

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NETWORK CONGESTION SOLUTIONS,
LLC,

Plaintiff,

v.

ATLANTIC BROADBAND GROUP, LLC,

Defendant.

Case No. 1:14-CV-00896 (SLR)

PATENT CASE

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Network Congestion Solutions, LLC (“NCS” or “Plaintiff”) files this Amended Complaint against Atlantic Broadband Group, LLC (“Atlantic Broadband” or “Defendant”) for infringement of U.S. Patent No. 6,826,620 (“the ’620 patent”).

THE PARTIES

1. NCS is a Delaware limited liability company with its principal place of business located at 604 East 4th Street, Suite 201, Fort Worth, Texas 76102.
2. Atlantic Broadband is a Delaware company with its principal place of business at 2 Batterymarch Park, Suite 205, Quincy, Massachusetts 02169.
3. Defendant maintains a registered agent for service of process in Delaware at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

4. NCS brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, has purposely transacted business involving the accused products in this judicial district, and/or has regular and established places of business in this district.

6. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process, due at least to its substantial business in this State and judicial district, including: (A) committing acts of infringement in this judicial district as described herein; (B) having a corporate headquarters in this judicial district; and/or (C) regularly conducting or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods and products sold and services provided to Delaware residents. Further, this Court has personal jurisdiction over Defendant because it is incorporated in Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,826,620)

7. NCS incorporates paragraph 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

9. NCS is the owner of the '620 patent, entitled "Network Congestion Control System and Method," with all substantial rights to the '620 patent, including the exclusive right to enforce, sue, and recover damages for past and future infringement. A copy of the '620 patent is attached as Exhibit 1.

10. The '620 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

11. Defendant has, and continues to, directly infringe one or more claims of the '620 patent in this judicial district and elsewhere in the United States.

12. In particular, Defendant has, and continues to, infringe at least claim 1 of the '620 patent by, among other things practicing infringing methods including, but not limited to, Defendant's practices in conjunction with network congestion management.

13. As one example, Defendant's High Speed Internet Network Management, Service Performance and Terms of Service specifically states: "Atlantic Broadband manages its High Speed Internet Network to deliver the best possible broadband Internet experience to all of its customers. We use reasonable network management practices that are consistent with industry standards and the FCC's Open Internet rules. We use tools and technologies that are minimally intrusive." *See* Exhibit 2 at 1.

14. As another example, Defendant's subscriber agreement states: "Customer acknowledges and agrees that Atlantic Broadband shall have the right to monitor the "bandwidth" utilization (i.e. volume of data transmitted) arising out of the Service provided hereunder at any time and on an on--going basis. In its sole discretion, Atlantic Broadband may: (i) limit excessive use of bandwidth; (ii)..." *See* Exhibit 3 at § 4.

15. To the extent not already pleaded herein, other evidence of Defendant's activities is set forth in the Network Congestion Solutions LLC's Answering Brief in Response to Motion to Dismiss (D.I. 12), attached as Exhibit 4, the entirety of which is incorporated by reference in this First Amended Complaint.

16. NCS has been damaged as a result of Defendant's infringing conduct described in this Court. Defendant is, thus, liable to NCS in an amount that adequately compensates NCS for Defendant's 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.

JURY DEMAND

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

PRAYER FOR RELIEF

Plaintiff asks that the Court find in its favor and against Defendant and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the '620 patent have been infringed, either literally and/or under the doctrine of equivalents by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;
- c. Judgment that Defendant account for and pay to Plaintiff a reasonable, ongoing, post judgment royalty because of Defendant's infringing activities and other conduct complained of herein;
- d. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- e. Find this case exceptional under the provisions of 35 U.S.C. § 285 and award enhanced damages; and
- f. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: June 30, 2015

NETWORK CONGESTION SOLUTIONS, LLC

By: /s/ Timothy Devlin
Timothy Devlin (# 4241)
Devlin Law Firm LLC
1220 N. Market Street, Suite 850
Wilmington, DE 19801
302-449-9010
tdevlin@devlinlawfirm.com

Of counsel:

Timothy E. Grochocinski
Joseph P. Oldaker
INNOVALAW, P.C.
1900 Ravinia Place
Orland Park, Illinois 60462
P. 708-675-1975
teg@innovalaw.com
joldaker@innovalaw.com

COUNSEL FOR PLAINTIFF
NETWORK CONGESTION SOLUTIONS, LLC