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

QoS IP, LLC	§	
Plaintiff	§	
	§	
v.	§	**CIVIL ACTION NO. 6:15-cv-860**
	§	
ALCATEL-LUCENT HOLDINGS INC.,	§	
ALCATEL-LUCENT USA INC.,	§	
ALE USA INC.	§	
Defendants	§	

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff QoS IP, LLC ("QoS") files this First Amended Complaint against Alcatel-Lucent Holdings Inc., Alcatel-Lucent USA Inc., and ALE USA Inc. (collectively, "Defendants" or "Alcatel-Lucent") for infringement of U.S. Patent No. 7,385,982 (the "'982 Patent").

THE PARTIES

1. Plaintiff QoS is a Texas limited liability company with its headquarters and principal place of business at 1400 Preston Road, Suite 475, Plano, Texas 75093.

2. Defendant Alcatel-Lucent Holdings Inc. is a Delaware corporation with its principal place of business in Plano, Texas, and may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas, 78701-3218.

3. Defendant Alcatel-Lucent USA Inc. is a Delaware corporation with its principal place of business located at 600-700 Mountain Avenue, Murray Hill, New Jersey 07974, and may be served through its registered agent, Prentice Hall Corporation System, 211 E. 7th Street, Suite 620, Austin, Texas, 78701-3218.

4. Defendant ALE USA Inc. is a Delaware corporation with its principal place of business located at 26801 Agoura Road, Calabasas, California, 91301, and may be served through its registered agent, Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, Delaware, 19808.

JURISDICTION AND VENUE

5. QoS 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.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Defendants do business in this judicial district, have committed acts of infringement in this judicial district, have purposely transacted business in this judicial district involving the accused products and/or, have regular and established places of business in this judicial district.

7. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long- Arm Statute, due at least to its substantial business in this State and judicial district, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 7,385,982)

8. QoS incorporates paragraphs 1 through 7 herein by reference.

9. QoS is the owner, by assignment, of U.S. Patent No. 7,385,982 (the "'982 Patent"), entitled "SYSTEMS AND METHODS FOR PROVIDING QUALITY OF SERVICE

(QOS) IN AN ENVIRONMENT THAT DOES NOT SUPPORT QOS FEATURES."

10. A true and correct copy of the '982 Patent is attached as Exhibit A.

11. As the owner of the '982 Patent, QoS holds all substantial rights in and under the '982 Patent, including the right to grant sublicenses, exclude others, and to enforce, sue, and recover damages for past and future infringement.

12. The United States Patent Office issued the '982 Patent on June 10, 2008.

13. The '982 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

14. Defendants are practicing one or more claims of the '982 Patent, including at least claims 1 and 13, by making, using, offering for sale, selling and/or importing products that include systems and methods for providing quality of service based upon non-QoS information.

15. Defendants have no consent or authorization to practice the '982 Patent.

16. Infringing products that Defendants make, use, sell, offer to sell, and/or import include, without limitation, the OmniSwitch 6900 and OmniSwitch 10K.

17. The OmniSwitch 6900 and OmniSwitch 10K have multiple input and output ports for data ingress and egress.

18. The OmniSwitch 6900 and OmniSwitch 10K examine received packet information including source and/or destination address information in order to apply QoS policies.

19. The OmniSwitch 6900 and OmniSwitch 10K are configured to classify and queue data for transmission based upon policies conditioned upon address information.

20. Alcatel-Lucent indirectly infringes at least claim 1 by contributing to the

infringement by others by knowingly providing the OmniSwitch 6900 and OmniSwitch 10K to customers for use on data networks and having no substantial non-infringing use.

21. QoS has been damaged as a result of Alcatel-Lucent's infringing conduct. Defendants are thus liable to QoS in an amount that adequately compensates it for their infringement, which compensation cannot be less than a reasonable royalty together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

NOTICE OF REQUIREMENT OF LITIGATION HOLD

22. Defendants are hereby notified they are legally obligated to locate, preserve, and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video/photographic recordings, and digital files, including edited and unedited or "raw" source material, and other information and tangible things that Defendants know, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses, and/or damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as "Potential Evidence").

23. As used above, the phrase "electronically stored information" includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts, revisions, and active or deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received, or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media,

peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include any personal electronic, digital, and storage devices of any and all of Defendants' agents, resellers, or employees if Defendants' electronically stored information resides there.

24. Defendants are hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to Defendants' claims and/or defenses. To avoid such a result, Defendants' preservation duties include, but are not limited to, the requirement that Defendants immediately notify their agents and employees to halt and/or supervise the auto-delete functions of Defendants' electronic systems and refrain from deleting Potential Evidence, either manually or through a policy of periodic deletion.

JURY DEMAND

25. QoS hereby demands a trial by jury on all claims, issues and damages so triable.

PRAYER FOR RELIEF

QoS prays for the following relief:

a. That Defendants be summoned to appear and answer;

b. That the Court enter an order declaring that Defendants have infringed, contributorily infringed, and/or induced infringement of the '982 Patent;

c. That this is an exceptional case under 35 U.S.C. § 285;

d. That the Court grant QoS judgment against Defendants for all actual, consequential, special, punitive, exemplary, increased, and/or statutory damages, including treble damages pursuant to 35 U.S.C. 284 including, if necessary, an accounting of all damages; pre and post-judgment interest as allowed by law; and reasonable attorney's fees, costs, and expenses incurred in this action; and

e. That QoS be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 18, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record below who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 18th day of December, 2015.

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/s/ Cabrach J. Connor
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CERTIFICATE OF CONFERENCE

I conferred with counsel for Defendant ALE USA Inc., and on December 18, 2015, received from counsel for all Defendants written consent to file this First Amended Complaint and Jury Demand thus satisfying the requirement of Fed. R. Civ. P. 15(a)(2).

/s/ Cabrach J. Connor
Cabrach J. Connor