

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

SECURE AXCESS, L.L.C.,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No.: _____
	§	
NEC CLOUD COMMUNICATIONS	§	
AMERICA, INC.,	§	JURY TRIAL DEMANDED
<i>Defendant.</i>	§	

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff Secure Axcess, L.L.C. (“Secure Axcess”) and files this Original Complaint for Patent Infringement against Defendant NEC Cloud Communications America, Inc. (“NEC” and/or “Defendant”), and alleges as follows:

I. NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

II. THE PARTIES

2. Plaintiff **Secure Axcess** is a Texas Limited Liability Company having its principal place of business at 555 Republic Drive, Suite 200, Plano, Texas 75074.

3. Defendant **NEC** is a Delaware corporation having its principal place of business at 6535 N. State Highway 161, Irving, TX 75039. NEC does business in the State of Texas, including in the Eastern District of Texas, and can be served with process through its registered agent, National Registered Agents Inc., 1999 Bryan St., 900 Dallas, Texas 75201.

III. JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has specific personal jurisdiction over Defendant pursuant to due process and the Texas Long Arm Statute because Defendant, directly or through intermediaries, has conducted and does conduct substantial business in this forum, including but not limited to: (i) engaging in at least part of the infringing acts alleged herein; (ii) purposefully and voluntarily placing one or more infringing products or services into the stream of commerce with the expectation that they will be purchased and/or used by consumers in this forum; and/or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(d) and 1400(b) for the reasons set forth above. Furthermore, venue is proper because Defendant, directly or through intermediaries, solicits and establishes business relationships with individuals and/or entities in this District, and through those business relationships provides infringing products or services as described herein. Each act of Defendant's direct and/or indirect infringing conduct in this District gives rise to proper venue.

IV. BACKGROUND

7. This cause of action asserts infringement of United States Patent No. 6,172,990 B1, entitled "Media access control micro-RISC stream processor and method for implementing the same" (the "990 Patent") and United States Patent No. 6,108,713 A, entitled "Media access

control architectures and network management systems” (the “’713 Patent”) (collectively the “Patent-in-Suit”).

8. The ’990 Patent was duly and lawfully issued by the United States Patent & Trademark Office on January 9, 2001. A copy of the ’990 Patent is attached hereto as Exhibit A.

9. Secure Axxess is the owner and assignee of all rights, title, and interest in and to the ’990 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

10. The ’713 Patent was duly and lawfully issued by the United States Patent & Trademark Office on August 22, 2000. A copy of the ’713 Patent is attached hereto as Exhibit B.

11. Secure Axxess is the owner and assignee of all rights, title, and interest in and to the ’713 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

12. On information and belief, Defendant offers hardware, software, and network services and solutions in the United States, including Texas, and, particularly within this District. Defendant provides hardware, software, and networking services and solutions including, but not limited to, switches, controllers, and software-defined networking services and solutions. In connection with these hardware, software, and network services and solutions, Defendant makes, uses, sells, and offers for sale systems that when used infringe at least claim 1 of the ’990 Patent and claim 24 of the ’713 Patent.

V. CLAIMS

13. Based on the above-described services and products, Plaintiff asserts the following against Defendant:

CLAIM 1 – The ’990 Patent

14. The allegations of paragraphs 1-13 above are incorporated by reference as if fully set forth herein.

15. NEC has been and is infringing the '990 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '990 Patent. Such infringement is direct, contributory, and/or by inducement.

A. Direct Patent Infringement of the '990 Patent

16. The allegations of paragraphs 1-15 above are incorporated by reference as if fully set forth herein.

17. NEC has directly infringed and continues to infringe at least claim 1 of the '990 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell in the United States, without Plaintiff's authority, system(s) and method(s) used to implement a software defined network. By way of example only and without limiting Plaintiff's claims to this specific example, NEC's implementation and use of switches, including the NEC ProgrammableFlow switches such as the PF1000, PF5240, PF5248, and PF5820 switches, and OpenFlow-compliant software-defined networking services and solutions infringe at least claim 1 of the '990 Patent.

B. Contributory Infringement of the '990 Patent

18. The allegations of paragraphs 1-17 above are incorporated by reference as if fully set forth herein.

19. Further and in the alternative and in addition to the direct infringement described above, NEC is liable for contributory infringement of the '990 Patent.

20. NEC knowingly contributes to infringement of the '990 Patent by making, selling, or offering for sale components of systems and methods that can be used to implement a

software defined network, including the making, selling, or offering for sale of switches, including the NEC ProgrammableFlow switches such as the PF1000, PF5240, PF5248, and PF5820 switches. These components have no substantial non-infringing uses, and they constitute a material part of the invention. NEC was aware of the '990 Patent at least by the time of the filing and serving this Original Complaint for Patent Infringement. NEC was aware that the components of the systems and methods satisfy at least one element of one claim, such as by way of example claim 1, of the '990 Patent. NEC further knows that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 1, of the '990 Patent.

C. Inducement of Infringement of the '990 Patent

21. The allegations of paragraphs 1-20 above are incorporated by reference as if fully set forth herein.

22. Further and in the alternative, NEC has knowingly induced infringement of the '990 Patent. NEC induced such infringement through making, using, selling, and/or offering to sell systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale switches, including the NEC ProgrammableFlow switches such as the PF1000, PF5240, PF5248, and PF5820 switches, and OpenFlow-compliant software-defined networking services and solutions.

23. NEC has intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '990 Patent by others, namely customers and/or end-users. Such intentional action was and is the selling and/or offering for sale systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale of switches, including the NEC ProgrammableFlow switches such as

the PF1000, PF5240, PF5248, and PF5820 switches, and OpenFlow-compliant software-defined networking services and solutions. As a result of its conduct, NEC induced customers and/or end-users to use systems and methods to infringe the claims of the '990 Patent, by way of example at least claim 1. NEC engaged in this conduct while it was aware of the '990 Patent, and knew the acts it was inducing would infringe the '990 Patent.

CLAIM 2 – The '713 Patent

24. The allegations of paragraphs 1-23 above are incorporated by reference as if fully set forth herein.

25. NEC has been and is infringing the '713 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '713 Patent. Such infringement is direct, contributory, and/or by inducement.

A. Direct Patent Infringement of the '713 Patent

26. The allegations of paragraphs 1-25 above are incorporated by reference as if fully set forth herein.

27. NEC has directly infringed and continues to infringe at least claim 24 of the '713 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell in the United States, without Plaintiff's authority, system(s) and method(s) used to implement a software defined network. By way of example only and without limiting Plaintiff's claims to this specific example, NEC's implementation and use of switches, including the NEC ProgrammableFlow switches such as the PF1000, PF5240, PF5248, and PF5820 switches, controllers, including the NEC ProgrammableFlow controllers such as the PF6800 and PFTAP controllers, and OpenFlow-compliant software-defined networking services and solutions

infringes at least claim 24 of the '713 Patent.

B. Contributory Infringement of the '713 Patent

28. The allegations of paragraphs 1-27 above are incorporated by reference as if fully set forth herein.

29. Further and in the alternative and in addition to the direct infringement described above, NEC is liable for contributory infringement of the '713 Patent.

30. NEC knowingly contributes to infringement of the '713 Patent by making, selling, or offering for sale components of systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale of switches, including the NEC ProgrammableFlow switches such as the PF1000, PF5240, PF5248, and PF5820 switches, and controllers, including the NEC ProgrammableFlow controllers such as the PF6800 and PFTAP controllers. These components have no substantial non-infringing uses, and they constitute a material part of the invention. NEC was aware of the '713 Patent at least by the time of the filing and serving this Original Complaint for Patent Infringement. NEC was aware that the components of the systems and methods satisfy at least one element of one claim, such as by way of example claim 24, of the '713 Patent. NEC further knows that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 24, of the '713 Patent.

C. Inducement of Infringement of the '713 Patent

31. The allegations of paragraphs 1-30 above are incorporated by reference as if fully set forth herein.

32. Further and in the alternative, NEC has knowingly induced infringement of the '713 Patent. NEC induced such infringement through making, using, selling, and/or offering to

sell systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale of switches, including the NEC ProgrammableFlow switches such as the PF1000, PF5240, PF5248, and PF5820 switches, controllers, including the NEC ProgrammableFlow controllers such as the PF6800 and PFTAP controllers, and OpenFlow-compliant software-defined networking services and solutions.

33. NEC has intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '713 Patent by others, namely customers and/or end-users. Such intentional action was and is the selling and/or offering for sale systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale of switches, including the NEC ProgrammableFlow switches such as the PF1000, PF5240, PF5248, and PF5820 switches, controllers, including the NEC ProgrammableFlow controllers such as the PF6800 and PFTAP controllers, and OpenFlow-compliant software-defined networking services and solutions. As a result of its conduct, NEC induced customers and/or end-users to use systems and methods to infringe the claims of the '713 Patent, by way of example at least claim 24. NEC engaged in this conduct while it was aware of the '713 Patent, and knew the acts it was inducing would infringe the '713 Patent.

VI. NOTICE

34. The allegations of paragraphs 1-33 above are incorporated by reference as if fully set forth herein.

35. At least by filing and serving this Original Complaint for Patent Infringement, Plaintiff has given Defendant written notice of their infringement.

VII. DAMAGES

36. The allegations of paragraphs 1-35 above are incorporated by reference as if fully set forth herein.

37. For the above-described infringement, Plaintiff has suffered injury and seeks damages to compensate it adequately for Defendant's infringement of the Patents-in-Suit. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

VIII. JURY DEMAND

38. Plaintiff requests a jury trial of all issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- a. A judgment in favor of Plaintiff that Defendant has infringed the '990 Patent, whether literally or under the doctrine of equivalents, as described herein;
- b. A judgment in favor of Plaintiff that Defendant has infringed the '713 Patent, whether literally or under the doctrine of equivalents, as described herein;
- c. A judgment and order requiring Defendant to pay Plaintiff's damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the '990 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;
- d. A judgment and order requiring Defendant to pay Plaintiff's damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the '713 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed; and
- e. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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