

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

NETWORK CONGESTION SOLUTIONS,  
LLC,

Plaintiff,

v.

AT&T INC. AND AT&T CORP.,

Defendants.

Case No. 1:14-CV-00894 (SLR)

PATENT CASE

JURY TRIAL DEMANDED

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**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Network Congestion Solutions, LLC (“NCS” or “Plaintiff”) files this Amended Complaint against AT&T Inc. and AT&T Corp. (collectively “Defendants”) 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. Defendants are Delaware corporations with a principal place of business at 208 S. Akard Street, Dallas, Texas 75202.
3. Defendants maintain a registered agent for service of process in Delaware at The Corporate Trust Company, Corporate Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

**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, Defendants are deemed to reside in this judicial district, have committed acts of infringement in this judicial district, have purposely transacted business involving the accused products in this judicial district, and/or have regular and established places of business in this district.

6. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process, due at least to their 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 Defendants because Defendants are incorporated in Delaware and have 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. Defendants have, and continue to, directly infringe one or more claims of the '620 patent in this judicial district and elsewhere in the United States.

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

13. NCS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to NCS in an amount that adequately compensates NCS for Defendants' 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.

14. As one example, AT&T states that it is guided by and complies with the FCC's Open Internet Order. *See* Ex. 2 at 1. The FCC's Open Internet Order, as recognized by AT&T, states "a flourishing and open Internet requires robust, well functioning broadband networks, and according that open Internet protections require broadband providers to be able to reasonably manage their networks." *Id.* at 4. AT&T then states that this "may require practices to reduce or mitigate congestion on the network, ensure quality of service, or address traffic that is unwanted or harmful to users, among other things." *Id.* at 4-5.

15. As another example, AT&T's website describes the network congestion management practices that AT&T employees. *See* Ex. 3.

16. 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. 13), attached as Exhibit 4, the entirety of which is incorporated by reference in this First Amended Complaint.

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 Defendants 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 Defendants;
- b. Judgment that Defendants account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- c. Judgment that Defendants account for and pay to Plaintiff a reasonable, ongoing, post judgment royalty because of Defendants' infringing activities and other conduct complained of herein;
- d. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendants' 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