

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

ZIPLINK, INC.,

Plaintiff,

v.

TIME WARNER CABLE, INC.,

Defendant.

Civil Action No. 3:12-cv-01576-WGY

**JURY TRIAL DEMANDED**

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**SECOND AMENDED COMPLAINT**

Plaintiff, Ziplink, Inc., does hereby, through its attorneys, allege as follows:

**THE PARTIES**

1. Plaintiff Ziplink, Inc., (hereinafter “Ziplink”), is a corporation organized and existing under the laws of Delaware, having a principal place of business at 40 Woodland Street, Hartford, Connecticut, 06105.

2. Upon information and belief, Defendant Time Warner Cable, Inc. (hereinafter “TWC”) is a corporation organized under the laws of the State of Delaware, with its principal place of business at 60 Columbus Circle, New York, NY 10023.

**JURISDICTION**

3. This is a claim for patent infringement and arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant, and Defendant comes within

the scope of the Connecticut long-arm statute, Conn. Gen. Stat. § 52-59b, because, upon information and belief and among other things, Defendant is transacting business within this judicial district, and has committed tortious acts causing injury within this judicial district, including acts of infringement which are in part the subject matter of this Complaint.

**VENUE**

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

**GENERAL ALLEGATIONS**

6. Ziplink is the owner by assignment of United States Patent No. 7,672,998 entitled “Apparatus and methods for controlling the transmission of messages,” issued on March 2, 2010 (“the ‘998 patent”). A true and correct copy of the ‘998 patent is attached hereto as Exhibit A.

7. Ziplink is the owner by assignment of United States Patent No. 8,271,596, entitled “Apparatus and methods for controlling the transmission of messages,” issued on September 18, 2012 (“the ‘596 patent”). A true and correct copy of the ‘596 patent is attached hereto as Exhibit B. (The ‘998 patent and the ‘596 patent are hereinafter collectively referred to as the “patents-in-suit”).

8. Upon information and belief, TWC makes, uses, sells, and offers for sale in the United States email products and services that, among other things, perform quota enforcement operations on outbound messages based on a message count and a message limit associated with an originator identity (hereinafter referred to as the “TWC email products and services”).

9. TWC has directly infringed and continues to infringe the patents-in-suit by, among other things, making, using, selling and/or offering to sell the TWC email products and services patented under the ‘998 and ‘596 patents. By making, using, selling and/or offering to

sell the TWC email products and services, TWC has injured Ziplink and is liable to Ziplink for direct infringement of the patents-in-suit pursuant to 35 U.S.C. § 271(a).

10. TWC has had actual knowledge of the patents-in-suit since at least receiving notice of the original complaint in this action on or about November 7, 2012.

11. Since at least the filing of the original complaint in this action, TWC has induced others and continues to induce others, including but not limited to TWC's customers, to infringe the patents-in-suit in violation of 35 U.S.C. § 271(b) by taking active steps to encourage and facilitate direct infringement by others with knowledge of that infringement, such as, upon information and belief, by making, offering for sale, and/or selling the TWC email products and services that when used as intended infringe the patents-in-suit. TWC's customers who use the TWC email products and services directly infringe one or more the claims of the patents-in-suit. Since at least the filing of the original complaint in this action, TWC has had actual knowledge of the patents-in-suit and has known that the use of the TWC email products and services by its customers constituted direct infringement of the patents-in-suit. Despite TWC's actual knowledge of the patents-in-suit and the knowledge that its customers infringed, TWC continued to, and still continues to, actively encourage its customers to infringe by, among other things, making, selling, and/or offering for sale the TWC email products and services. TWC further intends that its customer use the TWC email products and services in a manner that infringes the claims of the patents-in-suit.

12. Since at least the filing of the original complaint in this action, TWC has knowingly contributed to the infringement, and continues to contribute to the infringement of one or more claims of the patents-in-suit in violation of 35 U.S.C. § 271(c) by offering the TWC email products and services to its customers, which constitute a material part of the inventions of

the patents-in-suit and are not staple articles or commodities of commerce suitable for any substantial non-infringing use.

13. TWC's actions of, among other thing, making, using, offering for sale, and/or selling the TWC email products and services constitute an objectively high likelihood of infringement of the patents-in-suit, which were duly issued by the United States Patent and Trademark Office and are presumed valid. Since at least the filing of the original complaint, TWC has been and continues to be aware that there is an objectively high likelihood that its actions constitute, and continue to constitute, infringement of the patents-in-suit and that the patents-in-suit are valid. Despite TWC's knowledge of that risk, on information and belief, TWC has not made any changes to the relevant operation of the TWC email products and services and has not provided its users and/or customers with instructions on how to avoid infringement of the patents-in-suit. Instead, TWC has continued to, and still is continuing to, among other things, make, use, offer for sale, and/or sell the TWC email products and services patented under the patents-in-suit. As such, TWC willfully, wantonly and deliberately infringed and is infringing the patents-in-suit in disregard of Ziplink's rights.

**COUNT I**  
**(Infringement of U.S. Patent No. 7,672,998)**

14. Ziplink repeats and realleges paragraphs 1-13, above, as though fully set forth herein.

15. TWC infringes and will continue to infringe one or more of the claims of the '998 patent by, among other activities, making, using, selling and/or offering to sell the TWC email products and services.

16. TWC has also infringed the '998 patent by inducing others to infringe the '998 patent and/or by contributing to the infringement of the '998 patent by others.

17. Upon information and belief, TWC's continued infringement of the '998 patent, whether direct, contributory, and/or by inducement, has been and continues to be knowing, willful, and objectively reckless.

18. Ziplink has been irreparably harmed to an extent not yet determined by TWC's infringement, and will continue to be irreparably harmed in the future unless TWC is enjoined from its activities by this Court.

**COUNT II**  
**(Infringement of U.S. Patent No. 8,271,596)**

19. Ziplink repeats and realleges paragraphs 1-18, above, as though fully set forth herein.

20. TWC infringes and will continue to infringe one or more of the claims of the '596 patent by, among other activities, making, using, selling and/or offering to sell the TWC email products and services.

21. TWC has also infringed the '596 patent by inducing others to infringe the '596 patent and/or by contributing to the infringement of the '596 patent by others.

22. Upon information and belief, TWC's continued infringement of the '596 patent, whether direct, contributory, and/or by inducement, has been and continues to be knowing, willful, and objectively reckless.

23. Ziplink has been irreparably harmed to an extent not yet determined by TWC's infringement, and will continue to be irreparably harmed in the future unless TWC is enjoined from its activities by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Ziplink respectfully asks this Court to enter judgment against TWC and against its respective subsidiaries, successors, parents, affiliates, officers, directors, agents,

servants and employees, and all persons in active concert or participation with TWC, granting the following relief:

- A. The entry of judgment in favor of Ziplink and against TWC;
- B. A permanent injunction prohibiting further infringement of the patents-in-suit;
- C. An award of damages adequate to compensate Ziplink for the infringement that has occurred, but in no event less than a reasonable royalty for the use made of the inventions of the patents-in-suit as provided in 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- D. Award Ziplink treble damages as provided in 35 U.S.C. § 284;
- E. Find that this case is exceptional and award Ziplink its costs in this action together with reasonable attorneys' fees as provided in 35 U.S.C. § 285; and
- F. Such other relief to which Ziplink is entitled under law, and any other and further relief that this Court or a jury may deem just and proper.

**DEMAND FOR JURY TRIAL**

Ziplink demands a trial by jury on all issues so triable.

Respectfully submitted,

Date: July 17, 2013

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ATTORNEY FOR PLAINTIFF  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 17, 2013, a copy of the foregoing document was filed electronically and served by mail on any party unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties able to accept electronic filing by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/Andrew C. Ryan  
Andrew C. Ryan, Esq.