

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NEARVERSE INC.,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Civil Action No.: 6:22-cv-00736

TRIAL BY JURY DEMANDED

COMPLAINT FOR INFRINGEMENT OF PATENT

Now comes Plaintiff, NearVerse, Inc. (“Plaintiff”), by and through undersigned counsel, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin Defendant Cisco Systems Inc. (hereinafter “Defendant”), from infringing and profiting, in an illegal and unauthorized manner, and without authorization and/or consent from Plaintiff from U.S. Patent No. 8,634,853 (“the ‘853 Patent” or the “Patent-in-Suit”), which is attached hereto as Exhibit A and incorporated herein by reference, and pursuant to 35 U.S.C. §271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff is a Delaware company with its principal place of business at 8011 Stenton Avenue, Wyndmoor, PA 19038.

3. Upon information and belief, Defendant is a corporation organized under the laws of Delaware, with its principal place of business at 170 West Tasman Drive, San Jose, California 95134. Upon information and belief, Defendant is registered to do business in the state of Texas,

and has business addresses at 12515-3 Research Park Loop, Austin, TX 78759, and at 18615 Tuscany Stone, San Antonio, TX 78258.

4. Upon information and belief Defendant may be served with process through its registered agent, c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th St., Suite 620, Austin, TX 78701-3218.

JURISDICTION AND VENUE

5. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§1 *et seq.*

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction and its residence in this District, as well as because of the injury to Plaintiff, and the cause of action Plaintiff has arisen in this District, as alleged herein.

8. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; (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 this forum state and in this judicial District; and (iii) having a physical presence in the district.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because Defendant resides in this District under the Supreme Court's opinion in *TC Heartland v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017) through regular and established place of business in this District.

FACTUAL ALLEGATIONS

10. On January 21, 2014, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ‘853 Patent, entitled “METHOD FOR ENHANCING LOCATION IDENTITY THROUGH INCORPORATION OF SHORTER-RANGE COMMUNICATION AND SENSING (nearlocate)” after a full and fair examination. The ‘853 Patent is attached hereto as Exhibit A and incorporated herein as if fully rewritten.

11. Plaintiff is presently the owner of the ‘853 Patent, having received all right, title and interest in and to the ‘853 Patent from the previous assignee of record. Plaintiff possesses all rights of recovery under the ‘853 Patent, including the exclusive right to recover for past infringement.

12. To the extent required, Plaintiff has complied with all marking requirements under 35 U.S.C. § 287.

13. As identified in the ‘853 Patent, prior art systems were familiar network-based techniques for determining user location include tower-based triangulation, multilateration of the angles or times of arrivals of wireless terminal signals, signal strength based estimations, GPS-based techniques, and SkyHook/Polaris wireless techniques of estimating the signal environment of base stations and Wi-Fi points within a given area, including Such signals’ fading conditions. However, methods [were] desired which allow the use of devices and known information about the local environment, to cross-reference with network-based information. Ex. A at Col 1: 15-25.

14. To address the limitations and the network-centric problem, the ‘853 patent provides a method of determining location of a mobile device including estimating an absolute location using long range communication estimates, estimating a relative location based on shorter-range communications, receiving location information from a plurality of peer entities, and

refining the absolute location and based on the received location information. Ex. A at Col 1: 29-35.

15. More specifically, precise location determination was challenging to implement in in-building environments because of (a) GPS signal not accurately reaching in-building, and (b) the sources of RF signal reference are very distant, and the in-building obstruction substantially undermines their ability for precise performance. The method of Claim 1 of the '853 patent describes more effective methods for such precise measurements, by using relationships between the sources of RF signal reference, and other sensing capability, that are often in high proximity to each other. The methods of the '853 patent further enhance such precision, by correlating these short-range relationships to each other and to long-range measurements determined through GPS-derived methods and from network triangulation (time difference of arrival (TDOA)). Ex. A at Col. 2: 8-23.

16. The invention as claimed further enhances such precision by correlating these short-range relationships, through meshing or nesting, to a certain object that has precise location identity due to such object's location in a favorable environment. Ex. A at Col. 2: 23-27.

17. Claim 1 of the '853 patent further describes enhanced location precision by refining any given object's location identity, by sensing their proximity to nearby objects matched to other pre-determined data on such nearby objects location (i.e. such nearby object as a support column, such sensing as a photograph, and Such matching as a reference of the photograph against a database of photographs for the location in question). Ex. A at Col. 2: 31-37.

18. To address this specific technical problem, Claim 1 in the '853 Patent comprises a non-abstract method for determining location of a mobile device including estimating an absolute location using long range communication estimates, estimating a relative location based on

shorter-range communications, receiving location information from a plurality of peer entities, and refining the absolute location and based on the received location information.

19. Particularly, Claim 1 of the '853 Patent provides:

“1. A method for locating a first device by a processing device, the method comprising:
providing a positional relationship estimate between each of a population of neighboring mobile devices and the first device; wherein the positional relationship estimate is derived from data acquired by either the first device or the respective neighboring device; wherein the positional relationship estimate includes an inference of a position of first device in relation to the respective neighboring device; wherein a population includes one or more neighboring mobile devices; providing location estimates for each of the population of neighboring mobile devices using location determinations that do not rely on use of positional relationship estimates between each of a population of neighboring mobile devices and the first device;
assigning a precision factor to at least one of the provided neighboring mobile devices' location estimates or the provided positional relationship estimates;
assigning a weight to at least one of the provided neighboring mobile devices' location estimates or the provided positional relationship estimates based on the respective precision factor;
and
deriving, by the processing device, a location estimate for the first device, through multilateration using the provided neighboring mobile devices' location estimates and the provided positional relationship estimates; wherein the location estimate derivation weighs the location estimate of at least one neighboring mobile device or at least one positional relationship estimate by the assigned weight.” See Ex. A at Col 18: 2-33.

20. Claim 1 of the '853 Patent is a practical application and inventive step of technology that address these aforementioned specific computer-centric problems associated with network techniques for determining a user (or mobile device) location in an enhanced manner.

21. Specifically, to address the problems in the prior art, the method of Claim 1 in the '853 Patent requires: (a) a first portable device and a population of neighboring devices; (b) providing a positional relationship estimate between devices wherein the positional relationship estimate is derived from data acquired by the portable device, wherein the positional relationship estimate includes inference of a position of first device in relation to respective neighboring device(s); (c) providing location estimates for each of a population of neighboring devices using location determination that do not rely on use of positional relationship estimates between first device and a population of neighboring mobile device; (d) assigning a precision factor to at least one of the neighboring mobile devices' location estimates or the positional relationship estimates; (e) assigning a weight to at least one of the provided neighboring mobile devices' location estimates; and (f) deriving, by processing device, a location estimate for the first device through multilateration; wherein the location estimate derivation weighs the location estimate of at least one neighboring mobile device or at least one positional relationship estimate by the assigned weight.

22. These specific elements of (a)-(f), as combined, accomplish the desired result of delivering enhanced location data using portable devices, known information about the local environment and cross-referenced network data to overcome the then existing problems in the relevant field of location determination for mobile devices. *Ancora Technologies, Inc. v. HTC America, Inc.*, 908 F.3d 1343, 1348 (Fed. Cir. 2018) (holding that improving computer security can be a non-abstract computer-functionality improvement if done by a specific technique that departs from earlier approaches to solve a specific computer problem). See also *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999 (Fed. Cir. 2018); *Core Wireless Licensing v. LG Elecs.*,

Inc., 880 F.3d 1356 (Fed. Cir. 2018); *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299 (Fed. Cir. 2018); *Uniloc USA, Inc. v. LG Electronics USA, Inc.*, 957 F.3d 1303 (Fed. Cir. April 30, 2020).

23. Claim 1 of the '853 Patent provides meaningful details on how to implement its improved method, and thus adds something inventive.

24. Claims need not articulate the advantages of the claimed combinations to be eligible. *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1309 (Fed. Cir. 2020).

25. These specific elements of Claim 1 of the '853 Patent were an unconventional arrangement of elements. *Cellspin Soft, Inc. v. FitBit, Inc.*, 927 F.3d 1306 (Fed. Cir. 2019).

26. Further, regarding the specific non-conventional and non-generic arrangements of known, conventional pieces to overcome an existing problem, the method of Claim 1 in the '853 Patent provides a method that would not preempt all ways of determining enhanced location data. This is because claim 1 is based on: (a) portable devices; (b) providing a positional relationship estimate between devices wherein the positional relationship estimate is derived from data acquired by the portable device, wherein the positional relationship estimate includes inference of a position of first device in relation to respective neighboring device(s); (c) providing location estimates for each of a population of neighboring devices using location determination that do not rely on use of positional relationship estimates between first device and a population of neighboring mobile device; (d) assigning a precision factor to at least one of the neighboring mobile devices' location estimates or the positional relationship estimates; (e) assigning a weight to at least one of the provided neighboring mobile devices' location estimates; and (f) deriving, by processing device, a location estimate for the first device through multilateration; wherein the location estimate derivation weighs the location estimate of at least one neighboring mobile device or at least one positional relationship estimate by the assigned weight. *Bascom Global Internet*

Servs., Inc. v. AT&T Mobility LLC, 827 F.3d 1341 (Fed. Cir. 2016); See also *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

27. Based on the allegations, it must be accepted as true at this stage, that Claim 1 of the ‘853 Patent recites a specific, plausibly inventive computer implemented method for identifying and delivering information rather than the general idea of analyzing data. *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019), cert. denied sub nom. *Garmin USA, Inc. v. Cellspin Soft, Inc.*, 140 S. Ct. 907, 205 L. Ed. 2d 459 (2020).

28. Alternatively, there is at least a question of fact that must survive the pleading stage as to whether these specific elements of Claim 1 of the ‘853 Patent were an unconventional arrangement of elements. *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121 (Fed. Cir. 2018) See also *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), cert. denied, 140 S. Ct. 911, 205 L. Ed. 2d 454 (2020).

DEFENDANT’S PRODUCTS

29. Defendant offers products, such as Defendant’s “Unified Wireless Location Based Services (UWN)” (the “Accused Product”)¹, that practices a method for locating a first device by a processing device, the method comprising the enhanced determining of locations of mobile devices using long range communication estimates, estimating a relative location based on shorter-range communications, receiving location information from a plurality of peer entities and refining the absolute location of a device

30. A non-limiting and exemplary claim chart comparing the Accused Product to Claim 1 of the ‘853 Patent is attached hereto as Exhibit B and is incorporated herein as if fully rewritten.

¹ The Accused Product is just one of the products provided by Defendant, and Plaintiff’s investigation is on-going to additional products to be included as an Accused Product that may be added at a later date.

31. For example, as recited in one step of Claim 1, the Accused product practices providing a positional relationship estimate between each of a population of neighboring mobile devices and the first device; wherein the positional relationship estimate is derived from data acquired by either the first device or the respective neighboring device; wherein the positional relationship estimate includes an inference of a position of first device in relation to the respective neighboring device; wherein a population includes one or more neighboring mobile devices. See Ex. B.

32. As recited in another step of Claim 1, the Accused Product practices providing location estimates for each of the population of neighboring mobile devices using location determinations that do not rely on use of positional relationship estimates between each of a population of neighboring mobile devices and the first device. See Ex. B.

33. As recited in another step of Claim 1, the Accused Product practices assigning a precision factor to at least one of the provided neighboring mobile devices' location estimates or the provided positional relationship estimates. See Ex. B.

34. Further, as recited in another step of claim 1, the Accused Product practices assigning a weight to at least one of the provided neighboring mobile devices' location estimates or the provided positional relationship estimates based on the respective precision factor. See Ex. B.

35. As recited in another step of Claim 1, the Accused product practices deriving, by the processing device, a location estimate for the first device, through multilateration using the provided neighboring mobile devices' location estimates and the provided positional relationship estimates; wherein the location estimate derivation weighs the location estimate of at least one

neighboring mobile device or at least one positional relationship estimate by the assigned weight.

See Ex. B.

36. The elements described in the preceding paragraphs are covered by at least Claim 1 of the '853. Thus, Defendant's use of the Accused Product is enabled by the method described in the '853 Patent.

INFRINGEMENT OF THE PATENT-IN-SUIT

37. Plaintiff realleges and incorporates by reference all of the allegations set forth in the preceding paragraphs

38. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing the '853 Patent.

39. Defendant has had knowledge of infringement of the '853 Patent as of the filing of this complaint.

40. Defendant has directly infringed and continues to directly infringe, literally or by the doctrine of equivalents, at least one claim of the '853 Patent by using, at least through internal testing or otherwise, the Accused Product without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '853 Patent, Plaintiff has been and continues to be damaged.

41. Defendant has induced others to infringe the '853 Patent, literally or by the doctrine of equivalents, by encouraging infringement, knowing that the acts Defendant induced constituted patent infringement, and its encouraging acts actually resulted in direct patent infringement.

42. By engaging in the conduct described herein, Defendant has injured Plaintiff and is thus liable for infringement of the '853 Patent, pursuant to 35 U.S.C. § 271.

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

44. As a result of Defendant's infringement of the '853 Patent, Plaintiff has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

45. Plaintiff will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Plaintiff is entitled to compensation for any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

46. **Induced Infringement.** Defendant actively, knowingly, and intentionally has been and continues to induce infringement of the '853 Patent, literally or by the doctrine of equivalents, by selling Accused Products to their customers for use in end-user products in a manner that infringes one or more claims of the '853 Patent.

47. **Contributory Infringement.** Defendant actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '853 Patent, literally or by the doctrine of equivalents, by selling Accused Products to their customers for use in end-user products in a manner that infringes one or more claims of the '853 Patent. Moreover, the Accused Defendant Products are not a staple article of commerce suitable for substantial non-infringing use.

48. Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the claim charts that it provides with this Complaint.

DEMAND FOR JURY TRIAL

49. Plaintiff demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

a. That Defendant be adjudged to have directly infringed the '853 Patent either literally or under the doctrine of equivalents;

b. An accounting of all infringing sales and damages including, but not limited to, those sales and damages not presented at trial;

c. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '853 Patent;

d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Plaintiff for the Defendant's past infringement and any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

e. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

f. That Defendant be directed to pay enhanced damages, including Plaintiff's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

g. That Plaintiff be granted such other and further relief as this Court may deem just and proper.

Dated: July 6, 2022

Respectfully submitted,

SAND, SEBOLT & WERNOW CO., LPA

/s/ Howard L. Wernow

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