

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VPN MULTICAST TECHNOLOGIES LLC,

Plaintiff,

v.

**DIMENSION DATA NORTH AMERICA,
INC., DIMENSION DATA HOLDINGS PLC,
and DIMENSION DATA, LLC,**

Defendants.

Case No. 2:14-cv-1014

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff VPN Multicast Technologies LLC (“Plaintiff” or “VPN Multicast”) files this Complaint against Dimension Data North America, Inc., Dimension Data Holdings plc, and Dimension Data, LLC for infringement of United States Patent No. 8,477,778 (the “778 patent”).

THE PARTIES

PLAINTIFF

1. VPN Multicast Technologies LLC is a Texas company with its principal place of business at 101 E. Park, 6th Floor, Suite 33, Plano, Texas 75074.

DEFENDANTS

2. On information and belief, Defendant Dimension Data North America, Inc. is a New York corporation with its principal place of business located at 11006 Rushmore Drive, Suite 300, Charlotte, North Carolina 28277-3475. On information and belief, Dimension Data North America, Inc. may be served with process by serving its registered agent, Corporation

Service Company, 327 Hillsborough Street, Raleigh, North Carolina 27603-1725. On information and belief, this Court has personal jurisdiction over Dimension Data North America, Inc. because Dimension Data North America, Inc. has committed, and continues to commit, acts of infringement in the state of Texas, has conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas.

3. On information and belief, Defendant Dimension Data, LLC is a New York corporation with its principal place of business located at One Penn Plaza, Suite 1600, New York, New York 10119. On information and belief, Dimension Data, LLC may be served with process at its principal place of business. On information and belief, this Court has personal jurisdiction over Dimension Data, LLC because Dimension Data, LLC has committed, and continues to commit, acts of infringement in the state of Texas, has conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas.

4. On information and belief, Dimension Data Holdings plc is a South African corporation with its principal place of business located at The Campus, 57 Sloan Street, Bryanston, Johannesburg, 2021, South Africa. On information and belief, this Court has personal jurisdiction over Dimension Data Holdings plc because Dimension Data Holdings plc has committed, and continues to commit, acts of infringement in the state of Texas, has conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas.

5. Defendants Dimension Data North America, Inc., Dimension Data Holdings plc, and Dimension Data, LLC are collectively referred to as “Defendants” or “Dimension Data.”

JURISDICTION AND VENUE

6. This is an action for patent infringement under Title 35 of the United States Code. VPN Multicast is seeking injunctive relief as well as damages.

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States' patent statutes, 35 U.S.C. § 101 *et seq.*

8. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants have committed acts of infringement in this district and/or are deemed to reside in this district.

9. This Court has personal jurisdiction over Defendants and venue is proper in this district because Defendants have committed, and continue to commit, acts of infringement in the state of Texas, including in this district, have conducted business in the state of Texas, including in this district, and/or have engaged in continuous and systematic activities in the state of Texas, including in this district.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 8,477,778)

10. VPN Multicast incorporates paragraphs 1 through 9 herein by reference.

11. Plaintiff is the owner and assignee of the '778 patent, entitled "Applying Multicast Protocols and VPN Tunneling Techniques to Achieve High Quality of Service for Real Time Media Transport Across IP Networks," with ownership of all substantial rights in the '778 patent, including the right to exclude others and to enforce, sue and recover damages for past and future infringement. A true and correct copy of the '778 patent is attached as Exhibit A.

12. The '778 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

13. VPN Multicast has been damaged as a result of Dimension Data's infringing conduct described in this Count. Dimension Data is thus liable to VPN Multicast in an amount that adequately compensates it for its infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

Direct Infringement

14. On information and belief, Dimension Data has and continues to directly infringe one or more claims of the '778 patent in this judicial district and/or elsewhere in Texas and the United States, including at least claim 1, by, among other things, making, using, offering for sale, selling and/or importing infringing multicast VPN systems, services, and/or solutions, including but not limited to the Dimension Data Managed Cloud Platform (MCP), and/or by practicing methods for data transport using multicast protocols, including but not limited methods related to the Dimension Data Managed Cloud Platform (MCP). Dimension Data is thereby liable for infringement of the '778 patent pursuant to 35 U.S.C. § 271.

Indirect Infringement – Inducement

15. Based on the information presently available to VPN Multicast, absent discovery, and in the alternative to direct infringement, VPN Multicast contends that Dimension Data has and continues to indirectly infringe one or more claims of the '778 patent, including at least claim 6, by inducing others, including users of Dimension Data's multicast VPN systems, services, and/or solutions, including but not limited to the Dimension Data Managed Cloud Platform (MCP), to make, use, sell, offer for sale, and/or import infringing multicast VPN systems, services, and/or solutions in violation of one or more claims of the '778 patent, including at least claim 6.

16. Dimension Data has been on notice of the '778 patent since at least service of this action, or before, but has continued since that time to cause others to directly infringe the '778 patent as alleged herein. In accordance with Fed. R. Civ. P. 11(b)(3), VPN Multicast will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery on this issue.

17. On information and belief, since Dimension Data has been on notice of the '778 patent, Dimension Data has knowingly induced infringement of the '778 patent, including at least claim 6 of the '778 patent, and possessed specific intent to encourage others' infringement.

18. On information and belief, since Dimension Data has been on notice of the '778 patent, Dimension Data knew or should have known that its actions would induce actual infringement of the '778 patent, including at least claim 6 of the '778 patent, by customers and/or users of multicast VPN systems, services, and/or solutions, including but not limited to the Dimension Data Managed Cloud Platform (MCP).

19. For example, since Dimension Data has been on notice of the '778 patent, Dimension Data has purposefully and voluntarily made available infringing systems, services, and/or solutions with the expectation that they would be utilized by customers and/or users in the United States in a way that infringes at least claim 6 of the '778 patent.

20. Since Dimension Data has been on notice of the '778 patent, Dimension Data has also provided support to customers and/or users of Dimension Data's multicast VPN systems, services, and/or solutions, including but not limited to the Dimension Data Managed Cloud Platform (MCP).

21. Dimension Data has not produced or relied upon an opinion of counsel suggesting that the '778 patent is invalid or is not infringed by Dimension Data's multicast VPN systems,

services, and/or solutions, including but not limited to the Dimension Data Managed Cloud Platform (MCP). In accordance with Fed. R. Civ. P. 11(b)(3), VPN Multicast will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

22. Dimension Data has not produced any evidence as to any investigation, design around or that any remedial action was taken with respect to the '778 patent. In accordance with Fed. R. Civ. P. 11(b)(3), VPN Multicast will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

ADDITIONAL ALLEGATIONS

23. Plaintiff has been damaged as a result of Defendants' infringing conduct described herein. Defendants are thus liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendants' infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by the Court under 35 U.S.C. § 284.

24. Defendants' actions complained of herein will continue unless Defendants are enjoined by this Court.

25. Plaintiff has complied with 35 U.S.C. § 287.

26. Defendants' actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

JURY DEMAND

VPN Multicast hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

VPN Multicast requests that this Court find in its favor and against Defendants, and that this Court grant VPN Multicast the following relief:

- a. Enter judgment for Plaintiff on this Complaint;
- b. Enter judgment that one or more claims of the and '778 patent have been infringed, either directly or indirectly by Defendants;
- c. Enter judgment that Defendants account for and pay to VPN Multicast all damages to and costs incurred by VPN Multicast because of Defendants' infringing activities and other conduct complained of herein;
- d. Award Plaintiff damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- e. Enter a permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from infringing or inducing infringement of the '778 patent, or, in the alternative, judgment that Defendants account for and pay to VPN Multicast a reasonable royalty and an ongoing post-judgment royalty because of Defendants' past, present and future infringing activities and other conduct complained of herein;
- f. That VPN Multicast be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- g. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;

- h. That VPN Multicast be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: October 31, 2014

Respectfully submitted,

THE SIMON LAW FIRM, P.C.

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