

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

_____)	
IBIQUITY DIGITAL CORP.,)	
)	
Plaintiff,)	Civil Action No.: _____
)	
v.)	
)	JURY TRIAL DEMANDED
DELAWARE RADIO LLC and WYNCOMM,)	
LLC,)	
)	
Defendants.)	
_____)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff iBiquity Digital Corporation (“iBiquity”) alleges as follows:

1. This is an action for declaratory judgment of patent invalidity and non-infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. iBiquity is a corporation organized under the laws of the state of Delaware and having its principal place of business in Columbia, Maryland.

3. iBiquity is the developer of the NRSC-5 standard for the transmission of digital AM and FM radio signals using the in-band, on-channel (“IBOC”) technique. iBiquity’s IBOC technology is known to the public as HD Radio™ technology. iBiquity licenses HD Radio technology to various entities including radio broadcasting companies and manufacturers of HD Radio receiver equipment.

4. Defendant Delaware Radio Technologies, LLC (“Delaware Radio”) is a limited

liability company organized under the laws of the state of Delaware with a place of business at 1209 Orange Street, Wilmington, Delaware 19801.

5. Defendant Wyncomm, LLC (“Wyncomm”) is a limited liability company organized under the laws of the state of Delaware with a place of business at 113 Barksdale Professional Center, Newark, Delaware 19711.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*

7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

8. This Court has personal jurisdiction over Delaware Radio because it is a corporation organized under the laws of the state of Delaware with a place of business in Delaware.

9. This Court has personal jurisdiction over Wyncomm because it is a corporation organized under the laws of the state of Delaware with a place of business in Delaware.

10. This Court also has personal jurisdiction over Defendants because both Defendants have chosen to file patent infringement lawsuits in this District. In particular, Defendants have initiated several lawsuits alleging infringement of one or more of U.S. Patents Nos. 5,506,866, 5,642,379, and 5,475,691 (collectively, “Patents-In-Suit”), the same patents that are the subject of this complaint. These cases are currently pending in Delaware and are assigned to the honorable Chief Judge Gregory M. Sleet. Several of these cases are listed below at Paragraphs 19 and 20 of this complaint.

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c), and 1400(b).

FACTUAL BACKGROUND

12. U.S. Patent No. 5,506,866 (“’866 patent”) is titled “Side-Channel Communications in Simultaneous Voice and Data Transmission.” The ’866 patent indicates on its face that it was issued by the United States Patent and Trademark Office on April 9, 1996. A true and correct copy of the ’866 patent is attached as Exhibit A.

13. Defendant Wyncomm has asserted in filings with this Court that it owns and holds all rights, title, and interest in the ’866 patent with the exception of the field of HD Radio technology and any related technology.

14. Defendant Delaware Radio has asserted in filings with this Court that it is the exclusive licensee of the ’866 patent, including the exclusive right to assert all causes of action arising in the field of HD Radio technology and any related technology and the right to any remedies for infringement of the ’866 patent.

15. U.S. Patent No. 5,642,379 (“’379 patent”) is titled “Technique for Modulating Orthogonal Signals with One or More Analog or Digital Signals.” The ’379 patent indicates on its face that it was issued by the United States Patent and Trademark Office on June 24, 1997. A true and correct copy of the ’379 patent is attached as Exhibit B.

16. Defendant Delaware Radio has asserted in filings with this Court that it owns and holds all rights, title, and interest in the ’379 patent.

17. U.S. Patent No. 5,475,691 (“’691 patent”) is titled “Voice Activated Date Range Change in Simultaneous Voice and Data Transmission.” The ’691 Patent indicates on its face that it was issued by the United States Patent and Trademark Office on December 12, 1995. A true and correct copy of the ’691 patent is attached as Exhibit C.

18. Defendant Delaware Radio has asserted in filings with this Court that it owns and

holds all rights, title, and interest in the '691 patent.

19. Defendants Delaware Radio and Wyncomm have filed 14 complaints in the District of Delaware against various companies (collectively, the “Broadcasters”) alleging that these companies infringe one or more of the Patents-In-Suit through “transmission of radio broadcasts using HD radio transmission techniques further described in the IBOC Digital Radio Broadcasting Standard.” These cases are: *Delaware Radio Techs. LLC v. Beasley Broadcast Grp., Inc.*, No. 13-cv-1813; *Delaware Radio Techs. LLC v. CBS Radio Inc.*, No. 13-cv-1814; *Delaware Radio Techs. LLC v. CC Media Holdings Inc.*, No. 13-cv-1815; *Delaware Radio Techs. LLC v. Cox Media Group LLC*, No. 13-cv-1816; *Delaware Radio Techs. LLC v. Cumulus Media Inc.*, No. 13-cv-1817; *Delaware Radio Techs. LLC v. Entercom Commc’ns Corp.*, No. 13-cv-1818; *Delaware Radio Techs. LLC v. Entravision Commc’ns Corp.*, No. 13-cv-1819; *Delaware Radio Techs. LLC v. Greater Media, Inc.*, No. 13-cv-1820; *Delaware Radio Techs. LLC v. Hubbard Radio LLC*, No. 13-cv-1821; *Delaware Radio Techs. LLC v. Radio Disney Group LLC*, No. 13-cv-1822; *Delaware Radio Techs. LLC v. Radio One, Inc.*, No. 13-cv-1823; *Delaware Radio Techs. LLC v. Saga Commc’ns, Inc.*, No. 13-cv-1824; *Delaware Radio Techs. LLC v. Townsquare Media LLC*, No. 13-cv-1825; *Delaware Radio Techs. LLC v. Univision Commc’ns, Inc.*, No. 13-cv-1826.

20. Defendants Delaware Radio and Wyncomm have filed 18 complaints in the District of Delaware against various companies (collectively, the “Car Manufacturers”) alleging that these companies infringe the '866 and '379 patents by “making, using, selling, and/or offering for sale automobiles . . . equipped to receive HD radio broadcasts further described in the IBOC Digital Radio Broadcasting Standard.” These cases include: *Delaware Radio Techs. LLC v. Bayerische Motoren Werke AG*, No. 13-cv-1945; *Delaware Radio Techs. LLC v. Bentley*

Motors, Inc., No 13-cv-1944; *Delaware Radio Techs. LLC v. Chrysler Group LLC*, No. 13-cv-1946; *Delaware Radio Techs. LLC v. Daimler AG*, No. 13-cv-1954; *Delaware Radio Techs. LLC v. Dr. Ing. h.c. F. Porsche AG*, No 13-cv-1956; *Delaware Radio Techs. LLC v. Ford Motor Company*, No. 13-cv-1947; *Delaware Radio Techs. LLC v. Fuji Heavy Industries Ltd.*, No. 13-cv-1957; *Delaware Radio Techs. LLC v. General Motors Company*, 13-cv-01948; *Delaware Radio Techs. LLC v. Honda Motor Co., Ltd.*, No. 13-cv-1949.

21. On information and belief, Defendants' infringement allegations against the Broadcasters and the Car Manufacturers implicate iBiquity's technology used in licensed HD Radio transmitters and receivers. In addition, iBiquity has a contractual obligation to indemnify the Broadcasters and suppliers to the Car Manufacturers against any losses incurred as a result of being sued over their use of HD Radio technology.

22. An actual controversy exists between iBiquity and Defendants Delaware Radio and Wyncomm regarding the alleged infringement and invalidity of the Patents-in-Suit, and iBiquity is entitled to relief as requested.

COUNT I

(DECLARATORY JUDGMENT OF INVALIDITY AS TO THE '866 PATENT)

23. iBiquity incorporates its allegations in Paragraphs 1-22 as if fully restated herein.

24. One or more claims of the '866 patent is invalid under one or more provisions of Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

25. The claims of the '866 patent are invalid as anticipated and/or obvious over multiple prior art references that were not before the patent examiner during the prosecution of the '866 patent. Had the patent examiner known or been made aware of these prior art

references, the claims would not have been allowed and the '866 patent would not have issued.

26. iBiquity will provide additional and more detailed invalidity contentions as ordered by the Court.

27. To resolve Defendants' allegations of infringement and afford iBiquity relief from the uncertainty and controversy caused by Defendants' allegations, iBiquity is entitled to a declaratory judgment that one or more claims of the '866 patent is invalid.

COUNT II

(DECLARATORY JUDGMENT OF INVALIDITY AS TO THE '379 PATENT)

1. iBiquity incorporates its allegations in Paragraphs 1-22 as if fully restated herein.

2. One or more claims of the '379 patent is invalid under one or more provisions of Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

3. The claims of the '379 patent are invalid as anticipated and/or obvious over multiple prior art references that were not before the patent examiner during the prosecution of the '379 patent. Had the patent examiner known or been made aware of these prior art references, the claims would not have been allowed and the '379 patent would not have issued.

4. iBiquity will provide additional and more detailed invalidity contentions as ordered by the Court.

5. To resolve Defendants' allegations of infringement and afford iBiquity relief from the uncertainty and controversy caused by Defendants' allegations, iBiquity is entitled to a declaratory judgment that one or more claims of the '379 patent is invalid.

COUNT III

(DECLARATORY JUDGMENT OF INVALIDITY AS TO THE '691 PATENT)

6. iBiquity incorporates its allegations in Paragraphs 1-22 as if fully restated herein.

7. One or more claims of the '691 patent is invalid under one or more provisions of Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

8. The claims of the '691 patent are invalid as anticipated and/or obvious over multiple prior art references that were not before the patent examiner during the prosecution of the '691 patent. Had the patent examiner known or been made aware of these prior art references, the claims would not have been allowed and the '691 patent would not have issued.

9. iBiquity will provide additional and more detailed invalidity contentions as ordered by the Court.

10. To resolve Defendants' allegations of infringement and afford iBiquity relief from the uncertainty and controversy caused by Defendants' allegations, iBiquity is entitled to a declaratory judgment that one or more claims of the '691 patent is invalid.

COUNT IV

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT AS TO THE '866 PATENT)

1. iBiquity incorporates its allegations in Paragraphs 1-22 as if fully restated herein.

2. iBiquity has not and does not infringe, either directly, indirectly, or otherwise, any valid and enforceable claim of the '866 patent.

3. To resolve Defendants' continuing allegations of infringement and afford iBiquity relief from the uncertainty and controversy caused by Defendants' allegations, iBiquity is entitled to a declaratory judgment that HD Radio Technology, as used by iBiquity or any other party, does not infringe, either directly, indirectly, or otherwise, any valid and enforceable claim of the '866 patent.

COUNT V

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT AS TO THE '379 PATENT)

1. iBiquity incorporates its allegations in Paragraphs 1-22 as if fully restated herein.
2. iBiquity has not and does not infringe, either directly, indirectly, or otherwise, any valid and enforceable claim of the '379 patent.
3. To resolve Defendants' continuing allegations of infringement and afford iBiquity relief from the uncertainty and controversy caused by Defendants' allegations, iBiquity is entitled to a declaratory judgment that HD Radio Technology, as used by iBiquity or any other party, does not infringe, either directly, indirectly, or otherwise, any valid and enforceable claim of the '379 patent.

COUNT VI

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT AS TO THE '691 PATENT)

1. iBiquity incorporates its allegations in Paragraphs 1-22 as if fully restated herein.
2. iBiquity has not and does not infringe, either directly, indirectly, or otherwise, any valid and enforceable claim of the '691 patent.
3. To resolve Defendants' continuing allegations of infringement and afford iBiquity relief from the uncertainty and controversy caused by Defendants' allegations, iBiquity is entitled to a declaratory judgment that HD Radio technology, as used by iBiquity or any other party, does not infringe, either directly, indirectly, or otherwise, any valid and enforceable claim of the '691 patent.

PRAYER FOR RELIEF

WHEREFORE, iBiquity requests that the Court enter judgment in its favor against Defendants Delaware Radio and Wyncomm as follows:

- a. Declare that one or more claims of the '866 patent is invalid;
- b. Declare that one or more claims of the '379 patent is invalid;
- c. Declare that one or more claims of the '691 patent is invalid;
- d. Declare that HD Radio technology, as used by iBiquity or any other party, does not infringe, either directly, indirectly, by inducement, or otherwise, any valid and enforceable claim of the '866 patent.
 - e. that HD Radio technology, as used by iBiquity or any other party, does not infringe, either directly, indirectly, by inducement, or otherwise, any valid and enforceable claim of the '379 patent.
 - f. that HD Radio technology, as used by iBiquity or any other party, does not infringe, either directly, indirectly, by inducement, or otherwise, any valid and enforceable claim of the '691 patent.
- g. Declare this case exceptional and award iBiquity its reasonable attorney fees pursuant to 35 U.S.C. § 285;
- h. Award iBiquity its costs and reasonable expenses; and
- i. Grant iBiquity further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

iBiquity demands a trial by jury on all matters to which it is entitled to trial by jury, pursuant to FED. R. CIV. P. 38.

Dated: July 1, 2014

Respectfully Submitted,

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