

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

U.S. Ethernet Innovations, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:13-cv-612
)	
Lenovo (United States) Inc.,)	
)	
Defendant.)	
)	
)	<u>JURY TRIAL DEMANDED</u>

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff U.S. Ethernet Innovations, LLC (“USEI”) hereby makes and files this Complaint for patent infringement against Defendant Lenovo (United States) Inc. (“Lenovo” or “Defendant”), respectfully showing the Court as follows:

NATURE OF THE ACTION

1. Plaintiff USEI is a Tyler, Texas-based company that is the successor-in-interest to 3Com Corporation’s Ethernet technology business, based on fundamental Ethernet technology developed by 3Com in the 1990s. USEI owns United States Patent Nos. 5,434,872 (the “‘872 Patent”) and 5,299,313 (the “‘313 Patent”).
2. Defendant has made, used, imported, and/or sold and/or continues to make, use, import, and/or sell the technology claimed by the ‘872 Patent and the ‘313 Patent (collectively, the “Patents-in-Suit”) in devices, systems and methods without USEI’s permission.
3. Plaintiff USEI seeks damages for Defendant’s infringement of the Patents-in-Suit.

PARTIES

4. Plaintiff USEI is a Texas limited liability corporation. USEI's principal place of business is in Tyler, Texas.

5. On information and belief, Lenovo (United States) Inc. is organized and existing under the laws of the State of Delaware, with a principal place of business at 1009 Think Place, Morrisville, North Carolina 27560. Lenovo can be served with process through its registered agent, CT Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, North Carolina 27601.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Venue is proper in this judicial district because Defendant is a corporation subject to personal jurisdiction in this judicial district, 28 U.S.C. §§ 1391(b)-(c).

9. Defendant is subject to this Court's specific and general personal jurisdiction consistent with the principles of due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (1) a portion of the infringements alleged herein, including making, using, importing, selling, and/or offering to sell products and systems that infringe the claims of the Patents-in-Suit; (2) the presence of established distribution channels in this forum; and/or (3) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district.

PATENTS-IN-SUIT

10. The '872 Patent, entitled "Apparatus for Automatic Initiation of Data Transmission," was duly and legally issued on July 18, 1995 by the U.S. Patent and Trademark Office to 3Com Corporation, the assignee of the named inventors Brian Petersen, David R. Brown, and W. Paul Sherer. A true and correct copy of the '872 Patent is attached hereto as Exhibit A.

11. The '313 Patent, entitled "Network Interface with Host Independent Buffer Management," was duly and legally issued on March 29, 1994 by the U.S. Patent and Trademark Office to 3Com Corporation, the assignee of the named inventors Brian Petersen, W. Paul Sherer, David R. Brown, and Lai-Chin Lo. A true and correct copy of the '313 Patent is attached hereto as Exhibit B.

12. USEI is the sole owner of the entire right, title, and interest in the Patents-in-Suit by virtue of assignment, including all rights necessary to prosecute this case and collect all damages, past, present and future, resulting from Defendant's infringement.

ACCUSED PRODUCTS

13. Lenovo has imported, made, used and/or sold certain products and devices that embody one or more claims of the Patents-in-Suit, including without limitation products comprising Ethernet technology similar to that found in Lenovo's desktop and laptop computers, including but not limited to the IdeaCentre Q110 (collectively, the "Accused Products").

LENOVO'S NOTICE

14. Defendant has had actual and constructive notice of the Patents-in-Suit.

15. Defendant Lenovo's predecessor IBM recognized the need for Lenovo to be licensed under the Patents-in-Suit, but was unable to obtain a license for the Patents-in-Suit on behalf of Lenovo.

16. Defendant Lenovo also attempted to obtain a license to the Patents-in-Suit directly as well following its spin-off from IBM. While the parties exchanged drafts of a proposed license agreement, they were unable to reach terms on a license.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,434,872

17. USEI restates and realleges the allegations set forth in the foregoing paragraphs of this Complaint and incorporates them by reference.

18. Without a license or permission from USEI, Defendant has infringed one or more claims of the '872 Patent, directly, contributorily, and/or by inducement, by importing, making, using, offering for sale, and/or selling products and devices which embody the patented invention, including, without limitation, one or more of the Accused Products, in violation of 35 U.S.C. § 271.

19. Defendant directly contributed and induced infringement through supplying infringing systems and components to Defendant's customers. Defendant's customers who purchased systems and components thereof and operated such systems and components thereof in accordance with Defendant's instructions directly infringe one or more claims of the '872 Patent, in violation of 35 U.S.C. § 271.

20. On information and belief, Defendant has indirectly infringed and continues to indirectly infringe the '872 Patent by actively inducing direct infringement by other persons -- specifically, Defendant's customers -- who operate systems or methods that embody or otherwise practice one or more of the claims of the '872 Patent when Defendant had knowledge of the '872 Patent and knew or should have known that their actions would induce direct infringement by other and intended that their actions would induce direct infringement by others.

21. On information and belief, Defendant has also indirectly infringed and continues to indirectly infringe the '872 Patent by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system or method with knowledge of the '872 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claims invention of the '872 Patent.

22. The acts of infringement of the '872 Patent by Defendant have caused damage to USEI, and USEI is entitled to recover from Defendant the damages sustained by USEI as a result of the wrongful acts of Defendant in an amount subject to proof at trial.

23. Defendant has had actual or constructive knowledge of the '872 Patent, yet continued to infringe said patent. The infringement of the '872 Patent by Defendant was willful and deliberate, entitling USEI to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 5,299,313

24. USEI restates and realleges the allegations set forth in the foregoing paragraphs of this Complaint and incorporates them by reference.

25. Without a license or permission from USEI, Defendant has infringed one or more claims of the '313 Patent, directly, contributorily, and/or by inducement, by importing, making, using, offering for sale, and/or selling products and devices which embody the patented invention, including, without limitation, one or more of the Accused Products, in violation of 35 U.S.C. § 271.

26. Defendant directly contributed and induced infringement through supplying infringing systems and components to its customers. Defendant's customers who purchased systems and components thereof and operated such systems and components thereof in

accordance with Defendant's instructions directly infringe one or more claims of the '313 Patent, in violation of 35 U.S.C. § 271.

27. On information and belief, Defendant has indirectly infringed and continues to indirectly infringe the '313 Patent by actively inducing direct infringement by other persons -- specifically, Defendant's customers -- who operate systems or methods that embody or otherwise practice one or more of the claims of the '313 Patent when Defendant had knowledge of the '313 Patent and knew or should have known that their actions would induce direct infringement by other and intended that their actions would induce direct infringement by others.

28. On information and belief, Defendant has also indirectly infringed and continues to indirectly infringe the '313 Patent by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system or method with knowledge of the '313 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claims invention of the '313 Patent.

29. The acts of infringement of the '313 Patent by Defendant have caused damage to USEI, and USEI is entitled to recover from Defendant the damages sustained by USEI as a result of the wrongful acts of the Defendant in an amount subject to proof at trial.

30. Defendant has had actual or constructive knowledge of the '313 Patent, yet continued to infringe said patent. The infringement of the '313 Patent by Defendant was willful and deliberate, entitling USEI to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, USEI prays for the following relief against Defendant:

- A. A judgment that Defendant has directly infringed the '872 Patent and/or the '313 Patent; contributorily infringed the '872 Patent and/or the '313 Patent; and/or induced infringement of the '872 Patent and/or the '313 Patent;
- B. An award of all damages recoverable under the laws of the United States and the laws of the State of Texas in an amount to be proven at trial;
- C. An award of treble damages pursuant to 35 U.S.C. § 284 against Defendant as a result of Defendant's willful infringement;
- D. A judgment and order requiring Defendant to pay USEI pre-judgment and post-judgment interest on the full amounts of the damages awarded;
- E. A judgment requiring Defendant to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285, with prejudgment interest; and
- F. Such other and further relief as this Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands that all issues so triable be determined by a jury.

Respectfully submitted, this 26th day of August, 2013.

ROBBINS GELLER RUDMAN
& DOWD LLP

*/s/ John C. Herman by permission T. John
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