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

CHRIMAR SYSTEMS, INC., D/B/A CMS TECHNOLOGIES AND CHRIMAR HOLDING COMPANY, LLC , Plaintiffs, v. DELL INC. AND AEROHIVE NETWORKS, INC., Defendants.	NO. 6:15-CV-639-JRG-JDL **PATENT CASE** **JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT

Plaintiffs Chrimar Systems Inc. d/b/a CMS Technologies ("Chrimar") and Chrimar Holding Company, LLC ("Holding") file this First Ameneded Complaint ("the Complaint") for infringement of United States Patent Nos. 8,155,012 ("the '012 Patent"), 8,942,107 ("the '107 Patent"), 8,902,760 ("the '760 Patent"), and 9,019,838 ("the '838 Patent"), collectively the "Patents-in-Suit."

THE PARTIES

1. Chrimar is a Michigan corporation with a place of business located at 36528 Grand River Avenue, Suite A-1, Farmington Hills, Michigan 48335.

2. Holding is a Texas limited liability company with a place of business located at 911 NW Loop 281, Suite 211-30, Longview, Texas 75604.

3. Chrimar and Holding are collectively referred to as "Plaintiffs" or "CMS."

4. Dell Inc. ("Dell") is a Delaware corporation with its principal place of business located at One Dell Way, Round Rock, Texas 78682. This Court has personal jurisdiction over Dell.

5. Aerohive Networks, Inc. ("Aerohive") is a Delaware corporation with its principal place of business located at 330 Gibraltar Drive, Sunnyvale, California 94089. This Court has personal jurisdiction over Aerohive.

6. Dell and Aerohive are collectively referred to as "Defendants."

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, 35 U.S.C. § 101 et seq.

8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

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

10. This Court has personal jurisdiction over Defendants because Defendants have engaged in continuous and systematic activities in the state of Texas, including in this district.

PATENTS-IN-SUIT

11. Chrimar is the owner and assignee of the '012 Patent, entitled "System and Method for Adapting a Piece of Terminal Equipment" and Holding is the exclusive licensee of the '012 Patent. CMS owns all substantial rights in the '012 Patent. A true and correct copy of the '012 Patent is attached as Exhibit A to Plaintiffs' Original Complaint [ECF No. 1].

12. The '012 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

13. Chrimar is the owner and assignee of the ’107 Patent, entitled “Piece of Ethernet Terminal Equipment” and Holding is the exclusive licensee of the ’107 Patent. CMS owns all substantial rights in the ’107 Patent. A true and correct copy of the ’107 Patent is attached as Exhibit B to Plaintiffs’ Original Complaint [ECF No. 1].

14. The ’107 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

15. Chrimar is the owner and assignee of the ’760 Patent, entitled “Network System and Optional Tethers” and Holding is the exclusive licensee of the ’760 Patent. CMS owns all substantial rights in the ’760 Patent. A true and correct copy of the ’760 Patent is attached as Exhibit C to Plaintiffs’ Original Complaint [ECF No. 1].

16. The ’760 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

17. Chrimar is the owner and assignee of the ’838 Patent, entitled “Central Piece of Network Equipment” and Holding is the exclusive licensee of the ’838 Patent. CMS owns all substantial rights in the ’838 Patent. A true and correct copy of the ’838 Patent is attached as Exhibit D to Plaintiffs’ Original Complaint [ECF No. 1].

18. The ’838 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DEFENDANTS’ ACCUSED PRODUCTS

19. Upon information and belief, Defendants make, use, offer to sell, sell, and/or import Power over Ethernet (“PoE”) powered devices (“PDs”) that comply with and/or are compatible with the PoE Standards, namely IEEE 802.3af and/or 802.3at. Such products include,

but are not limited to, wireless access points such as the AP330 and PoE IP cameras, collectively the "Accused PD Products."

20. Upon information and belief, Defendants make, use, offer to sell, sells, and/or import PoE power sourcing equipment ("PSEs") that comply with and/or are compatible with the PoE Standards, namely IEEE 802.3af and/or 802.3at. Such products include, but are not limited to, PoE switches such as the N3000 Series Switch, collectively the "Accused PSE Products."

21. The Accused PD Products and the Accused PSE Products are collectively the "Accused Products."

22. Upon information and belief, the Accused Products are offered for sale and sold throughout the United States, including within the Eastern District of Texas.

23. Defendants have purposefully and voluntarily placed the Accused Products into the stream of commerce with the expectation that these products will be purchased and used by end users in the United States, including end users in the Eastern District of Texas.

24. Defendants provide direct and indirect support concerning the Accused Products to end users, including end users within the Eastern District of Texas.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,155,012

25. CMS incorporates paragraphs 1 through 244 herein by reference.

26. Defendants have and continue to directly infringe the '012 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing into the United States the Accused PD Products.

27. Defendants have been on notice of the ’012 Patent since at least as early as the filing date of the Original Complaint.

28. Notwithstanding that notice of infringement, Defendants have continued to infringe the ’012 Patent. Thus, Defendants’ infringement has been and is willful.

29. CMS has been damaged as a result of Defendants’ infringing conduct described in this Count. Because Defendants’ infringement has been and is willful, Plaintiffs seek enhanced damages of up to three times the amount found or assessed under 35 U.S.C. § 284.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 8,942,107

30. CMS incorporates paragraphs 1 through 29 herein by reference.

31. Defendants have and continue to directly infringe the ’107 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing into the United States the Accused PD Products.

32. Defendants have been on notice of the ’107 Patent since at least as early as the filing date of the Original Complaint.

33. Notwithstanding that notice of infringement, Defendants have continued to infringe the ’107 Patent. Thus, Defendants’ infringement has been and is willful.

34. CMS has been damaged as a result of Defendants’ infringing conduct described in this Count. Because Defendants’ infringement has been and is willful, Plaintiffs seek enhanced damages of up to three times the amount found or assessed under 35 U.S.C. § 284.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 8,902,760

35. CMS incorporates paragraphs 1 through 34 herein by reference.

36. Defendants have and continue to directly infringe the ’760 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing into the United States the Accused Products.

37. Defendants have and continue to indirectly infringe the ’760 Patent in violation of 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing the Accused Products into the United States.

38. The Accused Products implement a technology called “Power over Ethernet” or “PoE,” which allows for provision of electrical power to a networked device over the same Ethernet cable that is used for data transmission. One example of a PoE device is a Voice Over Internet Protocol (“VOIP”) business telephone. A PoE VOIP phone does not require an AC adapter that plugs into a an electrical outlet because the power to operate the phone is provided through the Ethernet cable, which also carries the telephone signals between the phone and the network.

39. The Accused Products fall within two categories of PoE equipment — “Powered Devices” (“PDs”), which are devices that receive power via an Ethernet cable (such as a PoE VOIP phone), and “Power Sourcing Equipment” (“PSEs”), which are devices connected to the opposite end of the Ethernet cable and send power to the PDs. The Accused PD Products and the Accused PSE Products operate cooperatively to provide PoE. The ’760 Patent is a system-level patent that implicates the provision of PoE by the Accused PD and PSE Products in combination.

40. Each Accused Product complies with and/or is compatible with the PoE Standards, namely IEEE 802.3af and/or 802.3at. More specifically, each Accused Product implements the detection and classification protocols as specified in the PoE Standards.

41. The detection protocol of the PoE Standards ensures that the Accused PSE Products only send power to PDs. The classification protocol of the PoE Standards ensures that the Accused PSE Products supply the correct power level to the Accused PD Products.

42. The detection and classification protocol sections of the PoE Standards are explicit—down to the circuit level—as to how these functions must be implemented in the Accused Products.

43. Each Accused Product includes specialized hardware and circuitry in order to implement the detection and classification protocols of the PoE Standards. Such hardware and circuitry includes, but is not limited to, a PoE controller, a detection circuit path that includes a PoE detection signature resistance, and a classification circuit path that includes a PoE power classification signature resistance.

44. Each Accused Product is a component of a patented machine, manufacture, combination, or system and constitutes a material part of the invention as claimed in the ’760 Patent. For example, the ’760 Patent is a system-level patent that implicates the detection and classification protocols of the Poe Standards and each Accused Product includes specialized hardware and circuitry to implement the detection and classification protocols of the PoE Standards.

45. Since receiving notice of Plaintiffs’ patent rights under the ’760 Patent, Defendants know that the Accused Products are especially made or especially adapted for use in

a manner that infringes one or more claims of the ’760 Patent, as they market and/or advertise the Accused Products as having PoE capability.

46. The Accused Products are not a staple article or commodity of commerce suitable for substantial non-infringing use. Each Accused Product incorporates specialized hardware and circuitry to implement the detection and classification protocols of the PoE Standards. The incorporation of this specialized hardware and circuitry serves no function other than to determine whether an Ethernet-connected device is a PoE-compliant device (“detection”), and, if so, the amount of power it is designed to accept (“classification”). There is no other established or practical non-infringing use of the specific specialized hardware and circuitry as required by the PoE Standards and claimed by the ’760 Patent.

47. The fact that the Accused Products may also incorporate other circuitry or functionality that does not implicate the ’760 Patent is irrelevant for determining whether the Accused Products have substantial non-infringing uses. *See Ricoh Co. v. Quanta Computer Inc*., 550 F.3d 1325 (Fed. Cir. 2008).

48. Defendants’ customers that use the Accused PD or PSE Products in their PoE networks directly infringe the ’760 Patent.

49. Defendants have been on notice of the ’760 Patent since at least as early as the filing date of the Original Complaint. Notwithstanding that notice of infringement, Defendants have continued to infringe the ’760 Patent. Thus, Defendants’ infringement has been and is willful.

50. CMS has been damaged as a result of Defendants' infringing conduct described in this Count. Because Defendants' infringement has been and is willful, Plaintiffs seek enhanced damages of up to three times the amount found or assessed under 35 U.S.C. § 284.

COUNT IV
INFRINGEMENT OF U.S. PATENT NO. 9,019,838

51. CMS incorporates paragraphs 1 through 50 herein by reference.

52. Defendants have and continue to directly infringe the '838 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing into the United States the Accused PSE Products.

53. Defendants have been on notice of the '838 Patent since at least as early as the filing date of the Original Complaint. Notwithstanding that notice of infringement, Defendants have continued to infringe the '838 Patent. Thus, Defendants' infringement has been and is willful.

54. CMS has been damaged as a result of Defendants' infringing conduct described in this Count. Because Defendants' infringement has been and is willful, Plaintiffs seek enhanced damages of up to three times the amount found or assessed under 35 U.S.C. § 284.

ADDITIONAL ALLEGATIONS

55. CMS has complied with 35 U.S.C. § 287.

JURY DEMAND

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

PRAYER FOR RELIEF

CMS requests that this Court find in its favor and against Defendants, and that this Court grant CMS the following relief:

a. Enter judgment that Defendants have infringed the Patents-in-Suit;

b. Award Plaintiffs damages in an amount adequate to compensate Plaintiffs for Defendants' infringement of the Patents-in-Suit, but in no event less than a reasonable royalty in accordance with 35 U.S.C. § 284;

c. Award Plaintiffs enhanced damages three times the amount of damages found or assessed under 35 U.S.C. § 284;

d. Award Plaintiffs pre-judgment and post-judgment interest to the full extent allowed under the law, as well as their costs;

e. Order Defendants to pay a reasonable royalty for each future infringement of the Patents-in-Suit;

f. Declare that this is an exceptional case and award Plaintiffs their reasonable attorneys' fees incurred in this action; and

g. Award such other relief as the Court may deem appropriate and just under the circumstances.

Dated: September 14, 2015

Respectfully submitted,

/s/ Richard L. Wynne, Jr.

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ATTORNEYS FOR PLAINTIFFS
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CERTIFICATE OF SERVICE

I certify that on September 14, 2015, I caused true and correct copies of the foregoing to be filed and served via the Court's CM/ECF system.

/s/ Richard L. Wynne, Jr.
Richard L. Wynne, Jr.

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