

Receipt # 44059  
9150.00

FILED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

2002 DEC 26 P 4: 05

U.S. DISTRICT COURT  
DISTRICT OF MASS.

CABLE & WIRELESS  
INTERNET SERVICES, INC.,

Plaintiff,

v.

AKAMAI TECHNOLOGIES, INC.,

AND

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY

Defendants.

Civil Action No.

**02 CV 12468 RWZ**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

Related Actions:  
Civil Action Nos.:  
00-cv-11851RWZ

By this Complaint, plaintiff Cable & Wireless Internet Services, Inc. ("C&W") seeks declaratory judgment that the revised version of its "Footprint" internet content delivery system does not infringe U.S. Patent No. 6,108,703 (the "'703 patent"), owned by defendant Massachusetts Institute of Technology ("defendant MIT") and exclusively licensed to defendant Akamai Technologies, Inc. ("defendant Akamai") (defendants collectively "Akamai"). Furthermore, C&W seeks declaratory judgment that the '703 patent is invalid and/or unenforceable.

**JURISDICTION AND VENUE**

1. This is an action for declaratory judgment arising under 28 U.S.C. § 2201, *et. seq.*
2. This Court has subject matter jurisdiction over this matter based on 28 U.S.C.

§§ 1338(a), 1331 and 2201.

3. Venue properly lies in this district under 28 U.S.C. §§ 1391 and 1400(b).

### **THE PARTIES**

4. Plaintiff C&W is a corporation organized under the laws of Delaware and has its principal place of business at 45 Fremont Street, San Francisco, California, 94105.

5. On information and belief, defendant MIT is an educational institution located in this judicial district, in Cambridge, Massachusetts.

6. On information and belief, defendant Akamai is a corporation organized under the laws of Delaware, having its principal place of business at 500 Technology Square, Cambridge, Massachusetts, 02139.

### **FACTUAL BACKGROUND**

7. C&W and defendant Akamai are competitors in the field of designing, manufacturing and selling internet content delivery networks or “CDNs”.

8. Since 2000, the parties have been embroiled in litigation in this Court involving cross-claims of patent infringement as well as patent invalidity, unenforceability and inequitable conduct before the Patent and Trademark Office. This litigation involved, among other patents, the ‘703 patent owned by MIT and exclusively licensed by defendant Akamai. Akamai claimed that C&W’s “Footprint” system infringed claims 1, 3, 5 and 9, *inter alia*, of the ‘703 patent.

9. A jury trial was held before District Judge Zobel, concluding on December 21, 2001. As part of its verdict in that action, the jury found that claims 1, 3, 5 and 9 of the ‘703 patent were infringed by C&W’s Footprint 2.0 system.

10. Following the conclusion of the trial, C&W successfully revised and reconfigured its Footprint system to avoid infringement of the '703 patent.

11. On August 21, 2002, this Court issued an Injunction Order permanently enjoining C&W from making, using, selling, offering for sale, or importing into the United States the patented inventions claimed in claims 1, 3, 5 and 9 of the '703 patent, and from actively inducing the infringement of those claims.

12. The Injunction Order extended to "Digital Island's Footprint 2.0 service, as configured and described at trial."

13. On September 17, 2001, Akamai filed a Motion for Contempt of C&W, alleging that C&W was continuing to violate the Court's permanent injunction order through its use and sale of the revised Footprint system, which had been reconfigured after trial. Specifically, Akamai alleged in its motion that C&W continues to operate its Footprint system as it was configured and described at trial.

14. C&W opposed the Motion on the grounds, *inter alia*, that substantial modifications had been made to the Footprint CDN in order to comply with the terms of the Court's injunction and to avoid any good faith allegations of infringement of the claims of the '703 patent.

15. This Court denied Akamai's motion for contempt on November 1, 2002, as it was "not persuaded that the revised version" infringes the '703 patent.

16. In response to the Court's contempt ruling, Akamai filed a Motion for Clarification of that decision on November 14, 2002, in which Akamai continued to contend that the revised version of C&W's Footprint service infringes the '703 patent.

17. C&W responded to Akamai's Motion for Clarification, denying that its revised version of Footprint infringes the '703 patent. C&W further contended that the Court's Order denying the motion for contempt was not in need of clarification, as the Court had clearly found that *inter alia*, the revised version of Footprint was substantially different from the version presented at trial.

18. The Court denied Akamai's Motion for Clarification on December 19, 2002.

**First Claim for Relief**  
**DECLARATORY JUDGMENT OF PATENT NONINFRINGEMENT**

19. Paragraphs 1-18 of this Complaint are incorporated herein by reference.

20. An actual controversy exists between C&W and Akamai as to whether C&W's revised version of the Footprint CDN infringes the '703 patent. Akamai has made clear in filings with this Court its contention that C&W's revised Footprint service infringes the '703 patent and that its sale and use of that service should be enjoined. C&W has steadfastly denied these allegations.

21. Therefore, C&W seeks a declaration from the Court that C&W's making, using, offering for sale, and/or selling the revised version of its Footprint CDN does not directly or contributorily infringe the '703 patent. *See* 28 U.S.C. § 2201, 35 U.S.C. § 271. Furthermore, C&W seeks a declaration that its making, using, offering for sale, and/or selling of the revised version of its Footprint CDN does not constitute active inducement of infringement of the '703 patent.

**Second Claim for Relief**  
**DECLARATORY JUDGMENT OF PATENT INVALIDITY**  
**AND/OR UNENFORCEABILITY**

22. Paragraphs 1-21 of this Complaint are incorporated herein by reference.

23. An actual controversy exists between C&W and Akamai as to whether the '703 patent is valid and/or enforceable. Akamai has repeatedly asserted the '703 patent against C&W's revised version of Footprint. C&W contends that the '703 patent is invalid and/or unenforceable.

24. Therefore, C&W seeks a declaration from the Court that the '703 patent is invalid and/or unenforceable. *See* 28 U.S.C. § 2201.

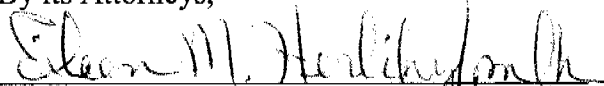
**Further Relief**

25. Pursuant to 35 U.S.C. § 285, C&W requests an award of reasonable attorneys' fees.

26. C&W also requests such other and further relief as the Court deems equitable and just in the circumstances.

CABLE & WIRELESS INTERNET SERVICES, INC.

By its Attorneys,



Eileen M. Herlihy (BBO #23141)

John T. Bennett (BBO #648464)

PALMER & DODGE LLP

111 Huntington Avenue

Boston, MA 02199

Tel.: (617) 239-0100

Fax.: (617) 227-4420

Arthur Wineburg

Susan T. Brown

Daniel E. Yonan

PILLSBURY WINTHROP LLP

1133 Connecticut Avenue, NW

Washington, DC 20036

Tel.: (202) 775-9800

Fax.: (202) 833-8491

Brian Siritzky

HELLER EHRMAN WHITE & McAULIFFE LLP

1666 K Street, NW, Suite 300

Washington, DC 20006-1228

Tel.: (202) 912-2000

Fax.: (202) 912-2020

Dated December 26, 2002