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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN MEZZALINGUA ASSOCIATES, INC., d/b/a/ PPC, INC. **Plaintiff,** **vs.** **ARRIS INTERNATIONAL, INC.** **Defendant**	**CIVIL NO.** **Jury Trial Demanded**

FIRST AMENDED COMPLAINT

Plaintiff John Mezzalingua Associates, d/b/a/ PPC, Inc. ("PPC") for its First Amended Complaint against Arris International, Inc. ("Arris") states as follows:

THE PARTIES

1. PPC is a Delaware corporation with its principle place of business at 6176 E. Malloy Rd. in East Syracuse, New York.

2. Arris International is a Delaware corporation with its principal place of business at 11450 Technology Circle in Duluth, Georgia. Arris has a registered agent in Wisconsin: CSC-Lawyers Incorporating Service Company located at 25 W. Main St., Madison, Wisconsin 53703.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because this case arises under the federal patent laws.

4. This Court has personal jurisdiction over Arris because Arris has committed acts of patent infringement in this district by selling and/or offering to sell infringing products in violation of 35 U.S.C. § 271(a).

5. Venue is proper in this district under 28 U.S.C. § 1400(b) because Arris is subject to personal jurisdiction in this district and therefore "resides" in this district under 28 U.S.C. §§ 1391(c) and 1400(b).

BACKGROUND

The Industry

6. PPC is a privately held company which has been family operated since its inception in 1940. PPC is one of the worldwide leaders in the design and manufacture of coaxial cable connectors for the cable and telephone industries.

7. Coaxial cable connectors are used to link coaxial cable between various electronic devices including televisions, cable TV boxes and computer modems. These connectors are used inside homes as well as outside to connect cables from an external source (*e.g.*, a telephone pole) to a home.

8. Because coaxial cable connectors are used both indoors and out, the connectors must be able to provide a secure connection between the cable and its destination, as well as prevent the ingress of moisture into the connector. If moisture is able to penetrate a coaxial cable connector, it can lead to a reduction in signal clarity and, if water leaks through the connector into the electronic device the cable is connected to, serious equipment damage.

9. Due to the high costs of labor associated with installing cable connections, manufacturers of coaxial cable connectors attempt to design connectors to ensure that installers can obtain a long-term, reliable connection as quickly and easily as possible.

The Invention Of PPC's EX® Connector

10. Coaxial cable connectors were historically designed so that after the cable was inserted into the connector, a hexagonal crimp tool was used to forcibly "crimp" the connector around the cable. These "crimp" connectors suffered several disadvantages, the greatest of which was that the use of a hexagonal crimp did not provide a 360° water-tight seal between the connector and the cable. Additionally, many coaxial cable connectors required the use of non-integral parts which created multiple paths for moisture to enter the connector. These parts could also be easily dropped and misplaced during outdoor installation.

11. In the mid-1990's, LRC Electronics, Inc. introduced a "compression" connector to the cable industry; the two-piece Snap-N-Seal®. This connector purported to offer a 360° water-tight seal, but it demanded the use of two separate parts during installation.

12. In April 1997, Noah Montena, a mechanical engineer for PPC, conceived of a new form of compression connector. Mr. Montena's invention provided all of the advantages of the two-piece Snap-N-Seal® connector, but did so in a novel "one-piece" design. This design avoided the need to use separate parts which could be dropped or lost during installation. Additionally, the one-piece design permitted the EX® connector

to be compressed quickly and easily by installers with a simple compression tool. Finally, the one-piece design reduced the number of paths for the ingress of water into the connector.

The '194 Patent

13. In May 1997, recognizing the benefits of Mr. Montena's invention, PPC developed working prototypes of Mr. Montena's one-piece connector design. Mr. Montena's invention was eventually labeled the "EX®" (short for "Express") connector.

14. On August 2, 1997 PPC filed a patent application on Mr. Montena's invention (Application Serial No. 08/910,509 (the "'509 application")). On November 28, 2000, Mr. Montena was awarded U.S. Patent No. 6,153,830 (the "'830 patent"). Before the issuance of the '830 patent, on July 21, 2000, PPC filed a "continuation" application (Serial No. 09/621,975; the "'975 application"). The '975 application was entitled to and did claim priority to the '509 application (35 U.S.C. § 120).

15. On May 6, 2003, the '975 application resulted in the issuance of United States Patent No. 6,558,194 (the '194 patent). That patent has been assigned to PPC and PPC is the sole owner, and has the sole right to sue upon, the '194 patent. A copy of the '194 patent is attached to this complaint as Exhibit A.

The Bid For MediaOne

16. The cable industry consists of several large Multiple System Operators (or, "MSOs"). These MSOs together own the many thousands of local cable companies

scattered across the country. Comcast, AOL Time Warner, Cox Communications, Charter Communications and Adelphia are among the largest MSOs.

17. In May 1997, PPC received a request for proposal ("RFP") from MediaOne (then one of the largest MSOs in the United States). MediaOne's RFP sought a compression (as opposed to the more traditional crimping) connector. Thereafter, PPC made a presentation to MediaOne based on drawings and prototypes of the invention claimed in the '194 patent. MediaOne was very excited about the advantages of this connector and PPC was awarded a three-year exclusive contract.

18. The MediaOne contract created a stir in the cable industry because no MSO had ever granted such a large, exclusive, multi-year contract. As a result, PPC's competitors soon began working on producing products that could compete with PPC's new EX® compression connector design.

Arris' Digicon® "S" Connector

19. One such competitor was Arris. On September 9, 1998 -- more than a year after PPC filed its patent application on Mr. Montena's invention -- Arris filed a continuation-in-part application of its prior United States Patent No. 5,863,220. This continuation-in-part issued as United States Patent No. 6,089,913 (the "'913 patent") on July 18, 2000. During this same time period, Arris began marketing its Digicon® "S" line of coaxial cable connectors.

20. On information and belief, during the pendency of its continuation-in-part application for the '913 patent, persons within Arris knew about Mr. Montena's new connector but Arris never told the United States Patent Office about this prior art.

21. Arris is and has been at all times relevant to this proceeding a competitor of PPC in the coaxial cable connector market.

July 25, 2003 Preliminary Injunction Order

22. On July 25, 2003 Arris was preliminary enjoined from selling its Digicon "S" connectors. Upon information and belief, after July 25, 2003 Arris has continued to sell and offered to sell, connectors which infringe the claims of the '194 patent.

Arris Digicon "T" Connectors

23. Beginning sometime in August, 2003 Arris began to sell and offer to sell in the United States so-called Digicon® "T" connectors. Said connectors infringe the claims of the '194 patent.

Forum Specific Allegations

24. Arris has sold and/or offered to sell its Digicon® "S" connectors in this district and throughout the state of Wisconsin.

25. Upon information and belief, unless enjoined, Arris will continue to sell and/or offer to sell its Digicon® "S" connectors in this district and throughout the state of Wisconsin.

26. Upon information and belief, unless enjoined, Arris will continue to sell and/or offer to sell its Digicon® "T" connectors in this district throughout the state of Wisconsin.

27. PPC is currently competing with Arris' Digicon® "S" product in a competitive bid from Time Warner Milwaukee. Time Warner Milwaukee has approximately 350,000 subscribers. Upon information and belief, the Time Warner bid is likely to be decided within the next sixty days.

28. Upon information and belief, Arris will attend the upcoming Wisconsin Cable Show in Green Bay, Wisconsin in August, 2003. Upon information and belief, unless enjoined, Arris will there and then attempt to solicit additional sales of its Digicon S® connectors to cable providers throughout the state of Wisconsin.

CLAIM 1

Arris' Infringement of the '194 Patent

29. PPC repeats and realleges each and every allegation of paragraphs 1 through 28 as fully set forth herein.

30. By having made, selling and/or offering to sell its Digicon® "S" and Digicon® "T" line of products, Arris has been engaged in acts of infringement of the claims of PPC's '194 patent.

31. Such unlawful infringing activity by Arris is continuing and will continue unless enjoined by this Court.

32. Upon information and belief, Arris has had actual knowledge of the '194 patent since its issuance and has willfully, deliberately, and intentionally infringed the claims of the '194 patent since its issuance.

PRAYER FOR RELIEF

WHEREFORE, PPC respectfully requests the following relief:

A. Entry of judgment declaring that Arris' Digicon® "S" and Digicon® "T" connectors infringe the '194 patent.

B. Entry of a judgment under 35 U.S.C. § 283 which preliminarily and permanently enjoins Arris, its representatives, assigns or successors, or any subsidiaries, divisions, agents, servants, employees thereof, and/or those in privity with Arris from infringing, contributing to the infringement of, and inducing the infringement of the '194 patent.

C. Compensatory damages for patent infringement, as provided in 35 U.S.C. § 284, the extent of which will be determined but in no event less than a reasonable royalty.

D. A determination that, at least since its actual notice of the '194 patent, Arris' acts of infringement have been willful.

E. A determination that Arris is and has been in violation of this Court's preliminary injunction order during periods since July 25, 2003.

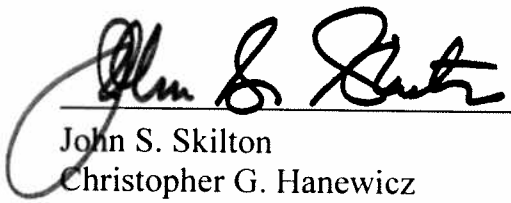
F. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

PPC hereby requests a trial by jury pursuant to Fed. R. Civ. P. 38 on all issues so triable.

Dated this 3rd day of September, 2003.

Attorneys for PPC, Inc.



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PPC'S REPLY TO ARRIS INTERNATIONAL, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL AND TO EXTEND THE DEADLINE TO AMEND PLEADINGS

This is submitted in reply to Arris International, Inc.'s Opposition to Plaintiff's Motion to Compel and to Extend the Deadline to Amend Pleadings filed September 2, 2003.

PPC has now received (presumably) representative samples of the "new" Digicon "T" connectors. (On Saturday, August 23, 2003, one lone sample was received; on Friday, August 29, 2003, PPC received a relatively small batch of purportedly representative samples.) Over the Labor Day weekend (August 30-September 2, 2003) these samples were measured by Dr. Tim A. Osswald, Director of the Polymer Engineering Center at the University of Wisconsin. Dr. Osswald's (necessarily) Preliminary Report is filed herewith.

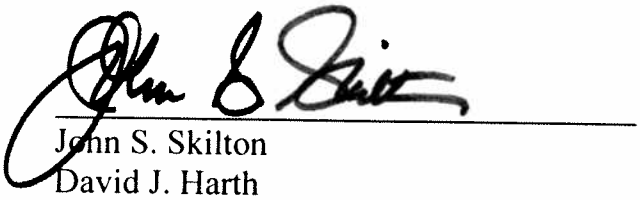
Also filed herewith is PPC's First Amended Complaint. This filing should effectively moot Arris' opposition to that portion of PPC's motion that sought to extend the time to file an amended complaint until September 23, 2003.

What is not moot is PPC's pending motion to compel discovery on the Digicon "T" connector. *See*, Tab 7 to PPC's motion, Amended Notice of Deposition of Arris International, Inc. under Fed. R. Civ. P. 30(b)(6).

Dr. Osswald's Preliminary Report sufficiently demonstrates that there is no colorable difference between the Digicon® "S" compression rings he measured, and the Digicon® "T" compression rings he measured. *Compare*, Osswald Report, ¶ 17, 26 and 31. Whether or not PPC decides to file a formal pre-trial motion on the Digicon® "T" connectors, PPC is surely entitled to the discovery on these connectors which it has requested — *on an expedited basis*.

Arris' opposition to this discovery on the grounds that after it was enjoined by this Court on the Digicon® "S" connectors, it made the "T" connector the subject of a "new" Colorado action is fairly characterized as a transparent attempt to "design around" this Court's injunction order and to thwart this Court's continuing jurisdiction over this controversy. Arris' opposition to the requested discovery is without merit.

Dated this 3rd day of September, 2003.



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