

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

GESTURE TECHNOLOGY PARTNERS,
LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

CIVIL ACTION NO. 6:21-cv-00121

ORIGINAL COMPLAINT FOR PATENT
INFRINGEMENT

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Gesture Technology Partners, LLC (“GTP” or “Plaintiff”) files this original complaint against Apple Inc. (“Apple”) alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

1. Gesture Technology Partners, LLC is a limited liability company filed under the laws of the State of Ohio, with its principal place of business at 2815 Joelle Drive, Toledo, Ohio 43617.

2. Defendant Apple is a company incorporated in California. Apple designs, manufactures, makes, uses, imports into the United States, sells, and/or offers for sale in the United States Apple smartphones and tablets. Apple’s smartphones and tablets are marketed, used, offered for sale, and/or sold throughout the United States, including within this district.

JURISDICTION AND VENUE

3. GTP repeats and re-alleges the allegations in Paragraphs 1-2 as though fully set forth in their entirety.

4. This is an action for infringement of United States patents arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

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

6. Apple is subject to this Court’s specific and general personal jurisdiction due at least to Apple’s substantial business in this forum, including (i) at least a portion of the infringements alleged herein; or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

7. Specifically, Apple intends to and does business in Texas, directly or through intermediaries and offers its products or services, including those accused herein of infringement, to customers and potential customers located in Texas, including in the Western District of Texas.

8. Apple maintains a regular and established place of business in this District, including at 2901 S. Capital of Texas Highway, Austin, Texas 78746. Apple may be served with process through its registered agent for service in Texas: CT Corporation System, 1999 Bryant Street, Suite 900, Dallas, Texas 75201.

9. Since 2010, Apple has maintained an engineering team in Austin that designs chips that “go into all the devices [Apple] sell[s].” See *The Statesman, Apple dives deeper into Austin’s talent pool*, Sept. 7, 2016, available at <https://www.statesman.com/news/20160907/apple-dives-deeper-into-austins-talent-pool> (last accessed Dec. 29, 2020).

10. In 2018, Apple had 6,200 employees in Austin, which was the largest population of Apple employees outside of its headquarters in Cupertino, California. *See* Apple, Inc., *Apple to build new campus in Austin and add jobs across the US*, Dec. 13, 2018, available at <https://www.apple.com/newsroom/2018/12/apple-to-build-new-campus-in-austin-and-add-jobs-across-the-us/> (last accessed Dec. 29, 2020).

11. As of 2019, Apple had approximately 7,000 employees in Austin. It has also broken ground on its new \$1 billion, 3-million square-foot campus, which will have the capacity to house up to 15,000 employees. *See* Apple, Inc., *Apple expands in Austin*, Nov. 20, 2019, available at <https://www.apple.com/newsroom/2019/11/apple-expands-in-austin/> (last accessed Dec. 29, 2020).

THE TECHNOLOGY

12. GTP repeats and re-alleges the allegations in Paragraphs 1-11 as though fully set forth in their entirety.

13. GTP was founded in 2013 by Dr. Timothy Pryor, the sole inventor of the five Asserted Patents. He currently resides in Toledo, Ohio. Dr. Pryor received a B.S. in Engineering Physics from Johns Hopkins University in 1962, where he was also a member of the Army Reserve Officer in Training (ROTC) program. Upon graduation, he was commissioned as a Second Lieutenant in the United States Army. Dr. Pryor continued his education, obtaining an M.S. in Physics from the University of Illinois (1964) and a Ph.D. in Mechanical Engineering from the University of Windsor (1972).

14. Dr. Pryor rose to the rank of Captain in the U.S. Army before his honorable discharge in 1967. Dr. Pryor served at the U.S. Army Aberdeen Proving Ground and in Italy,

commanding missile teams supporting the Italian armed forces on a NATO anti-aircraft missile site, charged with guarding nuclear warheads and providing technical assistance to NATO.

15. Dr. Pryor is a named inventor on over 200 patents and patent applications. For the past four decades, he has been a pioneer in laser sensing technology, motion sensing technology, machine vision technology and camera-based interactive technology.

16. Since the 1970's, Dr. Pryor has founded and led three other operating companies: two small operating companies in the automotive parts inspection and robotics businesses, one company that developed new forms of vehicle instrument panel controls, and co-founded another company that utilized camera-based sensors for physical therapy. Dr. Pryor is responsible for a significant amount of the research and development for the technologies at these companies.

17. The patents-in-suit, U.S. Patent Nos. 8,194,924 (the “924 patent”), 7,933,431 (the “431 patent”), 8,878,949 (the “949 patent”), and 8,553,079 (the “079 patent”) (collectively, the “Asserted Patents”), are generally directed to innovations in using mobile phone cameras to assist a user to interact with their smartphone, including, for example, but not limited to unlocking their phone, taking and using photos or videos, and providing other functions.

18. Dr. Pryor conceived of the inventions embodied in the Asserted Patents in the mid-to late-1990s, when he was working on a variety of different projects related to imaging and computer control. Dr. Pryor describes the process as a brainstorm that led to several breakthrough moments, ultimately resulting in the Asserted Patents.

DISCUSSIONS WITH APPLE

19. Dr. Pryor and his patents are well-known to Apple.

20. Indeed, Apple has purchased patents and technologies from Dr. Pryor in the past including his “multi-touch” patent portfolio in 2010. Dr. Pryor later assisted Apple in asserting the multi-touch portfolio against HTC.

21. After Dr. Pryor developed the technology embodied in the Asserted Patents, Dr. Pryor again approached Apple about acquiring or licensing rights to Asserted Patents.

22. GTP initiated a licensing discussion with Apple in June 2016 providing Apple with the Asserted Patents and describing the patented technology.

23. Apple responded to GTP in writing by letter dated December 5, 2016 and negotiations continued through March 27, 2017.

24. As a result of the correspondence described above and other negotiations, Apple was aware of the details of the Asserted Patents and was aware that Apple needed a license to practice the inventions in the Asserted Patents.

25. On information and belief, Apple did not take any steps to change their products or to inform its engineers and design team of the Asserted Patents to avoid infringing them.

THE ACCUSED PRODUCTS

26. GTP repeats and re-alleges the allegations in Paragraphs 1-25 as though fully set forth in their entirety.

27. Apple infringed the asserted patents by making, using, selling, offering to sell, and importing its smartphones and tablets including, but not limited to, Apple’s iPhone models 5C, 5S, 6, 6 Plus, 6S, 6S Plus, SE (1st), 7, 7 Plus, 8, 8 Plus, X, XS, XS Max, XR, 11, 11 Pro, 11 Pro Max, SE (2nd), 12, 12 Mini, 12 Pro, and 12 Pro Max and Apple’s iPad models iPad Mini 3, Air 2, Mini 4, Pro (1st, 12.9 in.), iPad Pro (1st, 9.7 in.), iPad (5th generation), iPad Pro (2nd, 10.5/12.9 in.), iPad (6th generation), iPad Pro (3rd, 11/12.9 in.), iPad Air (3rd generation), iPad Mini (5th generation),

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