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Attorneys for Plaintiff
GORDIUM INNOVATIONS LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GORDIUM INNOVATIONS LLC,

Plaintiff,

v.

ETHERWAN SYSTEMS, INC.,
KORENIX USA CORPORATION,
and
MOXA AMERICAS, INC.

Defendant.

Civil Case No. SACV-15-0028-DOC
(JPRx)

**PLAINTIFF GORDIUM
INNOVATIONS LLC'S FIRST
AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

JURY TRIAL DEMANDED

Plaintiff Gordium Innovations LLC, for its Complaint against Defendants EtherWAN Systems, Inc. ("EtherWan"), Korenix USA Corporation ("Korenix"), and Moxa Americas, Inc. ("Moxa"), alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, et seq.

THE PARTIES

2. Plaintiff Gordium Innovations, LLC is a limited liability company

1 organized under the laws of the State of Texas with its principal place of business at
2 106 Fannin Avenue, Round Rock, TX 78664-5219.

3 3. Upon information and belief, EtherWAN is a corporation organized
4 under the laws of the State of California, with its principal place of business at 4570
5 E. Eisenhower Circle, Anaheim, CA 92807, and a registered agent for service of
6 process at Ming Chau Yang, 4570 E. Eisenhower Circle, Anaheim, CA 92807.

7 4. Upon information and belief, Korenix is a corporation organized under
8 the laws of the State of California, with its principal place of business at 565 Brea
9 Canyon Rd., Ste. A, Walnut, CA 91789, and a registered agent for service of
10 process at Sophia Lo, 565 Brea Canyon Rd., Ste. A, Walnut, CA 91789.

11 5. Upon information and belief, Moxa is a corporation organized under
12 the laws of the State of California, with its principal place of business at 601
13 Valencia Avenue, Suite 100, Brea, CA 92823, and a registered agent for service of
14 process at Silva Ho, 601 Valencia Avenue, Suite 100, Brea, CA 92823.

15 **JURISDICTION AND VENUE**

16 6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
17 1338.

18 7. EtherWAN is subject to the jurisdiction of this Court by reason of its
19 acts of patent infringement which have been committed in this Judicial District, and
20 by virtue of its regularly conducted business and systematic business contacts in
21 this state, including maintaining its principal place of business in this District and
22 its organization under the laws of the State of California.

23 8. EtherWAN has established sufficient minimum contacts with this
24 Judicial District such that it should reasonably and fairly anticipate being haled into
25 court in this Judicial District.

26 9. Korenix is subject to the jurisdiction of this Court by reason of its acts
27 of patent infringement which have been committed in this Judicial District, and by
28 virtue of its regularly conducted business and systematic business contacts in this

1 state, including maintaining its principal place of business in this District and its
2 organization under the laws of the State of California.

3 10. Korenix has established sufficient minimum contacts with this Judicial
4 District such that it should reasonably and fairly anticipate being haled into court in
5 this Judicial District.

6 11. Moxa is subject to the jurisdiction of this Court by reason of its acts of
7 patent infringement which have been committed in this Judicial District, and by
8 virtue of its regularly conducted business and systematic business contacts in this
9 state, including maintaining its principal place of business in this District and its
10 organization under the laws of the State of California.

11 12. Moxa has established sufficient minimum contacts with this Judicial
12 District such that it should reasonably and fairly anticipate being haled into court in
13 this Judicial District.

14 13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and
15 1400(b).

16 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,697,385**

17 14. The allegations set forth in the foregoing paragraphs 1 through 13 are
18 incorporated into this First Claim for Relief.

19 15. On February 24, 2004, U.S. Patent No. 6,697,385, entitled “Circuit(s),
20 Method(s) and Architecture for Configurable Packet Re-timing in Network
21 Repeater Hubs,” was duly and legally issued by the United States Patent and
22 Trademark Office. A true and correct copy of the ’385 Patent is attached as Exhibit
23 A to this Complaint.

24 16. Gordium is the assignee and owner of the right, title and interest in and
25 to the ’385 Patent, including the right to assert all causes of action arising under the
26 ’385 Patent and the right to any remedies for its infringement.

27 **EtherWAN**

28 17. In violation of 35 U.S.C. § 271, EtherWAN has directly infringed and

1 continues to directly infringe, literally and/or under the doctrine of equivalents, the
2 '385 Patent by making, using, selling and/or offering for sale in the United States,
3 including in this Judicial District, networking devices providing data prioritization
4 features as claimed in one or more claims of the '385 Patent ("the EtherWAN
5 Accused Products and Services"), without the authority of Gordium. For example,
6 the EtherWAN Accused Products and Services receive delay control signals in the
7 form of priority bits, or 3-bit fields within Ethernet frame headers, in inbound
8 packets. While a packet is not being transmitted, these products use the priority bits
9 to configure delays for sending received packets, utilizing priority queues and a
10 transmission selection algorithm (e.g., strict priority queuing).

11 18. The EtherWAN Accused Products and Services include, but are not
12 limited to, the ER58000 Series, EX77000 Series, EX87000 Series, EX89000 Series,
13 EX75000 Series, EX76000 Series, EX83000 Series, EX73000 Series, EX63000
14 Series, EX72000 Series, EX62000 Series, EX71000 Series, EX61000A Series,
15 EX78000 Series, EX78000R Series, EX78602 Series, EX70900 Series, EX74000
16 Series, the EX74262R-01VT, EX32900 Series, EX42900 Series, EX39924 Series,
17 EX36100 Series, EX45900 Series, EX25611 Series, EX26182 Series, EX26262
18 Series, EX27000 Series, EX29000 Series, EX17242 Series, EX17162 Series,
19 EX17908 Series, EX17082 Series, and EX16900 Series Ethernet Switches.

20 19. Gordium provided actual notice to EtherWAN of its infringement of
21 the '385 Patent in a letter sent by certified mail on December 5, 2014. The letter
22 informed EtherWAN that the EtherWAN Accused Products and Services appeared
23 to directly infringe the '385 Patent, and identified the relevant features of the
24 EtherWAN Accused Products and Services. The December 5th letter also informed
25 EtherWAN that EtherWAN's actions, including advertising, marketing, and
26 providing instruction manuals and materials, induced others to infringe the '385
27 patent and cited at least one specific example. A copy of the December 5th letter is
28 attached hereto as Exhibit B to this Complaint.

1 20. EtherWAN has had actual knowledge of the '385 Patent since at least
2 the date it received Gordium's December 5th letter.

3 21. Upon information and belief, EtherWAN engaged in the actions
4 described in paragraph 17 of this Complaint with specific intent to cause
5 infringement or with willful blindness to the resulting infringement because
6 EtherWAN has had actual knowledge of the '385 Patent and that its acts were
7 infringing the '385 Patent since at least the date it received the notice letter from
8 Gordium notifying EtherWAN that its products and services infringed the '385
9 Patent.

10 22. Upon information and belief, EtherWAN has induced and continues to
11 induce others to infringe one or more claims of the '385 Patent under § 271(b) by,
12 among other things, with specific intent, actively and knowingly, since at least as of
13 the date it received Gordium's December 5th letter, aiding and abetting others to
14 infringe, including, but not limited to, EtherWAN's customers and other users,
15 whose use of the EtherWAN Accused Products and Services constitutes direct
16 infringement of one or more claims of the '385 Patent. In particular, EtherWAN
17 acted and continues to act with specific intent to make others, such as its customers,
18 infringe by advertising and selling products and providing instruction manuals
19 showing infringing uses of the products and services. For example, in a bulletin
20 titled "EtherWAN's new Gigabit PoE IEEE802.3at Ethernet Switches are ideal
21 upgrades to your network," EtherWAN advertises that "[t]raffic is prioritized
22 according to 802.1p, DSCP, and TCP/UDP port number, giving optimal
23 performance to real-time applications such as voice and video." EtherWAN's
24 datasheets and user manuals for the EtherWAN Accused Products and Services also
25 inform EtherWAN's customers and end-users of the products' infringing features
26 by describing the products' capability for delaying traffic using Class of Service
27 priority queues. On information and belief, since the time it received Gordium's
28 December 5th letter informing it that it was inducing its customers and users to

1 infringe the '385 Patent, EtherWAN engaged in, and continues to engage in, such
2 actions with specific intent to cause infringement or with willful blindness to the
3 resulting infringement.

4 23. Because of EtherWAN's infringing activities, Gordium has suffered
5 damages and will continue to suffer damages in the future.

6 **Korenix**

7 24. In violation of 35 U.S.C. § 271, Korenix has directly infringed and
8 continues to directly infringe, literally and/or under the doctrine of equivalents, the
9 '385 Patent by making, using, selling and/or offering for sale in the United States,
10 including in this Judicial District, networking devices providing data prioritization
11 features as claimed in one or more claims of the '385 Patent ("the Korenix Accused
12 Products and Services"), without the authority of Gordium. For example, the
13 Korenix Accused Products and Services receive delay control signals in the form of
14 priority bits, or 3-bit fields within Ethernet frame headers, in inbound packets.
15 While a packet is not being transmitted, these products use the priority bits to
16 configure delays for sending received packets, utilizing priority queues and a
17 transmission selection algorithm (e.g., strict priority queuing).

18 25. The Korenix Accused Products and Services include, but are not
19 limited to, the JetNet 3005G, JetNet 3008, JetNet 3008 V3, JetNet 3008f V3, JetNet
20 3010G, JetNet 3018G, JetNet 3710G, JetNet 3806G, JetNet 3810G, JetNet 3810Gf
21 / 3810f, JetNet 4006, JetNet 4006f, JetNet 4010, JetNet 4508 V2, JetNet 4508f V2,
22 JetNet 4510, JetNet 4518w, JetNet 4706, JetNet 4706f / 4706f-w, JetNet 5010G /
23 5010G-W, JetCard 5010G-P, JetNet 5012G, JetNet 5310G, JetNet 5428G / 5428G-
24 DC / 5428G-2G-2FX, JetNet 5628G, JetNet 5710G, JetNet 5728G-24P / 5728G-
25 16P / 5720G-8P, JetNet 5828, JetNet 6059G, JetNet 6524G / 6524G-DC24 /
26 6524G-DC48, JetNet 6710G-M12 / 6710G-RJ, and JetNet 6810G-M12 / 6810G-RJ,
27 JetBox 5430-w, JetBox 9300, JetBox 9310, JetBox 9430-w, JetBox 9530 / 9530-w,
28 JetBox 9532, JetBox 9560, JetBox 9562, JetCon 2502, JetCon 3401G, and JetWave

1 2800 Switches, Routers, Converters and APS.

2 26. Gordium provided actual notice to Korenix of its infringement of the
3 '385 Patent in a letter sent by certified mail on December 5, 2014. The letter
4 informed Korenix that the Korenix Accused Products and Services appeared to
5 directly infringe the '385 Patent, and identified the relevant features of the Korenix
6 Accused Products and Services. The December 5th letter also informed Korenix
7 that Korenix's actions, including advertising, marketing, and providing instruction
8 manuals and materials, induced others to infringe the '385 patent and cited at least
9 one specific example. A copy of the December 5th letter is attached hereto as
10 Exhibit C to this Complaint.

11 27. Korenix has had actual knowledge of the '385 Patent since at least the
12 date it received Gordium's December 5th letter.

13 28. Upon information and belief, Korenix engaged in the actions described
14 in paragraph 24 of this Complaint with specific intent to cause infringement or with
15 willful blindness to the resulting infringement because Korenix has had actual
16 knowledge of the '385 Patent and that its acts were infringing the '385 Patent since
17 at least the date it received the notice letter from Gordium notifying Korenix that its
18 products and services infringed the '385 Patent.

19 29. Upon information and belief, Korenix has induced and continues to
20 induce others to infringe one or more claims of the '385 Patent under § 271(b) by,
21 among other things, with specific intent, actively and knowingly, since at least as of
22 the date it received Gordium's December 5th letter, aiding and abetting others to
23 infringe, including, but not limited to, Korenix's customers and other users, whose
24 use of the Korenix Accused Products and Services constitutes direct infringement
25 of one or more claims of the '385 Patent. In particular, Korenix acted and
26 continues to act with specific intent to make others, such as its customers, infringe
27 by advertising and selling products and providing instruction manuals showing
28 infringing uses of the products and services. For example, in a blog post titled

1 “Korenix USA-JetCon 3401G Industrial Gigabit Copper to Gigabit Fiber Media
2 Converter by Korenix,” Korenix advertises “IEEE 802.1p QoS for data precedence
3 transmission” as one of the key features of the JetCon 3401G. Korenix’s datasheets
4 and user manuals for the Korenix Accused Products and Services also inform
5 Korenix’s customers and end-users of the products’ infringing features by
6 describing the products’ capability for delaying traffic using Class of Service
7 priority queues. On information and belief, since the time it received Gordium’s
8 December 5th letter informing it that it was inducing its customers and users to
9 infringe the ’385 Patent, Korenix engaged in, and continues to engage in, such
10 actions with specific intent to cause infringement or with willful blindness to the
11 resulting infringement.

12 30. Because of Korenix’s infringing activities, Gordium has suffered
13 damages and will continue to suffer damages in the future.

14 Moxa

15 31. In violation of 35 U.S.C. § 271, Moxa has directly infringed and
16 continues to directly infringe, literally and/or under the doctrine of equivalents, the
17 ’385 Patent by making, using, selling and/or offering for sale in the United States,
18 including in this Judicial District, networking devices providing data prioritization
19 features as claimed in one or more claims of the ’385 Patent (“the Moxa Accused
20 Products and Services”), without the authority of Gordium. For example, the Moxa
21 Accused Products and Services receive delay control signals in the form of priority
22 bits, or 3-bit fields within Ethernet frame headers, in inbound packets. While a
23 packet is not being transmitted, these products use the priority bits to configure
24 delays for sending received packets, utilizing priority queues and a transmission
25 selection algorithm (e.g., strict priority queuing).

26 32. The Moxa Accused Products and Services include, but are not limited
27 to, the EDS-405A/408A, EDS-405A/408A-EIP, EDS-405A/408A-PN, EDS-405A-
28 PTP, EDS-408A-3S-SC-48, EDS-505A/508A/516A, EDS-510A, EDS-510E, EDS-

1 518A, EDS-608/611/616/619, EDS-728/828, EDS-G508E/G512E/G516E, EDS-
2 G509, EDS-G512E-8PoE-4GSFP, EDS-P506A-4PoE, EDS-P510, EDS-P510A-
3 8PoE, ICS-G7526/G7528, ICS-G7526A/G7528A/G7826A/G7828A, ICS-
4 G7748/G7750/G7752, ICS-G7748A/G7750A/G7752A/G7848A/G7850A/G7852A,
5 ICS-G7826/G7828, ICS-G7848/G7850/G7852, IKS-G6524, IKS-
6 G6524A/G6824A, IKS-G6824, IKS-6726/6728, IKS-6726A/6728A, IKS-6728-
7 8PoE, IKS-6728A-8PoE, PT-508, PT-510, PT-7528, PT-7710, PT-7728, PT-7728-
8 PTP, PT-7828, PT-G7509, TN-5508/5516, TN-5508-4PoE/5516-8PoE, TN-
9 5508A/5516A, TN-5508A/5516A PoE, TN-5510/5518, TN-5510-2GLSX-ODC,
10 TN-5510A/5518A, TN-5510A/5518A PoE, TN-5524-8PoE, TN-5816/5818, NPort
11 S8000, NPort S8458, VPort 704-T, IEX-402 and EOM-104 Ethernet switches,
12 switch modules, and extenders.

13 33. Gordium provided actual notice to Moxa of its infringement of the
14 '385 Patent in a letter sent by certified mail on December 5, 2014. The letter
15 informed Moxa that the Moxa Accused Products and Services appeared to directly
16 infringe the '385 Patent, and identified the relevant features of the Moxa Accused
17 Products and Services. The December 5th letter also informed Moxa that Moxa's
18 actions, including advertising, marketing, and providing instruction manuals and
19 materials, induced others to infringe the '385 patent and cited at least one specific
20 example. A copy of the December 5th letter is attached hereto as Exhibit D to this
21 Complaint.

22 34. Moxa has had actual knowledge of the '385 Patent since at least the
23 date it received Gordium's December 5th letter.

24 35. Upon information and belief, Moxa engaged in the actions described in
25 paragraph 31 of this Complaint with specific intent to cause infringement or with
26 willful blindness to the resulting infringement because Moxa has had actual
27 knowledge of the '385 Patent and that its acts were infringing the '385 Patent since
28 at least the date it received the notice letter from Gordium notifying Moxa that its

1 products and services infringed the '385 Patent.

2 36. Upon information and belief, Moxa has induced and continues to
3 induce others to infringe one or more claims of the '385 Patent under § 271(b) by,
4 among other things, with specific intent, actively and knowingly, since at least as of
5 the date it received Gordium's December 5th letter, aiding and abetting others to
6 infringe, including, but not limited to, Moxa's customers and other users, whose use
7 of the Moxa Accused Products and Services constitutes direct infringement of one
8 or more claims of the '385 Patent. In particular, Moxa acted and continues to act
9 with specific intent to make others, such as its customers, infringe by advertising
10 and selling products and providing instruction manuals showing infringing uses of
11 the products and services. For example, in a newsletter post titled "Moxa Launches
12 PT-G7509 Full Gigabit Industrial Rackmount Ethernet Switch," Moxa advertises
13 "QoS-IEEE 802.1p/1Q and TOS/DiffServ to increase determinism" as one of the
14 key features of the PT-G7509 switch. Moxa's datasheets and user manuals for the
15 Accused Products and Services also inform Moxa's customers and end-users of the
16 products' infringing features by describing the products' capability for delaying
17 traffic using Class of Service priority queues. On information and belief, since the
18 time it received Gordium's December 5th letter informing it that it was inducing its
19 customers and users to infringe the '385 Patent, Moxa engaged in, and continues to
20 engage in, such actions with specific intent to cause infringement or with willful
21 blindness to the resulting infringement.

22 37. Because of Moxa's infringing activities, Gordium has suffered
23 damages and will continue to suffer damages in the future.

24 **JURY DEMAND**

25 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Gordium
26 demands a trial by jury against each Defendant on all issues triable as such.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Gordium respectfully requests that this Court enter judgment

1 for Gordium and against Defendants as follows:

2 A. an adjudication that Defendants have infringed the '385 Patent;

3 B. an award of damages to be paid by each Defendant adequate to
4 compensate Gordium for each Defendant's past infringement of the '385 Patent and
5 any continuing or future infringement through the date such judgment is entered,
6 including interest, costs, expenses and an accounting of all infringing acts
7 including, but not limited to, those acts not presented at trial;

8 C. an order that each Defendant pay an ongoing royalty in an amount to
9 be determined for any continued infringement after the date judgment is entered;

10 D. a declaration that this case is exceptional under 35 U.S.C. § 285, and
11 an award of Plaintiff's reasonable attorneys' fees;

12 E. an award to Gordium of such further relief at law or in equity as the
13 Court deems just and proper.

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Dated: March 20, 2015

Respectfully,

/s/ Jonathan Baker

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being service with a copy of this document via the Court’s CM/ECF system.

Dated: March 20, 2015

/s/Jonathan Baker
Jonathan Baker