how to set up a free iCloud account and use it to keep the content on your devices up to date automatically — no syncing required" despite Apple knowing that such use infringes the '295 Patent.).

one claim of the '295 Patent, and Apple knows that its customers do infringe the '295 Patent.

Apple image uploading software has no substantial non-infringing uses.

40. By contributing to its customers', suppliers', agents', users' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Apple image uploading platforms, Apple has been and is now indirectly infringing under 35 U.S.C. § 271(c) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

271(f) Infringement

41. Apple is liable for infringement under 35 U.S.C. § 271(f) when the end user is outside the United States by supplying its software components for combination outside the United States.

Joint Infringement

42. Alternatively, the actions alleged above establish joint infringement of at least claims 1 and 17 by Apple and its customers, users, suppliers, agents and affiliates for which they should be found jointly and severally liable.

Remedy for Apple's Infringement

43. As a result of Apple's unlawful infringement of the '295 Patent, TLI has suffered and will continue to suffer damage. TLI is entitled to recover from Apple the damages adequate to compensate for such infringement, which have yet to be determined.

44. Apple will continue to infringe the '295 Patent unless and until it is enjoined by this Court.

45. Apple's acts of infringement have caused and will continue to cause irreparable harm to TLI unless and until Apple is enjoined by this Court.

COUNT II

(AV Automotive's Infringement of the '295 Patent and Apple's Joint and Several Liability Based on Same Transaction or Occurrences)

46. TLI incorporates by reference paragraphs 1 through 42 of the Complaint as if set forth here in full.

Direct Infringement

47. AV Automotive has been and is currently directly infringing one or more claims of the '295 Patent at least by using within the United States, without authority, the aforementioned platforms that upload and store digital images from mobile devices having telephones. For example, and without limitation, AV Automotive has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. AV Automotive's infringement includes, without limitation, (i) using the apparatus of claim 1 and claims dependent thereon, and (ii) practicing the method of claim 17 and claims dependent thereon.

48. Specifically, AV Automotive's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto Apple servers within the United States. AV Automotive also directs and/or controls its employees, executives, agents, customers and agents to use the aforementioned digital image uploading platforms to upload images from mobile devices having telephones onto Apple servers within the United States.

49. For example, and without limitation, to the extent that claim 1 is construed to require a system with a user placing that system into use by uploading digital images from a mobile device having a telephone onto servers, AV Automotive also directly infringes claim 1 of the '295 Patent by putting the invention into use, for example by downloading software and/or downloadable applications on mobile devices having telephones, and uploading digital images

from mobile devices having telephones to Apple servers within the United States. As explained above, Apple would also be jointly and severally liable for AV Automotive's direct infringement for inducing and contributing to this direct infringement.

50. At least as a result of uploading digital images from mobile devices onto Apple servers, which automatically archive those images using identification information and characterization information of the user, AV Automotive is liable for literal direct infringement of the '295 Patent pursuant to 35 U.S.C. § 271(a).

51. To the extent that any fact finder deems any of the elements of the '295 patent claims not literally satisfied by AV Automotive's uploading digital images from mobile devices onto Apple servers, these elements are satisfied under the doctrine of equivalents.

Joint Infringement

52. Alternatively, the actions alleged above establish joint infringement of at least claims 1 and 17 by Apple and AV Automotive for which they should be found jointly and severally liable.

Remedy for AV Automotive's Infringement

53. As a result of AV Automotive's unlawful infringement of the '295 Patent, TLI has suffered and will continue to suffer damage. TLI is entitled to recover from AV Automotive the damages adequate to compensate for such infringement, which have yet to be determined.

54. AV Automotive will continue to infringe the '295 Patent unless and until it is enjoined by this Court.

55. AV Automotive's acts of infringement have caused and will continue to cause irreparable harm to TLI unless and until AV Automotive is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, TLI prays for a Judgment in favor of TLI and against Defendants as follows:

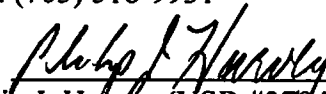
- A. That Defendants have directly infringed the '295 Patent;
- B. That Apple has indirectly infringed the '295 Patent;
- C. That Apple and its customers, users, suppliers, agents and affiliates have jointly infringed the '295 Patent;
- D. That Apple and AV Automotive have jointly infringed the '295 Patent;
- E. Preliminarily and permanently enjoining Defendants and their affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for them and on their behalf, or acting in concert with them directly or indirectly, from further acts of infringement of the '295 Patent;
- F. A full accounting for and an award of damages to TLI for Defendants' infringement of the '295 Patent; including enhanced damages pursuant to 35 U.S.C. § 284, together with pre- and post-judgment interest;
- G. That this case is "exceptional" within the meaning of 35 U.S.C. § 285;
- H. An award of TLI's reasonable attorneys' fees, expenses, and costs; and
- I. A grant of such other and further equitable or legal relief as this Court deems proper.

DEMAND FOR JURY TRIAL

TLI hereby demands trial by jury on all issues so triable.

Dated: February 10, 2014

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