

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

BRILLIANT OPTICAL SOLUTIONS LLC)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 4:13-cv-01288
)	
TIME WARNER CABLE, INC.)	<i>JURY TRIAL DEMANDED</i>
)	
<i>Defendant.</i>)	
_____)	

FIRST AMENDED COMPLAINT

Plaintiff Brilliant Optical Solutions LLC (“BOS”) files this First Amended Complaint for infringement of U.S. Patent No. 5,555,478 under 35 U.S.C. § 271 against defendant Time Warner Cable, Inc. (“TWC”). Plaintiff seeks damages and injunctive relief.

Plaintiff alleges as follows:

PARTIES

1. Plaintiff Brilliant Optical Solutions LLC is a Texas company organized under the laws of the State of Texas. BOS maintains its principal place of business at 1701 Directors Blvd., Suite 300, Austin, Texas 78744.

2. Upon information and belief, TWC is a corporation organized under the laws of the state of Delaware having its principal place of business at 60 Columbus Circle, New York, NY, 10023.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, alleging infringement of United States Patent No. 5,555,478 (the “’478 patent”). A copy of the ’478 patent is attached hereto as **Exhibit A** and is incorporated herein by reference in its entirety.

4. The Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over TWC because TWC has conducted business in this District and upon information and belief has infringed, contributed to infringement of and/or actively induced others to infringe the ’478 patent in this district as alleged in this Complaint. Finally, by agreement of the parties, TWC agreed to litigate this action in this Court, and thus consented to jurisdiction and venue in this forum.

6. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(b).

PATENT-IN-SUIT

7. The ’478 patent entitled “Fiber Optic Information Transmission System” was duly and legally issued posthumously to inventor Joseph Zelikovitz on September 10, 1996. **Exhibit A.**

8. Before he passed away, Joseph Zelikovitz recognized a problem with the conventional means of information transmission and with bridging standard copper communication lines with the developing optic lines.

9. He dedicated himself to opening up the “bottlenecks” that occurred when information was transmitted by the understood methods of the time. He envisioned a system with fibers connected end-to-end, but with intelligent routing along the way.

10. He invented a packet-based fiber-optic network, and an application for his invention was filed on June 7, 1995. As stated above, the patent issued on September 10, 1996.

11. All right, title and interest to the '478 Patent was initially assigned from his estate to his widow, Mrs. Melba Zelikovitz. **Exhibit B.**

12. In order to enforce her husband's patent, she assigned right, title and interest to the '478 Patent to Red River Fiber-Optic Corporation. ("Red River") **Exhibit B.**

13. The '478 Patent is battle-tested.

14. On October 4, 2001, Red River filed suit against Defendant Level 3 Communications, Inc. alleging patent infringement. *Red River Fiber Optic Corp., Inc. v. Level 3 Comm'ns, Inc.*, Case No. 2:01-cv-00208-TJW, Docket No. 1 (E.D. Tex. Oct. 4, 2001) **Exhibit C.**

15. On February 20, 2003, Red River served a third party subpoena on AOL Time Warner, Inc. commanding it and any parent, subsidiary, or related company or entity thereof to produce documents related to the '478 patent infringement litigation. **Exhibit H.**

16. Also on February 20, 2003, Red River served a third party subpoena on Time Warner Telecom, Inc. commanding it and any parent, subsidiary, or related company or entity thereof to produce documents related to the '478 patent infringement litigation. **Exhibit I.**

17. Upon information and belief, at the time these subpoenas were served, Time Warner Cable, Inc. was a subsidiary of AOL Time Warner, Inc., and thus obtained not only knowledge of the Red River lawsuit, but also of the '478 patent. **Exhibit J.**

18. On October 4, 2002, a 3rd party requested reexamination of the '478 Patent. **Exhibit D.**

19. The parties settled the suit before the patent emerged from reexamination, but on June 19, 2007 the patent reissued with only minor changes and all its claims intact. **Exhibit A.**

20. On May 19, 2008, Red River filed suit against Verizon Communications, Inc., AT&T Corp., and Qwest Communications International Inc. for infringement of the '478 patent. *Red River Fiber Optic Corp. v. Verizon Comm'ns, Inc., et al.*, Case No.2:08-cv-00215-TJW-CE, Docket No. 1 (E.D. Tex. May 19, 2008). This action settled.

21. On February 5, 2013, Red River assigned the '478 patent to Acacia Research Group, Inc. ("Acacia"). **Exhibit E**. Acacia is a company that partners with individual inventors and small companies with limited resources to contend with large, unauthorized infringers. The patent was then assigned to BOS, a subsidiary of Acacia, on February 13, 2013. **Exhibit F**.

22. It has recently come to BOS's attention that Defendant TWC infringes the '478 patent.

23. For example, claim 1 of the '478 patent provides:

1. A fiber optic transmission system comprising:

a plurality of fiber optic lines, subscriber locations, intelligent communication platforms, and at least one intelligent routing card;

a first source of data at a first subscriber location;

a first data processor line card at said first subscriber location capable of forming a plurality of data transmission packets with data, header and tail information;

a first intelligent communication platform coupled to said first data processor line card by fiber optic lines wherein said first intelligent communication platform is capable of receiving any one of said transmission packets, determining the appropriate route for said one transmission packet and is

capable of shunting said one transmission packet onto the appropriate fiber optic line to a first intelligent line module;

a first intelligent routing card at the junction of at least two fiber optic lines and coupled to said first intelligent line module wherein said first intelligent routing card is capable of receiving any one of said transmission packets, determining the appropriate route for said one transmission packet and shunting said one transmission packet onto the appropriate fiber optic line to or away from said first intelligent line module; and

a second data processor line card at a second subscriber location coupled to said first intelligent routing card capable of receiving said transmission packet and decoding the data within said packet.

Exhibit A, '478 patent, col. 12, ln 45 to col. 13, ln 6.

24. On April 26, 2013 BOS filed a complaint in the Western District of Missouri alleging TWC's infringement of the '478 patent; this complaint was voluntarily dismissed without prejudice on June 28, 2013. Brilliant Optical Solutions, LLC v Time Warner Cable, Inc.

Exhibit K.

INFRINGEMENT GOODS/SERVICES

25. The '478 Patent discloses a fiber optic network that includes fiber optic lines operating in conjunction with shunting and routing devices that divert information through a network to the intended subscriber.

26. Upon information and belief, TWC was aware of the patent through the third party subpoenas to its two related "Time Warner" entities.

26. Regardless, at a minimum, TWC was aware of the '478 patent after filing the complaint in the Western District of Missouri.

27. Upon information and belief, TWC owns, operates, maintains, sells, offers for sale, makes, and uses a fiber optic transmission system as described in the claims of the '478 Patent.

28. Specifically, TWC advertises that it is capable of providing a complete system to transport data (including internet, voice, and video) from the source of that data (e.g., a subscriber location such as a residence or business) to the destination of the data (e.g., another subscriber location) using fiber optic lines end-to-end. (the "TWC System"). The TWC System includes, at a minimum, its Time Warner Cable Business Class Ethernet Solutions. Besides owning, operating, maintaining, selling, offering for sale, making, and using the TWC System, TWC induces the use of the TWC System by residential, business, governmental, and enterprise subscribers. **Exhibit G** (available at: http://www.telegration.com/presentations/TIME%20WARNER%20Ethernet_Solutions_for_Partners_20120221.pdf). BOS is unaware of any substantial non-infringing uses of the TWC System.

COUNT I

TWC PATENT INFRINGEMENT UNDER 35 U.S.C. 271 OF THE '478 PATENT

29. BOS incorporates by reference the allegations of paragraphs 1-28.

30. The '478 patent was duly and legally issued by the United States Patent and Trademark Office on September 10, 1996, after full and fair examination. An *ex parte* reexamination certificate issued on June 19, 2007.

31. Plaintiff is the assignee of all rights, title, and interest in and to the '478 patent and possesses all rights of recovery under the '478 patent.

32. TWC has directly infringed the '478 patent at a minimum by making, using, offering to sell, and selling within the United States products and services that practice the inventions of the '478 patent, namely products/services affiliated with at least the TWC System, and these products/services have no substantial non-infringing uses.

33. TWC has contributorily infringed the '478 patent and induced infringement of the '478 patent after the filing of the complaint.

34. Upon information and belief, TWC was aware of the '478 patent on or about February 20, 2003.

35. At a minimum, TWC was aware of the '478 patent after the filing of the April 26, 2013 complaint and prior to the filing of the initial complaint in this action.

36. Despite knowledge of the patent and its infringement prior to the filing of this lawsuit, TWC continues to operate its TWC System.

37. In addition and upon belief, TWC encourages its customers to operate the TWC System in an infringing manner despite its prior knowledge of the patent-in-suit. This is accomplished, at a minimum, by TWC directing and encouraging its customers to receive and send data on the TWC System.

38. TWC has caused and will continue to cause BOS substantial damage and irreparable injury by virtue of its continuing infringement.

39. BOS is entitled to recover from TWC the damages sustained by BOS as a result of TWC's acts in an amount subject to proof at trial and an injunction preventing TWC from continuing its acts.

40. Upon information and belief and after an opportunity for further discovery, TWC's infringement of the '478 patent is willful and deliberate.

PRAYER FOR RELIEF

WHEREFORE, Brilliant Optical Solutions respectfully requests that the Court enter a judgment as follows:

- A. A judgment that TWC has directly infringed the '478 patent, contributorily infringed the '478 patent, and induced infringement of the '478 patent;
- B. An injunction preventing TWC and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with TWC, from directly infringing, contributorily infringing, and inducing the infringement of the '478 patent;
- C. A judgment and order requiring TWC to pay Plaintiff damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;
- D. A judgment and order requiring TWC to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;
- E. A judgment and order requiring TWC to pay Plaintiff the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and
- F. Such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that all issues be determined by jury.

Respectfully submitted,
PLAINTIFF BRILLIANT OPTICAL SOLUTIONS, LLC

By its attorneys,
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC

Dated: August 29, 2013.

By: /s/ Paul A. Lesko

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2013, I electronically filed the foregoing document via the Court's ECF, electronic email system, upon all of record:

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