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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT TECHNOLOGY LICENSING,  
LLC,

No. 2:15-cv-346

Plaintiff,

**COMPLAINT**

v.

**JURY TRIAL DEMANDED**

KYOCERA CORPORATION and  
KYOCERA COMMUNICATIONS, INC.,

Defendants.

Plaintiff Microsoft Technology Licensing, LLC (“MTL” or “Plaintiff”), for its complaint against Kyocera Corporation (“Kyocera Japan”) and Kyocera Communications, Inc. (“Kyocera USA”), (collectively, “Kyocera” or “Defendants”) hereby alleges as follows:

**INTRODUCTION**

1. Since its founding in 1975, Microsoft Corporation, the parent of MTL (collectively, Microsoft Corporation and MTL are hereinafter “Microsoft”), has been a worldwide leader and innovator in software products, services and devices for consumers and business users. Microsoft was an early pioneer in the development of personal computers and smartphones and has led the development of generation after generation of products that are part of the fabric of our digital lifestyle today. Through the investment of billions of dollars in research and development, Microsoft has become one of the world’s leading technology companies, garnering over 60,000 patents worldwide and regularly ranking in the top five companies in the number of issued patents.



1 **NATURE OF THE ACTION**

2 7. This is a civil action for the infringement of United States Reissue Patent No. 40,989,  
3 United States Patent No. 7,137,117, United States Patent No. 7,289,102, United States Patent No.  
4 6,349,344, United States Patent No. 7,062,274, United States Patent No. 7,062,715 and United States  
5 Patent No. 7,050,408 (collectively the “Patents-In-Suit”) and arising under the patent laws of the  
6 United States, 35 U.S.C. § 1, *et seq.*

7 **JURISDICTION AND VENUE**

8 8. This Court has original jurisdiction over the subject matter of this complaint under 28  
9 U.S.C. § 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §  
10 271, *et seq.* This Court also has original jurisdiction over the subject matter of this complaint under  
11 28 U.S.C. §§ 2201 and 2202 because there exists an actual controversy within its jurisdiction.

12 9. The Defendants are subject to personal jurisdiction in the Western District of  
13 Washington. Upon information and belief, they regularly transact business in this judicial district  
14 and division by, among other things, offering infringing products and services to customers, business  
15 affiliates and partners located in this judicial district. Such contacts include, upon information and  
16 belief, entering into agreements with T-Mobile USA, which is based in Bellevue, Washington, for  
17 the sale and provisioning of Kyocera phones on T-Mobile USA’s wireless networks in the State of  
18 Washington and throughout the United States. With respect to other wireless carriers, Defendants  
19 place infringing cell phones in the stream of commerce with full knowledge that these phones will be  
20 sold in the State of Washington, and as discussed below, Defendants induce direct infringement in  
21 this district.

22 10. Venue in this district is proper under 28 U.S.C. §§ 1400(b) and 1391(b) and (c),  
23 because the Defendants are subject to personal jurisdiction in this district and have committed and  
24 induced acts of infringement in this district.

**FACTUAL BACKGROUND**

1  
2 11. MTL is a wholly-owned subsidiary of Microsoft Corporation and is the owner by  
3 assignment of all right, title and interest to the Patents-In-Suit.

4 12. MTL holds patents issued on inventions created by Microsoft inventors, and the  
5 company works closely with Microsoft Corporation in licensing and protecting Microsoft patented  
6 inventions.

7 13. The seven patents at issue in this case demonstrate the breadth of the Microsoft patent  
8 portfolio and the substantial contributions that Microsoft has made to the world of mobile devices.

9 14. On November 17, 2009, United States Patent No. RE 40,989 (“the ’989 Patent”) titled  
10 “Atomic Operations on Data Structures” was duly and lawfully issued by the United States Patent  
11 and Trademark Office (“PTO”). A true and correct copy of the ’989 Patent is attached hereto as  
12 Exhibit A.

13 15. The ’989 Patent solved a fundamental problem relating to the efficient sharing of data  
14 in computer systems that permit multiple tasks to be performed at the same time. Microsoft’s ’989  
15 Patent taught the world how to permit different threads of execution to efficiently read and write  
16 shared data of arbitrary size without risking corruption and error. The invention is of particular use  
17 in the mobile environment where speed of processing is an important constraint.

18 16. On November 14, 2006, United States Patent No. 7,137,117 (“the ’117 Patent”) titled  
19 “Dynamically Variable Idle Time Thread Scheduling” was duly and lawfully issued by the PTO. A  
20 true and correct copy of the ’117 Patent is attached hereto as Exhibit B.

21 17. The ’117 Patent teaches how to enable a portable device to run for long periods of  
22 time on a single battery charge. Operating systems that predated the ’117 Patent typically provided  
23 power to most of a device even when there was little work to do, thereby draining the battery rapidly.  
24 With its invention claimed in the ’117 Patent, Microsoft demonstrated how to use a sophisticated  
25 power management technique to enhance battery life.

1 18. On October 30, 2007, United States Patent No. 7,289,102 (“the ’102 Patent”) titled  
2 “Method and Apparatus Using Multiple Sensors in a Device with a Display” was duly and lawfully  
3 issued by the PTO. A true and correct copy of the ’102 Patent is attached hereto as Exhibit C.

4 19. Unlike desktop computers or notebooks, users move with their handheld devices,  
5 changing the orientation of the screen frequently. Microsoft recognized that the user experience could  
6 be improved dramatically if the device could “know” when it was changing orientation or the user  
7 was changing the viewing angle. Microsoft researchers, using state of the art accelerometers to  
8 measure motion, developed a way for devices to not only sense their own orientation, but to rotate  
9 the display appropriately and even determine whether the device was being placed on a stationary  
10 object like a table or counter.

11 20. On February 19, 2002, United States Patent No. 6,349,344 (“the ’344 Patent”) titled  
12 “Combining Multiple Java Class Files into a Run-Time Image” was duly and lawfully issued by the  
13 PTO. A true and correct copy of the ’344 Patent is attached hereto as Exhibit D.

14 21. Challenged with how to run Java on a truly mobile device, Microsoft’s researchers  
15 took a new approach to compiling Java applications, which reduces the amount of memory such  
16 applications need, while also reducing their time to start. Microsoft’s ’344 Patent teaches a more  
17 efficient way to run applications on portable devices, paving the way for powerful applications on  
18 small, handheld devices like modern smartphones.

19 22. On June 13, 2006, United States Patent No. 7,062,274 (“the ’274 Patent”) titled  
20 “Increasing the Level of Automation when Establishing and Managing Network Connections” was  
21 duly and lawfully issued by the PTO. A true and correct copy of the ’274 Patent is attached hereto  
22 as Exhibit E.

23 23. Microsoft’s ’274 Patent solved a fundamental problem in computer networking with  
24 the invention of a way to allow software to efficiently access a remote resource, such as data on a  
25

1 different server. The invention describes a software connection manager which handles the burden  
2 of determining and establishing the appropriate connection, taking the burden off the user.

3 24. On June 13, 2006, United States Patent No. 7,062,715 (“the ’715 Patent”) titled  
4 “Supplying Notifications Related to Supply and Consumption of User Context Data” was duly and  
5 lawfully issued by the PTO. A true and correct copy of the ’715 Patent is attached hereto as Exhibit  
6 F.

7 25. Microsoft recognized that users could benefit from devices that were “self-aware” and  
8 knew, for instance, whether the device was being held by a user who was walking or was in a vehicle,  
9 and whether the device was approaching a location of interest. Microsoft researchers went to work  
10 and developed a way for software applications to obtain information about important changes in the  
11 environment without requiring a programmer to write code to read individual sensors or integrate the  
12 information from them. Microsoft’s invention claimed in the ’715 Patent enables applications on  
13 mobile computers, including modern smartphones, to become aware of the changes in a user’s  
14 surroundings that are important to the user and to take appropriate action.

15 26. On May 23, 2006, United States Patent No. 7,050,408 (“the ’408 Patent”) titled  
16 “Communicating Multi-Part Messages between Cellular Devices Using a Standardized Interface”  
17 was duly and lawfully issued by the PTO. A true and correct copy of the ’408 Patent is attached  
18 hereto as Exhibit G.

19 27. Microsoft’s invention claimed in the ’408 Patent created an easy way for diverse  
20 applications to receive long text messages, like those supported by modern smartphones. The ’408  
21 Patent teaches an efficient and reliable way to receive, reassemble, and process such messages.

22 28. The foregoing selection of patents from the MTL portfolio demonstrates just a few of  
23 the inventions that Microsoft has brought to the world of computing that are in widespread use in  
24 today’s smartphones.

**COUNT I**

**(Defendants' Infringement of the '989 Patent)**

29. Paragraphs 1 through 28 are incorporated by reference as if fully restated herein.

30. MTL is the owner by assignment of the '989 Patent and has all right, title and interest in the '989 Patent, including the right to sue and recover damages for infringement thereof.

31. Kyocera has infringed the '989 Patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing in or into the United States products and/or processes falling within the scope of one or more claims of the '989 patent, without authority and in violation of 35 U.S.C. § 271(a). Among such infringing products are cellular telephones, including but not limited to, Kyocera's Duraforce, Hydro, and Brigadier lines of cellular telephones.

32. Defendants actively, knowingly, and intentionally induce, and continue to actively, knowingly, and intentionally induce, infringement of the '989 Patent in violation of 35 U.S.C. § 271(b) by making, using, offering for sale, importing, and selling infringing consumer electronics devices, including without limitation its Duraforce, Hydro, and Brigadier lines of cellular telephones, all with knowledge, at least as of the date of this suit, of the '989 Patent and its claims; with knowledge that its customers and end users will use, market, sell, offer to sell, and import infringing consumer electronics devices, which devices necessarily infringe the '989 Patent through the operation of the Android kernel software on them whenever they are powered on; and with the knowledge and the specific intent to encourage and facilitate those infringing sales and uses of infringing consumer electronics devices, including by encouraging customers to turn on and use such devices.

33. Defendants have contributed to and will continue to contribute to the infringement of end users in violation of 35 U.S.C. § 271(c), by selling, offering to sell, and importing infringing consumer electronics devices and software modules, including but not limited to its Duraforce, Hydro, and Brigadier lines of cellular telephones and the software modules which perform the steps

1 described in the '989 Patent, knowing that those products constitute a material part of the inventions  
2 of the '989 Patent, knowing those products to be especially made or adapted to infringe the '989  
3 Patent, and knowing that those products are not staple articles or commodities of commerce suitable  
4 for substantial non-infringing use.

5 34. Defendants have had knowledge of and actual notice of the '989 Patent and their  
6 infringement since at least, and through, the filing and service of the Complaint, and despite this  
7 knowledge will, upon information and belief, continue to infringe the '989 Patent.

8 35. Defendants' infringement has caused and is continuing to cause damage and  
9 irreparable injury to MTL, and MTL will continue to suffer such injury unless and until infringement  
10 is enjoined by this Court.

11 36. MTL is entitled to injunctive relief and damages pursuant to 35 U.S.C. §§ 271, 281,  
12 283 and 284.

## 13 COUNT II

### 14 **(Kyocera's Infringement of the '117 Patent)**

15 37. Paragraphs 1 through 36 are incorporated by reference as if fully restated herein.

16 38. MTL is the owner by assignment of the '117 Patent and has all right, title and interest  
17 in the '117 patent, including the right to sue and recover damages for infringement thereof.

18 39. Kyocera has infringed the '117 Patent, literally and/or under the doctrine of  
19 equivalents, by making, using, offering to sell, selling and/or importing in or into the United States  
20 products and/or processes falling within the scope of one or more claims of the '117 Patent, without  
21 authority and in violation of 35 U.S.C. § 271(a). Among such infringing products are cellular  
22 telephones, including but not limited to, Kyocera's Duraforce, Hydro, and Brigadier lines of cellular  
23 telephones.

24 40. Defendants actively, knowingly, and intentionally induce, and continue to actively,  
25 knowingly, and intentionally induce, infringement of the '117 Patent in violation of 35 U.S.C. §



1 271(b) by making, using, offering for sale, importing, and selling infringing consumer electronics  
2 devices, including without limitation its Duraforce, Hydro, and Brigadier lines of cellular telephones,  
3 all with knowledge, at least as of the date of this suit, of the '117 Patent and its claims; with  
4 knowledge that its customers and end users will use, market, sell, offer to sell, and import infringing  
5 consumer electronics devices, which devices necessarily infringe the '117 Patent through the  
6 operation of the Android kernel software on them whenever they are powered on; and with the  
7 knowledge and the specific intent to encourage and facilitate those infringing sales and uses of  
8 infringing consumer electronics devices, including by encouraging customers to turn on and use such  
9 devices.

10 41. Defendants have contributed to and will continue to contribute to the infringement of  
11 end users in violation of 35 U.S.C. § 271(c), by selling, offering to sell, and importing infringing  
12 consumer electronics devices and software modules, including but not limited to its Duraforce,  
13 Hydro, and Brigadier lines of cellular telephones and the software modules which perform the steps  
14 described in the '117 Patent, knowing that those products constitute a material part of the inventions  
15 of the '117 Patent, knowing those products to be especially made or adapted to infringe the '117  
16 Patent, and knowing that those products are not staple articles or commodities of commerce suitable  
17 for substantial non-infringing use.

18 42. Defendants have had knowledge of and actual notice of the '117 Patent and their  
19 infringement since at least, and through, the filing and service of the Complaint, and despite this  
20 knowledge will, upon information and belief, continue to infringe the '117 Patent.

21 43. Defendants' infringement has caused and is continuing to cause damage and  
22 irreparable injury to MTL, and MTL will continue to suffer such injury unless and until infringement  
23 is enjoined by this Court.

24 44. MTL is entitled to injunctive relief and damages pursuant to 35 U.S.C. §§ 271, 281,  
25 283 and 284.

**COUNT III**

**(Kyocera's Infringement of the '102 Patent)**

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2  
3 45. Paragraphs 1 through 44 are incorporated by reference as if fully restated herein.

4 46. MTL is the owner by assignment of the '102 Patent and has all right, title and interest  
5 in the '102 Patent, including the right to sue and recover damages for infringement thereof.

6 47. Kyocera has infringed the '102 Patent, literally and/or under the doctrine of  
7 equivalents, by making, using, offering to sell, selling and/or importing in or into the United States  
8 products and/or processes falling within the scope of one or more claims of the '102 Patent, without  
9 authority and in violation of 35 U.S.C. § 271(a). Among such infringing products are cellular  
10 telephones, including but not limited to, Kyocera's Duraforce, Hydro, and Brigadier lines of cellular  
11 telephones.

12 48. Defendants actively, knowingly, and intentionally induce, and continue to actively,  
13 knowingly, and intentionally induce, infringement of the '102 Patent in violation of 35 U.S.C. §  
14 271(b) by making, using, offering for sale, importing, and selling infringing consumer electronics  
15 devices, including without limitation its Duraforce, Hydro, and Brigadier lines of cellular telephones,  
16 all with knowledge, at least as of the date of this suit, of the '102 Patent and its claims; with knowledge  
17 that its customers and end users will use, market, sell, offer to sell, and import infringing consumer  
18 electronics devices, which devices infringe the '102 Patent through the operation of the Android user  
19 interface software on them during normal use; and with the knowledge and the specific intent to  
20 encourage and facilitate those infringing sales and uses of infringing consumer electronics devices,  
21 including by encouraging customers to use such devices.

22 49. Defendants have contributed to and will continue to contribute to the infringement of  
23 end users in violation of 35 U.S.C. § 271(c), by selling, offering to sell, and importing infringing  
24 consumer electronics devices and software modules, including but not limited to its Duraforce,  
25 Hydro, and Brigadier lines of cellular telephones and the software modules which perform the steps

1 described in the '102 Patent, knowing that those products constitute a material part of the inventions  
2 of the '102 Patent, knowing those products to be especially made or adapted to infringe the '102  
3 Patent, and knowing that those products are not staple articles or commodities of commerce suitable  
4 for substantial non-infringing use.

5 50. Defendants have had knowledge of and actual notice of the '102 Patent and their  
6 infringement since at least, and through, the filing and service of the Complaint, and despite this  
7 knowledge will, upon information and belief, continue to infringe the '102 Patent.

8 51. Defendants' infringement has caused and is continuing to cause damage and  
9 irreparable injury to MTL, and MTL will continue to suffer such injury unless and until infringement  
10 is enjoined by this Court.

11 52. MTL is entitled to injunctive relief and damages pursuant to 35 U.S.C. §§ 271, 281,  
12 283 and 284.

#### 13 COUNT IV

#### 14 **(Kyocera's Infringement of the '344 Patent)**

15 53. Paragraphs 1 through 52 are incorporated by reference as if fully restated herein.

16 54. MTL is the owner by assignment of the '344 Patent and has all right, title and interest  
17 in the '344 Patent, including the right to sue and recover damages for infringement thereof.

18 55. Kyocera has infringed the '344 Patent, literally and/or under the doctrine of  
19 equivalents, by making, using, offering to sell, selling and/or importing in or into the United States  
20 products and/or processes falling within the scope of one or more claims of the '344 Patent, without  
21 authority and in violation of 35 U.S.C. § 271(a). Among such infringing products are cellular  
22 telephones, including but not limited to, Kyocera's Duraforce, Hydro, and Brigadier lines of cellular  
23 telephones.

24 56. Defendants actively, knowingly, and intentionally induce, and continue to actively,  
25 knowingly, and intentionally induce, infringement of the '344 Patent in violation of 35 U.S.C. §

1 271(b) by making, using, offering for sale, importing, and selling infringing consumer electronics  
2 devices, including without limitation its Duraforce, Hydro, and Brigadier lines of cellular telephones,  
3 all with knowledge, at least as of the date of this suit, of the '344 Patent and its claims; with knowledge  
4 that its customers and end users will use, market, sell, offer to sell, and import infringing consumer  
5 electronics devices, which devices infringe the '344 Patent through the operation of the run time  
6 system of the Android software on them during normal use; and with the knowledge and the specific  
7 intent to encourage and facilitate those infringing sales and uses of infringing consumer electronics  
8 devices, including by encouraging customers to use such devices.

9 57. Defendants have contributed to and will continue to contribute to the infringement of  
10 end users in violation of 35 U.S.C. § 271(c), by selling, offering to sell, and importing infringing  
11 consumer electronics devices and software modules, including but not limited to its Duraforce,  
12 Hydro, and Brigadier lines of cellular telephones and the software modules which perform the steps  
13 described in the '344 Patent, knowing that those products constitute a material part of the inventions  
14 of the '344 Patent, knowing those products to be especially made or adapted to infringe the '344  
15 Patent, and knowing that those products are not staple articles or commodities of commerce suitable  
16 for substantial non-infringing use.

17 58. Defendants have had knowledge of and actual notice of the '344 Patent and their  
18 infringement since at least, and through, the filing and service of the Complaint, and despite this  
19 knowledge will, upon information and belief, continue to infringe the '344 Patent.

20 59. Defendants' infringement has caused and is continuing to cause damage and  
21 irreparable injury to MTL, and MTL will continue to suffer such injury unless and until infringement  
22 is enjoined by this Court.

23 60. MTL is entitled to injunctive relief and damages pursuant to 35 U.S.C. §§ 271, 281,  
24 283 and 284.

**COUNT V**

**(Kyocera's Infringement of the '274 Patent)**

61. Paragraphs 1 through 60 are incorporated by reference as if fully restated herein.

62. MTL is the owner by assignment of the '274 Patent and has all right, title and interest in the '274 patent, including the right to sue and recover damages for infringement thereof.

63. Kyocera has infringed the '274 Patent, literally and/or under the doctrine of equivalents, by making, using, offering to sell selling and/or importing in or into the United States products and/or processes falling within the scope of one or more claims of the '274 Patent, without authority and in violation of 35 U.S.C. § 271(a). Among such infringing products are cellular telephones, including but not limited to, Kyocera's Duraforce, Hydro, and Brigadier lines of cellular telephones.

64. Defendants actively, knowingly, and intentionally induce, and continue to actively, knowingly, and intentionally induce, infringement of the '274 Patent in violation of 35 U.S.C. § 271(b) by making, using, offering for sale, importing, and selling infringing consumer electronics devices, including without limitation its Duraforce, Hydro, and Brigadier lines of cellular telephones, all with knowledge, at least as of the date of this suit, of the '274 Patent and its claims; with knowledge that its customers and end users will use, market, sell, offer to sell, and import infringing consumer electronics devices, which devices infringe the '274 Patent through the operation of the Connectivity Service software of the Android operating system on them during normal use of data services; and with the knowledge and the specific intent to encourage and facilitate those infringing sales and uses of infringing consumer electronics devices, including by encouraging customers to use data services on such devices.

65. Defendants have contributed to and will continue to contribute to the infringement of end users in violation of 35 U.S.C. § 271(c), by selling, offering to sell, and importing infringing consumer electronics devices and software modules, including but not limited to its Duraforce,

1 Hydro, and Brigadier lines of cellular telephones and the software modules which perform the steps  
2 described in the '274 Patent, knowing that those products constitute a material part of the inventions  
3 of the '274 Patent, knowing those products to be especially made or adapted to infringe the '274  
4 Patent, and knowing that those products are not staple articles or commodities of commerce suitable  
5 for substantial non-infringing use.

6 66. Defendants have had knowledge of and actual notice of the '274 Patent and their  
7 infringement since at least, and through, the filing and service of the Complaint, and despite this  
8 knowledge will, upon information and belief, continue to infringe the '274 Patent.

9 67. Defendants' infringement has caused and is continuing to cause damage and  
10 irreparable injury to MTL, and MTL will continue to suffer such injury unless and until infringement  
11 is enjoined by this Court.

12 68. MTL is entitled to injunctive relief and damages pursuant to 35 U.S.C. §§ 271, 281,  
13 283 and 284.

#### 14 COUNT VI

#### 15 **(Kyocera's Infringement of the '715 Patent)**

16 69. Paragraphs 1 through 68 are incorporated by reference as if fully restated herein.

17 70. MTL is the owner by assignment of the '715 Patent and has all right, title and interest  
18 in the '715 Patent, including the right to sue and recover damages for infringement thereof.

19 71. Kyocera has infringed the '715 Patent, literally and/or under the doctrine of  
20 equivalents, by making, using, offering to sell, selling and/or importing in or into the United States  
21 products and/or processes falling within the scope of one or more claims of the '715 Patent, without  
22 authority and in violation of 35 U.S.C. § 271(a). Among such infringing products are cellular  
23 telephones, including but not limited to, Kyocera's Duraforce, Hydro, and Brigadier lines of cellular  
24 telephones.

1           72. Defendants actively, knowingly, and intentionally induce, and continue to actively,  
2 knowingly, and intentionally induce, infringement of the '715 Patent in violation of 35 U.S.C. §  
3 271(b) by making, using, offering for sale, importing, and selling infringing consumer electronics  
4 devices, including without limitation its Duraforce, Hydro, and Brigadier lines of cellular telephones,  
5 all with knowledge, at least as of the date of this suit, of the '715 Patent and its claims; with knowledge  
6 that its customers and end users will use, market, sell, offer to sell, and import infringing consumer  
7 electronics devices, which devices infringe the '715 Patent through the operation of the location  
8 services software of the Android operating system on them; and with the knowledge and the specific  
9 intent to encourage and facilitate those infringing sales and uses of infringing consumer electronics  
10 devices, including by encouraging customers to use location services functionality on such devices.

11           73. Defendants have contributed to and will continue to contribute to the infringement of  
12 end users in violation of 35 U.S.C. § 271(c), by selling, offering to sell, and importing infringing  
13 consumer electronics devices and software modules, including but not limited to its Duraforce,  
14 Hydro, and Brigadier lines of cellular telephones and the software modules which perform the steps  
15 described in the '715 Patent, knowing that those products constitute a material part of the inventions  
16 of the '715 Patent, knowing those products to be especially made or adapted to infringe the '715  
17 Patent, and knowing that those products are not staple articles or commodities of commerce suitable  
18 for substantial non-infringing use.

19           74. Defendants have had knowledge of and actual notice of the '715 Patent and their  
20 infringement since at least, and through, the filing and service of the Complaint, and despite this  
21 knowledge will, upon information and belief, continue to infringe the '715 Patent.

22           75. Defendants' infringement has caused and is continuing to cause damage and  
23 irreparable injury to MTL, and MTL will continue to suffer such injury unless and until infringement  
24 is enjoined by this Court.

25

1           76.     MTL is entitled to injunctive relief and damages pursuant to 35 U.S.C. §§ 271, 281,  
2 283 and 284.

3   **COUNT VII**

4   **(Kyocera’s Infringement of the ’408 Patent)**

5           77.     Paragraphs 1 through 76 are incorporated by reference as if fully restated herein.

6           78.     MTL is the owner by assignment of the ’408 Patent and has all right, title and interest  
7 in the ’408 Patent, including the right to sue and recover damages for infringement thereof.

8           79.     Kyocera has infringed the ’408 Patent, literally and/or under the doctrine of  
9 equivalents, by making, using, offering to sell, selling and/or importing in or into the United States  
10 products and/or processes falling within the scope of one or more claims of the ’408 Patent, without  
11 authority and in violation of 35 U.S.C. § 271(a). Among such infringing products are cellular  
12 telephones, including but not limited to, Kyocera’s Duraforce, Hydro, and Brigadier lines of cellular  
13 telephones.

14           80.     Defendants actively, knowingly, and intentionally induce, and continue to actively,  
15 knowingly, and intentionally induce, infringement of the ’408 Patent in violation of 35 U.S.C. §  
16 271(b) by making, using, offering for sale, importing, and selling infringing consumer electronics  
17 devices, including without limitation its Duraforce, Hydro, and Brigadier lines of cellular telephones,  
18 all with knowledge, at least as of the date of this suit, of the ’408 Patent and its claims; with knowledge  
19 that its customers and end users will use, market, sell, offer to sell, and import infringing consumer  
20 electronics devices, which devices infringe the ’408 Patent through the operation of the text  
21 messaging software of the Android operating system on them during text messaging; and with the  
22 knowledge and the specific intent to encourage and facilitate those infringing sales and uses of  
23 infringing consumer electronics devices, including by encouraging customers to use text messages  
24 on such devices.  
25



1 81. Defendants have contributed to and will continue to contribute to the infringement of  
2 end users in violation of 35 U.S.C. § 271(c), by selling, offering to sell, and importing infringing  
3 consumer electronics devices and software modules, including but not limited to its Duraforce,  
4 Hydro, and Brigadier lines of cellular telephones and the software modules which perform the steps  
5 described in the '408 Patent, knowing that those products constitute a material part of the inventions  
6 of the '408 Patent, knowing those products to be especially made or adapted to infringe the '408  
7 Patent, and knowing that those products are not staple articles or commodities of commerce suitable  
8 for substantial non-infringing use.

9 82. Defendants have had knowledge of and actual notice of the '408 Patent and their  
10 infringement since at least, and through, the filing and service of the Complaint, and despite this  
11 knowledge will, upon information and belief, continue to infringe the '408 Patent.

12 83. Defendants' infringement has caused and is continuing to cause damage and  
13 irreparable injury to MTL, and MTL will continue to suffer such injury unless and until infringement  
14 is enjoined by this Court.

15 84. MTL is entitled to injunctive relief and damages pursuant to 35 U.S.C. §§ 271, 281,  
16 283 and 284.

17 **COUNT VIII**

18 **(Declaratory Judgment of Indirect Infringement)**

19 85. Paragraphs 1 through 84 are incorporated by reference as if fully restated herein.

20 86. MTL seeks a declaratory judgment under 28 USC §§ 2201 and 2202 that the Patents-  
21 In-Suit are valid and infringed.

22 87. Upon information and belief, the Kyocera Defendants intend to continue engaging in  
23 the acts described in Counts I through VII of the Complaint, and such conduct will violate 35 USC  
24 §§ 271.  
25

1 88. There exists a substantial controversy of sufficient immediacy and reality to warrant  
2 the issuance of a declaratory judgment.

3 89. MTL is entitled to a declaratory judgment that the Kyocera Defendants infringe one  
4 or more claims of each of the Patents-In-Suit.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Microsoft Technology Licensing, LLC, respectfully requests the following  
7 relief:

- 8 a) A judgment that the Kyocera Defendants have infringed the '989, '117, '102, '344,  
9 '274, '715 and '408 Patents;
- 10 b) A judgment that the '989, '117, '102, '344, '274, '715 and '408 Patents are valid and  
11 enforceable;
- 12 c) An award of all appropriate damages under 35 U.S.C. § 284 for Kyocera's past  
13 infringement, and any continuing or future infringement of the Patents-In-Suit, up until the  
14 date of such judgment;
- 15 d) A declaration that this is an exceptional case within the meaning of 35 U.S.C. § 285  
16 and that MTL be awarded its reasonable attorneys' fees incurred in prosecuting this action;
- 17 e) An award of damages for willful infringement under 35 U.S.C. § 285 starting from  
18 and after the date of the filing of the complaint;
- 19 f) A judgment awarding MTL costs and expenses that it incurs in prosecuting this action;  
20 and
- 21 g) The issuance of an injunction preliminarily and permanently enjoining the Kyocera  
22 Defendants from infringing the Patents-In-Suit and from using, selling or importing infringing  
23 devices in or into this country or inducing infringement thereof;
- 24 h) Such further relief at law or in equity as the Court deems just and proper.  
25

**DEMAND FOR JURY TRIAL**

MTL hereby demands trial by jury on all claims and issues so triable.

DATED this 6<sup>th</sup> day of March, 2015.

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