

1 RUSS, AUGUST & KABAT  
Larry C. Russ, State Bar No. 82760  
2 Marc A. Fenster, State Bar No. 181067  
Brian D. Ledahl, State Bar No. 186579  
3 Alexander C.D. Giza, State Bar No. 212327  
J. Power Hely VI, State Bar No. 271231  
4 12424 Wilshire Boulevard, 12<sup>th</sup> Floor  
Los Angeles, California 90025  
5 Telephone: (310) 826-7474  
Facsimile:(310) 826-6991

6 Attorneys for Plaintiff  
7 SPH AMERICA, LLC

8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

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12 SPH AMERICA, LLC,  
13 Plaintiff,

14 vs.

15  
16 HUAWEI TECHNOLOGIES, CO.,  
LTD., FUTUREWEI  
17 TECHNOLOGIES, INC., HUAWEI  
18 DEVICE USA, INC.,

19 Defendants.

Case No. 13-CV-2323-CAB-NLS

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**Jury Trial Demanded**

RUSS, AUGUST & KABAT

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1 This is an action for patent infringement arising under the Patent Laws of the  
2 United States of America, 35 U.S.C. § 1 *et seq.* in which Plaintiff SPH America,  
3 LLC (“SPH” or “Plaintiff”) makes the following allegations against Defendants  
4 Huawei Technologies, Co., Ltd., Futurewei Technologies, Inc., and Huawei Device  
5 USA, Inc. (collectively “Huawei” or “Defendants”).

## 6 I. PARTIES

7 1. Plaintiff SPH America, LLC is a Virginia limited liability company  
8 having a principal place of business at 8133 Leesburg Pike, Suite 310, Vienna,  
9 Virginia 22182.

10 2. On information and belief, Defendant Huawei Technologies, Co., Ltd.  
11 is a Chinese corporation with its principal place of business in Shenzhen, China.  
12 On information and belief, Defendant Futurewei Technologies, Inc. is a Delaware  
13 corporation with its principal place of business at 5700 Tennyson Parkway, Suite  
14 #500, Plano, Texas, 75024. On information and belief, Defendant Huawei Device  
15 USA, Inc. is a Texas corporation with its principal place of business at 5700  
16 Tennyson Parkway, Suite #600, Plano, Texas 75024. On information and belief,  
17 all three defendants are wholly-owned subsidiaries of Huawei Investment &  
18 Holding Co., Ltd.

## 19 II. JURISDICTION AND VENUE

20 3. This action arises under the patent laws of the United States, Title 35  
21 of the United States Code. This Court has original subject matter jurisdiction  
22 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

23 4. On information and belief, Defendants are subject to this Court's  
24 specific and general personal jurisdiction pursuant to due process and/or the  
25 California Long Arm Statute, due to having availed themselves of the rights and  
26 benefits of California by engaging in activities, including: (i) conducting  
27 substantial business in this forum; and (ii) engaging in other persistent courses of  
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RUSS, AUGUST &amp; KABAT

1 conduct, and/or deriving substantial revenue from goods and services provided to  
2 individuals in California and in this Judicial District.

3 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c)  
4 and 1400(b). On information and belief, Defendants have engaged in activities  
5 including: transacting business in this district and purposefully directing its  
6 business activities, including the sale of infringing goods, to this district.

7 **COUNT I**

8 **INFRINGEMENT OF U.S. PATENT NO. RE 40,385**

9 6. Plaintiff SPH realleges and incorporates by reference paragraphs 1-5  
10 above, as if fully set forth herein.

11 7. Plaintiff SPH is the exclusive licensee of United States Patent No. RE  
12 40,385 (“the ‘385 patent”) titled “Orthogonal Complex Spreading Method For  
13 Multichannel And Apparatus Thereof.” The ‘385 patent was duly and legally  
14 issued by the United States Patent and Trademark Office on June 17, 2008. SPH is  
15 the exclusive licensee, possessing all substantial rights, to the ‘385 patent pursuant  
16 to a license from the Electronics and Telecommunications Research Institute, a  
17 South Korean non-profit research organization, the owner of the ‘385 patent.

18 8. On information and belief, Huawei makes and sells mobile handsets  
19 for use on a wireless network.

20 9. On information and belief, Huawei has infringed and continues to  
21 infringe the ‘385 patent by, among other things, making, using, offering for sale,  
22 and/or selling unlicensed systems, and products and/or services related thereto,  
23 covered by one or more claims of the ‘385 patent. Such unlicensed products  
24 include, by way of example and without limitation, the T-Mobile Prism II, the  
25 Premia 4G, and the Pinnacle 2 devices, all of which are covered by one or more  
26 claims of the ‘385 patent, including but not limited to claim 31. By making, using,  
27 offering for sale, and/or selling such systems, and products and/or services related  
28 thereto, covered by one or more claims of the ‘385 patent, Huawei has injured SPH

RUSS, AUGUST & KABAT

1 and is liable to SPH for infringement of the '385 patent pursuant to 35 U.S.C. §  
2 271.

3 10. Huawei was placed on notice of its infringement of the '385 Patent no  
4 later than approximately July 2009 as a result of a complaint filed by SPH alleging  
5 infringement of the '385 patent by Huawei. Though that action was subsequently  
6 dismissed without prejudice as to Huawei, it placed Huawei on notice of its  
7 infringing activities.

8 11. On information and belief, Huawei has also infringed the '385 patent  
9 by inducing others, including users of its wireless handsets, to infringe one or more  
10 claims of the '385 patent in violation of 35 U.S.C. § 271(b).

11 12. On information and belief, Huawei takes active steps to induce its  
12 customers to infringe the '385 patent by taking affirmative steps to encourage and  
13 facilitate direct infringement by others with knowledge of that infringement, such  
14 as, upon information and belief, by importing, offering for sale, and/or selling  
15 products and/or services that when used as intended infringe the '385 patent. For  
16 example, and without limitation, on information and belief, Huawei advertises that  
17 customers can utilize mobile devices to communicate using its network services for  
18 3G communications enabled pursuant to CDMA2000 technology or WCDMA  
19 technology. Since at least the time of prior complaint in July 2009, Huawei has  
20 had actual knowledge of the '385 patent and that the use of products and services  
21 by its customers constituted direct infringement of the '385 patent. Despite this  
22 knowledge, Huawei has continued to offer its infringing products, to facilitate and  
23 encourage infringing use of its products, and to encourage its customers to use its  
24 products and services in a manner that infringes the '385 patent.

25 13. On information and belief, Huawei has also infringed the '385 patent  
26 by contributing to the infringement of others, including users of its handsets, to  
27 infringe one or more claims of the '385 patent in violation of 35 U.S.C. § 271(c).  
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RUSS, AUGUST &amp; KABAT

1           14. On information and belief, Huawei sells devices that are a component  
2 of the patented invention of the '385 patent or an apparatus for use in practicing a  
3 patented process of the '385 patent and they are especially made or especially  
4 adapted for use in infringement of the '385 patent. In particular, the mobile  
5 handsets sold and offered for sale by Huawei are apparatus for use in practicing  
6 one or more claimed processes of the '385 patent and are especially made or  
7 especially adapted for use in practicing one or more claimed processes of the '385  
8 patent, including through use in communications using CDMA2000 technology or  
9 WCDMA technology. Huawei sold these devices despite its knowledge that they  
10 were especially made or especially adapted for use in infringement of the '385  
11 patent. Huawei was put on notice of the infringing nature of these goods since at  
12 least the time of SPH's prior complaint in July 2009.

13           15. Huawei undertook its actions of, *inter alia*, making, using, offering for  
14 sale, and/or selling unlicensed systems, and products and/or services related thereto  
15 despite an objectively high likelihood that such activities infringed the '385 patent,  
16 which has been duly issued by the United States Patent and Trademark Office, and  
17 is presumed valid. Since at least the time of the 2009 complaint, Huawei has been  
18 aware of an objectively high likelihood that its actions constituted, and continue to  
19 constitute, infringement of the '385 patent and that the '385 patent is valid.  
20 Despite that knowledge, on information and belief, Huawei has continued its  
21 infringing activities. As such, Huawei willfully infringed the '385 patent.

22           16. As a result of Huawei's infringement of the '385 patent, Plaintiff SPH  
23 has suffered monetary damages and is entitled to a money judgment in an amount  
24 adequate to compensate for Huawei's infringement, but in no event less than a  
25 reasonable royalty for the use made of the invention by Huawei, enhancement of  
26 damages due to Huawei's willful infringement, and interest and costs as fixed by  
27 the Court.  
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