

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CALLWAVE COMMUNICATIONS, )  
LLC, )  
Plaintiff, )  
v. ) C.A. No. 12-1701-RGA  
AT&T MOBILITY, LLC, et )  
al, )  
Defendants. )

CALLWAVE COMMUNICATIONS, )  
LLC, )  
Plaintiff, )  
v. ) C.A. No. 12-1702-RGA  
SPRINT NEXTEL CORP, et al,) )  
Defendants. )

CALLWAVE COMMUNICATIONS, )  
LLC, )  
Plaintiff, )  
v. ) C.A. No. 12-1703-RGA  
T-MOBILE USA, INC., et al,) )  
Defendants. )

CALLWAVE COMMUNICATIONS, )  
LLC, )  
Plaintiff, )  
v. ) C.A. No. 12-1704-RGA  
VERIZON COMMUNICATIONS, )  
INC., )  
Defendant. )

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1 APPEARANCES CONTINUED:

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ASHBY & GEDDES, P.A.  
BY: JOHN DAY, ESQ.  
Counsel for the Plaintiff  
Broadsoft, Inc.

MORRIS NICHOLS ARSHT & TUNNELL, LLP  
BY: JACK B. BLUMENFELD, ESQ.

-and-

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Counsel for the Defendant Sprint

MORGAN LEWIS & BOCKIUS, LLP  
BY: JODY C. BARILLARE, ESQ.

Counsel for the Defendants  
AT&T Mobility, Blackberry LH and  
Blackberry Corp

CONNOLLY GALLAGHER, LLP  
BY: RYAN P. NEWEL, ESQ.

Counsel for the Defendant T-Mobile

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CALLWAVE COMMUNICATIONS, )  
LLC, )  
Plaintiff, )  
v. ) C.A. No. 12-1788-RGA  
AT&T MOBILITY, LLC, et al,) )  
Defendants. )

BROADSOFT, INC., )  
Plaintiff, )  
v. ) C.A. No. 13-711-RGA  
CALLWAVE COMMUNICATIONS, )  
LLC, )  
Defendant. )

Wednesday, April 9, 2014  
10:51 a.m.

844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE RICHARD G. ANDREWS  
United States District Court Judge

APPEARANCES:

PEPPER HAMILTON, LLP  
BY: EDMOND D. JOHNSON, ESQ.  
BY: NOAH MALGERI, ESQ.  
Counsel for the Plaintiff  
CallW ave Communications, LLC

1 APPEARANCES CONTINUED:

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SEITZ ROSS ARONSTAM & MORITZ, LLP  
BY: BENJAMIN J. SCHLADWEILER, ESQ.

-and-

DENTONS  
BY: MARK C. NELSON, ESQ.

Counsel for the Defendant  
AT&T Mobility

10:51:40 **1** THE CLERK: All rise.  
 10:51:40 **2** THE COURT: All right. Good  
 10:51:40 **3** morning, everyone.  
 10:51:40 **4** MR. BLUMENFELD: Good morning.  
 10:51:40 **5** THE COURT: This is CallWave  
 10:51:40 **6** Communications, LLC versus a number of different  
 10:51:40 **7** defendants, including -- you can be seated --  
 10:51:40 **8** AT&T Mobility, Civil Action Number 12-1701. And  
 10:51:40 **9** I see there's six cases in total. So I guess we  
 10:51:40 **10** ought to know who's here.  
 10:51:40 **11** Mr. Johnson.  
 10:51:40 **12** MR. JOHNSON: Yes, Your Honor.  
 10:51:40 **13** Edmond Johnson from Pepper Hamilton on behalf of  
 10:51:40 **14** the plaintiff, CallWave. And I have with me at  
 10:51:40 **15** counsel table, Noah Malgeri, also from Pepper  
 10:51:40 **16** Hamilton.  
 10:51:40 **17** THE COURT: All right. And good  
 10:51:40 **18** morning.  
 10:51:40 **19** And who represents the defendants  
 10:51:40 **20** here?  
 10:51:40 **21** MR. BLUMENFELD: Good morning, Your  
 10:51:40 **22** Honor, Jack Blumenfeld.  
 10:51:40 **23** I'm here for Google, along with  
 10:51:40 **24** Scott Samay and Peter Lambrianakos from Winston &  
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10:51:40 **1** Mr. Day.  
 10:51:40 **2** MR. DAY: Good morning, Your Honor.  
 10:51:40 **3** John Day from Ashby & Geddes for Broadsoft in the  
 10:51:40 **4** 13-711 action.  
 10:51:40 **5** THE COURT: Okay. So I've got these  
 10:51:40 **6** various disputes about the Protective Order and  
 10:51:40 **7** I've got also the ESI Order. And I guess the  
 10:51:40 **8** first letter I got, I guess it was from the  
 10:51:40 **9** defendants.  
 10:51:40 **10** And I do appreciate that you agreed,  
 10:51:40 **11** one of you, to go first and one of you to go  
 10:51:40 **12** second as opposed to just submitting two letters  
 10:51:40 **13** and then submitting two responses. So thank you  
 10:51:40 **14** for that.  
 10:51:40 **15** Why don't we just go over these  
 10:51:40 **16** things one by one. In the prosecution bar, is  
 10:51:40 **17** there anything that the defense counsel wants to  
 10:51:40 **18** say about that?  
 10:51:40 **19** MR. BLUMENFELD: Just, Your Honor, a  
 10:51:40 **20** couple things based on the response letter that  
 10:51:40 **21** we got. I don't have much to add about, you  
 10:51:40 **22** know, the strategic amendment point that we  
 10:51:40 **23** covered.  
 10:51:40 **24** We cited a number of cases from Your  
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10:51:40 **1** Strawn.  
 10:51:40 **2** MS. JACOBS: Good morning, Your  
 10:51:40 **3** Honor. On behalf of the defendant, Sprint, Karen  
 10:51:40 **4** Jacobs from Morris Nichols.  
 10:51:40 **5** THE COURT: I'm sorry, which  
 10:51:40 **6** defendant?  
 10:51:40 **7** MS. JACOBS: Sprint.  
 10:51:40 **8** MR. NEWELL: Ryan Newell from  
 10:51:40 **9** Connolly Gallagher on behalf of T-Mobile in the  
 10:51:40 **10** 1703 matter.  
 10:51:40 **11** THE COURT: All right.  
 10:51:40 **12** MR. BARILLARE: Good morning, Jody  
 10:51:40 **13** Barillare for Morgan Lewis for Blackberry and  
 10:51:40 **14** AT&T Mobility.  
 10:51:40 **15** THE COURT: All right. Good  
 10:51:40 **16** morning.  
 10:51:40 **17** MR. SCHLADWEILER: Your Honor, Ben  
 10:51:40 **18** Schladweiler from Seitz Ross on behalf of Verizon  
 10:51:40 **19** and AT&T Mobility in the 1701 action.  
 10:51:40 **20** With me today is Mr. Nelson from  
 10:51:40 **21** Dentons.  
 10:51:40 **22** MR. NELSON: Good morning, Your  
 10:51:40 **23** Honor.  
 10:51:40 **24** THE COURT: Good morning. And  
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10:51:40 **1** Honor, Judge Stark, Judge Sleet. None of which  
 10:51:40 **2** they responded to.  
 10:51:40 **3** THE COURT: Even though I thought  
 10:51:40 **4** the cases we cited from me, while that may have  
 10:51:40 **5** been in the actual order, I don't think that was  
 10:51:40 **6** a disputed issue of that case.  
 10:51:40 **7** MR. BLUMENFELD: What Your Honor  
 10:51:40 **8** said was that you were entering the defendants'  
 10:51:40 **9** order and you did enter the order, which applied  
 10:51:40 **10** to the post-grant review issue and also was a  
 10:51:40 **11** one-way bar. But certainly we argued the issues  
 10:51:40 **12** more fully in the two cases before Judge Sleet  
 10:51:40 **13** and in the case before Judge Stark.  
 10:51:40 **14** And if you want to hear more about  
 10:51:40 **15** that, I'll be glad to talk about it.  
 10:51:40 **16** THE COURT: No. No. No.  
 10:51:40 **17** I had actually just gone back to see  
 10:51:40 **18** what I had said in that case, and it did strike  
 10:51:40 **19** me that one-way bar, I certainly addressed. I  
 10:51:40 **20** wasn't sure how much I had addressed the first  
 10:51:40 **21** question.  
 10:51:40 **22** But, in any event, go ahead.  
 10:51:40 **23** MR. BLUMENFELD: I mean, we can  
 10:51:40 **24** address the strategic amendment issue if you'd  
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10:51:40 **1** like. I think it's pretty clear, a pretty clear  
 10:51:40 **2** issue.  
 10:51:40 **3** On the one-way, two-way bar, they  
 10:51:40 **4** didn't address that in their letter, so I'm  
 10:51:40 **5** assuming that that's no longer an issue. The one  
 10:51:40 **6** thing that they did raise that's new is they  
 10:51:40 **7** argued that we're willing, we the defendants,  
 10:51:40 **8** collectively are willing to accept other defense  
 10:51:40 **9** counsel as participants in post-grant reviews.  
 10:51:40 **10** And that really isn't much of an  
 10:51:40 **11** argument, in our view, because we're not going to  
 10:51:40 **12** produce our confidential information to the other  
 10:51:40 **13** defense counsel. I mean, I can speak for Google  
 10:51:40 **14** and I think it's true for all of the defendants,  
 10:51:40 **15** the only party that's requested our information  
 10:51:40 **16** is the plaintiff. The only party that we're  
 10:51:40 **17** going to produce it to is the plaintiff.  
 10:51:40 **18** So we're not producing our  
 10:51:40 **19** confidential information to the other defendants,  
 10:51:40 **20** so there's just not any risk at all there. In  
 10:51:40 **21** fact, you know, to the extent that we've produced  
 10:51:40 **22** all -- the defense has produced core technical  
 10:51:40 **23** documents. You know, we've only produced them to  
 10:51:40 **24** the plaintiff. We're not sharing them with the  
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10:51:42 **1** request or anything in regard to the other seven?  
 10:51:42 **2** MR. BLUMENFELD: There have not been  
 10:51:42 **3** any requests for the other seven.  
 10:51:42 **4** THE COURT: All right.  
 10:51:42 **5** MR. BLUMENFELD: And I think I  
 10:51:42 **6** mentioned that when we were here at the  
 10:51:42 **7** scheduling conference that IPR had happened and  
 10:51:42 **8** that there might be even a stay of this, a  
 10:51:42 **9** request for a stay of the litigation pending the  
 10:51:42 **10** IPR, which also may happen.  
 10:51:42 **11** THE COURT: Okay. All right.  
 10:51:42 **12** Thank you.  
 10:51:42 **13** MR. BLUMENFELD: Anything else you'd  
 10:51:42 **14** like to hear on the prosecution bar?  
 10:51:42 **15** THE COURT: No.  
 10:51:42 **16** MR. BLUMENFELD: Thank you.  
 10:51:42 **17** THE COURT: All right.  
 10:51:42 **18** MR. MALGERI: Good morning, Your  
 10:51:42 **19** Honor. Noah Malgeri from Pepper Hamilton on  
 10:51:42 **20** behalf of CallWave.  
 10:51:42 **21** Go ahead. Your Honor, you have a  
 10:51:42 **22** question?  
 10:51:42 **23** THE COURT: Well, so I think I see  
 10:51:42 **24** this stuff about Mr. Engellener and Attorney  
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10:51:40 **1** other defendants and there's no intention to.  
 10:51:40 **2** So, in our view, this is just a very  
 10:51:42 **3** plain prosecution bar issue. They can amend or  
 10:51:42 **4** perhaps they can add new claims in post-grant  
 10:51:42 **5** proceedings. There's already an IPR pending for  
 10:51:42 **6** one of the patents, and we think the law is  
 10:51:42 **7** pretty clear that the lawyers who have access  
 10:51:42 **8** shouldn't be permitted to participate.  
 10:51:42 **9** THE COURT: And so just to make sure  
 10:51:42 **10** that I have the background correct, there are  
 10:51:42 **11** five patents; right?  
 10:51:42 **12** MR. BLUMENFELD: There are. There  
 10:51:42 **13** are more than five patents. There's three  
 10:51:42 **14** tracks. Two of the tracks have one patent. I  
 10:51:42 **15** think there's six patents in the third track.  
 10:51:42 **16** So there are --  
 10:51:42 **17** THE COURT: Total number of patents  
 10:51:42 **18** altogether is how many?  
 10:51:42 **19** MR. BLUMENFELD: I think it's eight.  
 10:51:42 **20** THE COURT: Oh, okay. And so one of  
 10:51:42 **21** them is under IPR review?  
 10:51:42 **22** MR. BLUMENFELD: One of them is in  
 10:51:42 **23** IPR. Correct.  
 10:51:42 **24** THE COURT: And there's no pending  
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10:51:42 **1** Mullagababa, two registered patent attorneys who  
 10:51:42 **2** apparently are representing CallWave in the IPR;  
 10:51:42 **3** is that right?  
 10:51:42 **4** MR. MALGERI: Yes, Your Honor.  
 10:51:42 **5** That's right.  
 10:51:42 **6** Actually there was a mention of some  
 10:51:42 **7** of the circumstances that sort of surround their  
 10:51:42 **8** participation in the IPR and the defendant in the  
 10:51:42 **9** defendants' letter to Your Honor, but it didn't  
 10:51:42 **10** get the facts entirely right. CallWave did not  
 10:51:42 **11** appoint the presence for counsel.  
 10:51:42 **12** They were the counsel of record at  
 10:51:42 **13** the U.S. PTO for the patentee who just sort of  
 10:51:42 **14** defaulted into the role of being counsel of  
 10:51:42 **15** record for service of the petition, et cetera.  
 10:51:42 **16** The first counsel that CallWave appointed and  
 10:51:42 **17** selected in its exercise of its discretion to  
 10:51:42 **18** choose counsel was naturally counsel from Pepper  
 10:51:42 **19** Hamilton.  
 10:51:42 **20** And Your Honor, much like the  
 10:51:42 **21** defendants' arrangement in the present IPR, they  
 10:51:42 **22** have counsel. They have the same individual who  
 10:51:42 **23** was on the pro hac for T-Mobile and Sprint, who's  
 10:51:42 **24** also appeared as counsel in the IPR.  
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10:51:42 1 And so --

10:51:42 2 THE COURT: Well, so just, and maybe

10:51:42 3 it was in here about how far IPR is or maybe it

10:51:42 4 wasn't. I can't remember now.

10:51:42 5 But are you saying that Mr.

10:51:42 6 Engellener and Attorney Mullagababa are not the

10:51:42 7 people who are representing CallWave in the IPR,

10:51:42 8 they were essentially just on the docket as such

10:51:42 9 and now somebody else is or what?

10:51:42 10 MR. MALGERI: Oh, no, Your Honor.

10:51:42 11 My mistake, if I wasn't clear.

10:51:42 12 There was a mention in the

10:51:42 13 defendants' letter to Your Honor that mentioned

10:51:42 14 that there was previous counsel before Mr.

10:51:42 15 Engellener.

10:51:42 16 THE COURT: Oh, okay. Because it

10:51:42 17 said substituted, so that implied somebody, yes.

10:51:42 18 MR. MALGERI: There was no

10:51:42 19 substitution on CallWave's behalf, Your Honor.

10:51:42 20 THE COURT: I don't think that

10:51:42 21 matters.

10:51:42 22 MR. MALGERI: Okay.

10:51:42 23 THE COURT: But I did appreciate

10:51:42 24 that, so thank you for pointing that out.

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10:51:42 1 prosecution bar that has been provided by the

10:51:42 2 defendants, in fact, even that level of

10:51:44 3 participation which goes well beyond the argument

10:51:44 4 they've made with claim amendments, is foreclosed

10:51:44 5 as well. And as I mentioned before, they're

10:51:44 6 enjoying the ability to exercise common counsel

10:51:44 7 in representation with respect to issues in the

10:51:44 8 litigation and have done -- so counsel of record

10:51:44 9 in the cases before this Court, Your Honor, is

10:51:44 10 the same individual who's arguing before the

10:51:44 11 Patent & Trademark Office on IPR.

10:51:44 12 THE COURT: But the only relevant

10:51:44 13 confidential information those people have is

10:51:44 14 their own confidential information; right?

10:51:44 15 MR. MALGERI: Not necessarily, Your

10:51:44 16 Honor, because as has been made clear in this

10:51:44 17 case, third-party discovery is going to be very,

10:51:44 18 very important. And we expect that there will be

10:51:44 19 issues that involve the confidential information

10:51:44 20 of third parties who will seek to take advantage

10:51:44 21 of the protection of this Protective Order in

10:51:44 22 producing their information.

10:51:44 23 And that information will be

10:51:44 24 available to those counsel and will not be

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10:51:42 1 MR. MALGERI: Yes, Your Honor. So

10:51:42 2 basically the argument that the defendants make

10:51:42 3 in their letter and then also today briefly said

10:51:42 4 that the prosecution bar that they'd like to see

10:51:42 5 imposed in this case, that is their burden to try

10:51:42 6 to justify, goes well beyond the arguments that

10:51:42 7 they have even made. That prosecution bar would

10:51:42 8 effectively eliminate CallWave's ability to have

10:51:42 9 folks who have participated on CallWave's behalf

10:51:42 10 over the course of awhile in learning the

10:51:42 11 litigation strategy of CallWave and the validity

10:51:42 12 theories of CallWave with respect to this

10:51:42 13 particular patent, and foreclose their

10:51:42 14 participation in the IPR where the exact same

10:51:42 15 issues are here.

10:51:42 16 And, indeed, the only information

10:51:42 17 that's relevant to those questions in the IPR is

10:51:42 18 public prior art and the patent claims

10:51:42 19 themselves, Your Honor. So, in the interest of

10:51:42 20 efficiency and the ability of this small

10:51:42 21 company's exercise of its discretion to select

10:51:42 22 counsel of its choosing, Your Honor, there's no

10:51:42 23 combination of those interests.

10:51:42 24 So whatever in the proposed

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10:51:44 1 available to benefit the team from CallWave, Your

10:51:44 2 Honor, in arguing the IPR. So, nonetheless, our

10:51:44 3 contention, as made clear in the letter, is that

10:51:44 4 the prosecution that the Protective Order itself

10:51:44 5 already contains a protection against using

10:51:44 6 information that's --

10:51:44 7 THE COURT: I mean, they always do

10:51:44 8 because basically we're talking about inadvertent

10:51:44 9 disclosure here.

10:51:44 10 MR. MALGERI: Yes, Your Honor,

10:51:44 11 understood. And it's a good point.

10:51:44 12 But, Your Honor, the danger is so

10:51:44 13 outweighed by the patentee's interest in being

10:51:44 14 able to retain and use as his counsel of choice

10:51:44 15 because --

10:51:44 16 THE COURT: Well, I take it that Mr.

10:51:44 17 Engellener or the second attorney, you know, are

10:51:44 18 registered patent attorneys of Pepper Hamilton.

10:51:44 19 So these are two people who are premiere at

10:51:44 20 representing people before the PTO; right?

10:51:44 21 MR. MALGERI: I believe that's a

10:51:44 22 correct characterization, Your Honor. Yes.

10:51:44 23 THE COURT: But I take it that their

10:51:44 24 background in CallWave's technology is they're

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