

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

BLUE SPIKE, LLC,

Plaintiff,

v.

**HUAWEI TECHNOLOGIES USA
INC., HUAWEI TECHNOLOGIES
CO., LTD.,**

Defendants.



Case No. 6:16-cv-00048-RWS

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blue Spike, LLC files this complaint against Defendants Huawei Technologies USA Inc., Huawei Technologies Co., Ltd., (the “Huawei Defendants” or “Defendant”), and alleges four counts of patent infringement of one or more claims of each of the following:

(Count 1) U.S. Patent 7,287,275, titled “Methods, systems and devices for packet watermarking and efficient provisioning of bandwidth” (the ’275 Patent);

(Count 2) U.S. Patent 8,473,746 (the ’746 Patent);

(Count 3) Reissued U.S. Patent RE44,222 (the ’222 Patent); and

(Count 4) Reissued U.S. Patent RE44,307 (the ’307 Patent, and collectively the “Patents-in-Suit”) as follows:

NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

2. Plaintiff Blue Spike, LLC is a Texas limited liability company and has its headquarters and principal place of business at 1820 Shiloh Road, Suite 1201-C, Tyler, Texas 75703. Blue Spike, LLC is the assignee of the Patents-in-Suit, and has ownership of all substantial rights in the Patents-in-Suit, including the rights to grant sublicenses, to exclude others from using it, and to sue and obtain damages and other relief for past and future acts of patent infringement.

3. Huawei Technologies USA Inc. has its principal place of business at 5700 Tennyson Pkwy, Plano, Texas 75024.

4. Huawei Technologies Co., Ltd. states that it is a Chinese corporation with a principal place of business located at Huawei Industrial Base, Bantain Longgang, Shenzhen, 518129, People's Republic of China.

JURISDICTION AND VENUE

5. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §101 *et seq.* The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§1331, 1332, 1338(a), and 1367.

6. The Court has personal jurisdiction over Defendant for at least five reasons: (1) Defendant has committed acts of patent infringement and contributed to and induced acts of patent infringement by others in this District and elsewhere in Texas; (2) Defendant regularly does business or solicits business in the District and in Texas;

(3) Defendant engages in other persistent courses of conduct and derives substantial revenue from products and/or services provided to individuals in the District and in Texas; (4) Defendant has purposefully established substantial, systematic, and continuous contacts with the District and should reasonably expect to be haled into court here. Thus, the Court's exercise of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice; and (5) Defendant has an office in Plano, Texas.

7. Venue is proper in this judicial district under 28 U.S.C. §§1391(b)–(c) and 1400(b) because Defendant does business in the State of Texas, Defendant has committed acts of infringement in Texas and in the District, a substantial part of the events or omissions giving rise to Blue Spike's claims happened in the District, and Defendant is subject to personal jurisdiction in the District.

THE ACCUSED PRODUCTS AND SERVICES

8. Defendant designs, develops, employs, and/or manufactures software, systems, and/or technology that infringe the patents-in-suit. Defendant makes, uses, offers for sale and/or imports into the U.S. data transmission products, systems, and/or services including, but not limited to, products identified by Defendant's product nomenclature as follows: AR160-M Series Agile Gateways, AR500 Series Agile Gateways, AR510 Series Agile Gateways, AR530 Series Agile Gateways, AR550 Series Agile Gateways, AR3600 Series Agile Gateways, AR3200 Series Enterprise Routers, AR2200 Series Enterprise Routers, AR1200 Series Enterprise Routers, AR120/150/160/200 Series Enterprise Routers, NetEngine5000E Cluster Routers, NetEngine40E Series Universal Service Routers, NetEngine20E-S Series Universal Service Routers, NE05E/08E Series Mid-range Service Routers, ME60 Series Multi-Service Control Gateways, B2268H, B3000

Vodafone, B310s-927, B315s-22, B315s-22 Zain, B593, B593 Zain, B593s-22, B593s-22v2, B593v2, B660, B681, B683 MTN, B683V, B68A, B890-66, B890-75, B970 Orange Flybox, BM625, BM632, BM635, DR814, E51728s-925, E5172s-920, E5330, E5331, E5336, E5377s, E5577s, E5776, E586, E8231s-1, EchoLife-BM625, Echolife-HG520b, EchoLife-HG520c, EchoLife-HG520i, EchoLife-HG520u, EchoLife-HG520v, EchoLife-HG521, EchoLife-HG523, EchoLife-HG532, EchoLife-HG532b, EchoLife-HG556a-v2, EchoLife-HG8247, EchoLife-HG866, HG232f, HG256s, HG521c, HG530, HG531v1, HG532a, HG532b, HG532b B013, HG532b B022, HG532d, HG532e, HG532n TE Data, HG532s, HG556a, HG622, HG622u, HG630b Spark, HG633 TalkTalk, HG635 TalkTalk, HG655b, HG655d, HG658b, HG658c, HG658G Vodafone, HG685c Vodafone, HG8244H Ooredoo, HG8245, HG8245A, HG8245H, HG8245H Orange, HG8245T, HG8247, HG8247H, HG850a, R205, SmartAX-MT800v2, SmartAX-MT880a, SmartAX-MT880av3, SmartAX-MT880v3, and SmartAX (collectively, the “Accused Products”), which infringe one or more claims of each of the Patents-in-Suit listed in Counts 1 and 2 below.

9. The following Huawei products infringe at least Claim 1 of each of the Patents-in-Suit that were reissued by the U.S.P.T.O and included in this complaint at Counts 3 and 4. Defendant makes, uses, offers for sale and/or imports into the U.S. data transmission products, systems, and/or services including, but not limited to, products identified by Defendant’s product nomenclature as follows: eSpace DEC6001-E One-Channel Decoder, IPC6212-IR 1.3 Megapixel Infrared IP Bullet Camera, IPC6231-WD-VRZ 3.0 Megapixel Infrared IP Bullet Camera, IPC6232-IR 3.0-Megapixel Infrared IP Bullet Camera, IPC6311-IR 1.3 Megapixel Infrared IP Dome Camera, IPC6332-MIR Infrared IP

Dome Camera, IPC6331-IR Infrared IP Dome Camera, IPC6512-Z30 IP Dome Camera, IPC6522-Z30 IP Dome Camera, IPC6112 Series 1.3-Megapixel Day and Night IP Box Cameras, IPC6122 Series Day and Night IP Box Camera, IPC6125-WDL-FA 2-Megapixel Low-light WDR Network Box Camera, IPC6225-VRZ (7 mm-22 mm) 2-Megapixel IR Bullet IP Camera, IPC6525-Z30 2-Megapixel 30x Intelligent High-Speed PTZ Dome Camera, IPC6325-WD-VF 2-Megapixel WDR Vandal-Proof Dome Camera, IPC6325-WD-VR 2-Megapixel IR Dome Camera with Manual Zoom, IPC6625-Z30 2-Megapixel 30x Intelligent IR High-Speed PTZ Dome Camera, IPC6324-MIR 2-Megapixel Fixed Mini Dome Camera with IR Illumination, IPC6324-MIF 2-Megapixel Fixed Mini Dome Camera, IPC6225-VRZ-SP 2-Megapixel IR Bullet IP Camera, IPC6225-VRZ 2-Megapixel IR Bullet IP Camera with a Motorized Zoom Lens, IPC6224-VRZ 2-Megapixel IR Bullet IPC, IPC6224-IR 2-Megapixel IR Fixed Bullet IPC, IPC6125-WDL-P 2-Megapixel Low-light WDR Network Box Camera, IPC6125-WDL-D 2-Megapixel Low-light WDR Network Box Camera, and Huawei IPC6000 series HD Network Cameras (and all new versions sharing same data transmission protocol).

10. Defendant has not obtained a license for any of Blue Spike's patented technologies.

11. Yet Defendant's Accused Products are using methods, devices, and systems taught by Blue Spike's Patent-in-Suit.

**COUNT 1:
Infringement of U.S. Patent Nos. 7,287,275**

12. Blue Spike incorporates by reference the allegations in paragraphs above.

13. The '275 Patent is valid, is enforceable, and duly issued by the United States Patent and Trademark Office.

14. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '275 Patent—directly, contributorily, and/or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products, in violation of 35 U.S.C. §271.

15. For example, Defendant's Accused Products listed in ¶ 8 of this complaint infringe at least claim 1 of U.S. Patent 7,287,275 which teaches

A method for transmitting a stream of data, comprising:
receiving a stream of data;
organizing a stream of data into a plurality of packets;
generating a packet watermark associated with the stream of data wherein the packet watermark enables identification of at least one of a plurality of packets;
combining the packet watermark with each of the plurality of packets to form watermarked packets; and transmitting at least one of the watermarked packets across a network.

Defendant's Accused Products "perform traffic classification, traffic shaping, traffic policing, and queue scheduling" operations. *See* Huawei AR1200-S Series Enterprise Routers, at 3, *attached as* Exhibit A. "Generally, a device at the border of a network needs to re-mark precedence fields of incoming packets." *See* Exhibit A, at 74. "Therefore, the AR1200-S is required to mark precedence fields of packets based on the network type" (*generating a packet watermark associated with the stream of data wherein the packet watermark enables identification of at least one of a plurality of packets; combining the packet watermark with each of the plurality of packets to form watermarked packets*). *See* Exhibit A at 74.

16. Defendant directly infringes U.S. Patent 7,287,275 the Accused Devices in the United States. Defendant has a significant presence in the United States, including offices in 13 U.S. states. *See* Huawei North America, *available at* <http://www.huawei.com/en/about-huawei/contact-us/north-america/index.html>, *attached as* Exhibit B. On information and belief, Defendant uses and tests the Accused Products in its own corporate offices. Defendant also sells the Accused Products in the United States. *See* US Rural Operators Find Huawei a Perfect Fit, *available at* <http://www.huawei.com/us/industry/customer-voices/hw-197752.htm>, *attached as* Exhibit C. In connection with Defendant's sale of the Accused Products in the United States, Defendant imports and/or builds the Accused Products in the United States.

17. Defendant has been and now is indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '275 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products for use in systems that fall within the scope of one or more claims of the '275 Patent. Such products include, without limitation, one or more of the Accused Products. Such products have no substantial non-infringing uses and are for use in systems that infringe the '275 Patent. By making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike and is thus liable to Blue Spike for infringement of the '275 Patent under 35 U.S.C. § 271. Those whom Defendant induces to infringe and/or to whose infringement Defendant contributes are the end users of the Accused Products. Defendant had knowledge of the '275 Patent at least as early as the service of this complaint and is thus liable for infringement of one or more claims of

the '275 Patent by actively inducing infringement and/or is liable as contributory infringer of one or more claims of the '275 Patent under 35 U.S.C. §271.

18. In particular, Defendant induces and contributes to the infringement of Defendant's customers who directly infringe the Patents-in-Suit through the use of the Accused Products. As indicated below, Defendant had knowledge of the Patents-in-Suit and was therefore aware that the Accused Products infringed the Patents-in-Suit. The Accused Products have no non-infringing uses, thus Defendant specifically intended for its customers to infringe the Patents-in-Suit through the sale of its Accused Products. Additionally, Defendant instructed its customers on the use of the Accused Products, and thus induced its customers to infringe and contributed to their infringement, at the very least through its instruction manuals, online technical support, customer support, and Frequently Asked Questions (FAQs). *See, e.g.*, Exhibit A.

19. Defendant's acts of infringement of the '275 Patent have caused damage to Blue Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. §271. Defendant's infringement of Blue Spike's exclusive rights under the '275 Patent will continue to damage Blue Spike, causing it irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the Court.

20. On information and belief, the infringement of the Patent-in-Suit by Defendant has been willful and continues to be willful. Defendant had knowledge of the Patent-in-Suit, including but not limited to at least one or more of the following:

- a. Through the Defendant's obligations to disclose information to the United States Patent and Trademark Office, which the Defendant is very familiar with as the world's leader for filing international patent applications in 2014.
- b. Through this patent being cited by numerous companies and agencies such as, The Hong Kong University Of Science And Technology; Vmware, Inc.; Verizon Services Organization Inc.; Verizon Patent And Licensing Inc.; and Palo Alto Research Center Incorporated.
- c. Through the due diligence performed by Defendant when filing its patent applications.
- d. Through the filing of two prior complaints for patent infringement by Plaintiff against the Defendant.

Defendant was aware of the Patents-in-Suit and that the claims of the Patents-in-Suit are directed toward watermarking technology present in the Accused Products. Therefore Defendant was aware (or recklessly disregarded) that the Accused Products infringe the Patents-in-Suit.

21. On information and belief, Defendant has at least had constructive notice of the '275 Patent by operation of law.

**COUNT 2:
Infringement of U.S. Patent 8,473,746**

22. Blue Spike incorporates by reference the allegations in paragraphs above.
23. The '746 Patent is valid, is enforceable, and duly issued by the United States Patent and Trademark Office.
24. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '746 Patent—directly, contributorily,

and/or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products, in violation of 35 U.S.C. §271.

25. For example, Defendant's Accused Products listed in ¶ 8 of this complaint infringe at least claim 13 of U.S. Patent 8,473,746 which teaches

A router for routing packets, comprising:
structure for receiving a data packet, said data packet
comprising a packet watermark;
wherein said router comprises a processor; and
wherein said router is configured to use said processor to
analyze said packet watermark in said data packet to
determine a QoS associated with said data packet.

Defendant's Accused Products "perform traffic classification, traffic shaping, traffic policing, and queue scheduling" operations (*routers for routing packets*). See Huawei AR1200-S Series Enterprise Routers, at 3, *attached as* Exhibit A. "Generally, a device at the border of a network needs to re-mark precedence fields of incoming packets." Exhibit A, at 74. "Therefore, the AR1200-S is required to mark precedence fields of packets based on the network type" Exhibit A at 74. The Accused Products provide congestion avoidance and congestion management which may be configured, for example, so that "[p]ackets are marked with different DSCP priorities by SwitchA and SwitchB, and the priorities of voice, video, and data services" are each marked differently. See Exhibit A at 55. After packets are marked with a QoS priority, they may be sent to Router A which "sends packets to queues based on DSCP priorities" (*wherein said router is configured to analyze said packet watermark in said data packet to determine a QoS associated with said data packet*). Exhibit A at 55.

26. Defendant directly infringes U.S. Patent 8,473,746 the Accused Devices in the United States. Defendant has a significant presence in the United States, including offices in 13 U.S. states. *See* Huawei North America, *available at* <http://www.huawei.com/en/about-huawei/contact-us/north-america/index.html>, *attached as* Exhibit B. On information and belief, Defendant uses and tests the Accused Products in its own corporate offices. Defendant also sells the Accused Products in the United States. *See* US Rural Operators Find Huawei a Perfect Fit, *available at* <http://www.huawei.com/us/industry/customer-voices/hw-197752.htm>, *attached as* Exhibit C. In connection with Defendant's sale of the Accused Products in the United States, Defendant imports and/or builds the Accused Products in the United States.

27. Defendant has been and now is indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '746 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products for use in systems that fall within the scope of one or more claims of the '746 Patent. Such products include, without limitation, one or more of the Accused Products. Such products have no substantial non-infringing uses and are for use in systems that infringe the '746 Patent. By making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike and is thus liable to Blue Spike for infringement of the '746 Patent under 35 U.S.C. § 271. Those whom Defendant induces to infringe and/or to whose infringement Defendant contributes are the end users of the Accused Products. Defendant had knowledge of the '746 Patent at least as early as the service of this complaint and is thus liable for infringement of one or more claims of

the '746 Patent by actively inducing infringement and/or is liable as contributory infringer of one or more claims of the '746 Patent under 35 U.S.C. §271.

28. In particular, Defendant induces and contributes to the infringement of Defendant's customers who directly infringe the Patents-in-Suit through the use of the Accused Products. As indicated below, Defendant had knowledge of the Patents-in-Suit and was therefore aware that the Accused Products infringed the Patents-in-Suit. The Accused Products have no non-infringing uses, thus Defendant specifically intended for its customers to infringe the Patents-in-Suit through the sale of its Accused Products. Additionally, Defendant instructed its customers on the use of the Accused Products, and thus induced its customers to infringe and contributed to their infringement, at the very least through its instruction manuals, online technical support, customer support, and Frequently Asked Questions (FAQs). *See, e.g.*, Exhibit A.

29. Defendant's acts of infringement of the '746 Patent have caused damage to Blue Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. §271. Defendant's infringement of Blue Spike's exclusive rights under the '746 Patent will continue to damage Blue Spike, causing it irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the Court.

30. On information and belief, the infringement of the Patent-in-Suit by Defendant has been willful and continues to be willful. Defendant had knowledge of the Patent-in-Suit, including but not limited to at least one or more of the following:

- a. Through the Defendant's obligations to disclose information to the United States Patent and Trademark Office, which the Defendant is very familiar with as the world's leader for filing international patent applications in 2014.
- b. Through this patent being cited by numerous companies and agencies such as, Omnipoint Corporation, which was later acquired by T-Mobile US, Inc.
- c. Through the due diligence performed by Defendant when filing its patent applications.
- d. Through the filing of two prior complaints for patent infringement by Plaintiff against the Defendant.

Defendant was aware of the Patents-in-Suit and that the claims of the Patents-in-Suit are directed toward watermarking technology present in the Accused Products. Therefore Defendant was aware (or recklessly disregarded) that the Accused Products infringe the Patents-in-Suit.

31. On information and belief, Defendant has at least had constructive notice of the '746 Patent by operation of law.

**COUNT 3:
Infringement of U.S. Patent Re-Exam No. RE44,222**

32. Blue Spike incorporates by reference the allegations in paragraphs above.
33. The '222 Patent is valid, is enforceable, and duly issued by the United States Patent and Trademark Office.
34. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '222 Patent—directly, contributorily, and/or by inducement—by importing, making, using, offering for sale, or selling products

and devices that embody the patented invention, including, without limitation, one or more of the Accused Products, in violation of 35 U.S.C. §271.

35. For example, Defendant's Accused Products listed in ¶ 8 and ¶ 9 of this complaint infringe at least claim 24 of U.S. Patent RE44,222 which teaches

A system for secure data transmission, comprising:
a receiver to receive data;
a processor to organize the data into a plurality of packets;
a watermark generator to generate at least a portion of a packet watermark associated with at least one packet of data wherein the packet watermark is associated with verification information; and
a transmitter to transmit at least one of the plurality of data packets, *and its associated packet watermark, across a network.*

Defendant's Accused Products "perform traffic classification, traffic shaping, traffic policing, and queue scheduling" operations (*routers for routing packets*). See Huawei AR1200-S Series Enterprise Routers, at 3, *attached as Exhibit A*. "Generally, a device at the border of a network needs to re-mark precedence fields of incoming packets." Exhibit A, at 74. "Therefore, the AR1200-S is required to mark precedence fields of packets based on the network type" Exhibit A at 74. The Accused Products provide congestion avoidance and congestion management which may be configured, for example, so that "[p]ackets are marked with different DSCP priorities by SwitchA and SwitchB, and the priorities of voice, video, and data services" are each marked differently (*a packet watermark associated with at least one packet of data wherein the packet watermark is associated with verification information*). See Exhibit A at 55. After packets are marked with a QoS priority, they may be sent to Router A which "sends packets to queues based on DSCP priorities" (*a transmitter to transmit at least one of the plurality of data packets, and its associated watermark, across a network*). Exhibit A at 55.

36. Defendant directly infringes U.S. Patent RE44,222 the Accused Devices in the United States. Defendant has a significant presence in the United States, including offices in 13 U.S. states. *See* Huawei North America, *available at* <http://www.huawei.com/en/about-huawei/contact-us/north-america/index.html>, *attached as* Exhibit B. On information and belief, Defendant uses and tests the Accused Products in its own corporate offices. Defendant also sells the Accused Products in the United States. *See* US Rural Operators Find Huawei a Perfect Fit, *available at* <http://www.huawei.com/us/industry/customer-voices/hw-197752.htm>, *attached as* Exhibit C. In connection with Defendant's sale of the Accused Products in the United States, Defendant imports and/or builds the Accused Products in the United States.

37. Defendant has been and now is indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '222 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, products for use in systems that fall within the scope of one or more claims of the '222 Patent. Such products include, without limitation, one or more of the Accused Products. Such products have no substantial non-infringing uses and are for use in systems that infringe the '222 Patent. By making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike and is thus liable to Blue Spike for infringement of the '222 Patent under 35 U.S.C. § 271. Those whom Defendant induces to infringe and/or to whose infringement Defendant contributes are the end users of the Accused Products. Defendant had knowledge of the '222 Patent at least as early as the service of this complaint and is thus liable for infringement of one or more claims of

the '222 Patent by actively inducing infringement and/or is liable as contributory infringer of one or more claims of the '222 Patent under 35 U.S.C. §271.

38. In particular, Defendant induces and contributes to the infringement of Defendant's customers who directly infringe the Patents-in-Suit through the use of the Accused Products. As indicated below, Defendant had knowledge of the Patents-in-Suit and was therefore aware that the Accused Products infringed the Patents-in-Suit. The Accused Products have no non-infringing uses, thus Defendant specifically intended for its customers to infringe the Patents-in-Suit through the sale of its Accused Products. Additionally, Defendant instructed its customers on the use of the Accused Products, and thus induced its customers to infringe and contributed to their infringement, at the very least through its instruction manuals, online technical support, customer support, and Frequently Asked Questions (FAQs). *See, e.g.*, Exhibit A.

39. Defendant's acts of infringement of the '222 Patent have caused damage to Blue Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. §271. Defendant's infringement of Blue Spike's exclusive rights under the '222 Patent will continue to damage Blue Spike, causing it irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the Court.

40. On information and belief, the infringement of the Patent-in-Suit by Defendant has been willful and continues to be willful. Defendant had knowledge of the Patent-in-Suit, including but not limited to at least one or more of the following:

a. Through the Defendant's obligations to disclose information to the United Patent and Trademark Office, which the Defendant is very familiar with as the world's leader for filing international patent applications in 2014.

b. This patent discloses inventions in the exact field of Defendant's product offerings, such as, Claim 24, that recites:

A system for secure data transmission, comprising:

a receiver to receive data;

a processor to organize the data into a plurality of packets;

a watermark generator to generate at least a portion of a packet watermark associated with at least one packet of data wherein the packet watermark is associated with verification information; and

a transmitter to transmit at least one of the plurality of data packets, and its associated packet watermark, across a network.

c. Through the due diligence performed by Defendant when filing its patent applications.

d. Through the filing of two prior complaints for patent infringement by Plaintiff against the Defendant.

Defendant was aware of the Patents-in-Suit and that the claims of the Patents-in-Suit are directed toward watermarking technology present in the Accused Products. Therefore Defendant was aware (or recklessly disregarded) that the Accused Products infringe the Patents-in-Suit.

41. On information and belief, Defendant has at least had constructive notice of the '222 Patent by operation of law.

**COUNT 4:
Infringement of U.S. Patent Re-Exam RE44,307**

42. Blue Spike incorporates by reference the allegations in paragraphs above.
43. The '307 Patent is valid, is enforceable, and duly issued by the United States Patent and Trademark Office.
44. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '307 Patent—directly, contributorily, and/or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products, in violation of 35 U.S.C. §271.
45. For example, Defendant's Accused Products listed in ¶ 8 and ¶ 9 of this complaint infringe at least claim 1 of U.S. Patent RE44307 which teaches

A process for provisioning a stream of data, comprising:
receiving a stream of data;
organizing the stream of data into a packet flow comprising
a plurality of packets;
generating, using a processor, a packet watermark
associated with the packet flow wherein the packet
watermark enables discrimination between packet
flows;
combining, using a processor, the packet watermark with
each of the plurality of packets to form watermarked
packets; and
provisioning at least one of the watermarked packets across
a network.

Defendant's Accused Products "perform traffic classification, traffic shaping, traffic policing, and queue scheduling" operations. *See* Huawei AR1200-S Series Enterprise Routers, at 3, *attached as* Exhibit A. "Generally, a device at the border of a network needs to re-mark precedence fields of incoming packets." Exhibit A, at 74. "Therefore, the AR1200-S is required to mark precedence fields of packets based on the network

type” Exhibit A at 74. The Accused Products provide congestion avoidance and congestion management which may be configured, for example, so that “[p]ackets are marked with different DSCP priorities by SwitchA and SwitchB, and the priorities of voice, video, and data services” are each marked differently (*generating, using a processor, a packet watermark associated with the packet flow wherein the packet watermark enables discrimination between packet flows*). See Exhibit A at 55. After packets are marked with a QoS priority, they may be sent to Router A which “sends packets to queues based on DSCP priorities” (*provisioning at least one of the watermarked packets across a network*). Exhibit A at 55.

46. Defendant directly infringes U.S. Patent RE44307 the Accused Devices in the United States. Defendant has a significant presence in the United States, including offices in 13 U.S. states. See Huawei North America, available at <http://www.huawei.com/en/about-huawei/contact-us/north-america/index.html>, attached as Exhibit B. On information and belief, Defendant uses and tests the Accused Products in its own corporate offices. Defendant also sells the Accused Products in the United States. See US Rural Operators Find Huawei a Perfect Fit, available at <http://www.huawei.com/us/industry/customer-voices/hw-197752.htm>, attached as Exhibit C. In connection with Defendant’s sale of the Accused Products in the United States, Defendant imports and/or builds the Accused Products in the United States.

47. Defendant has been and now is indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the ’307 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling,

without license or authority, products for use in systems that fall within the scope of one or more claims of the '307 Patent. Such products include, without limitation, one or more of the Accused Products. Such products have no substantial non-infringing uses and are for use in systems that infringe the '307 Patent. By making, using, importing offering for sale, and/or selling such products, Defendant injured Blue Spike and is thus liable to Blue Spike for infringement of the '307 Patent under 35 U.S.C. § 271. Those whom Defendant induces to infringe and/or to whose infringement Defendant contributes are the end users of the Accused Products. Defendant had knowledge of the '307 Patent at least as early as the service of this complaint and is thus liable for infringement of one or more claims of the '307 Patent by actively inducing infringement and/or is liable as contributory infringer of one or more claims of the '307 Patent under 35 U.S.C. §271.

48. In particular, Defendant induces and contributes to the infringement of Defendant's customers who directly infringe the Patents-in-Suit through the use of the Accused Products. As indicated below, Defendant had knowledge of the Patents-in-Suit and was therefore aware that the Accused Products infringed the Patents-in-Suit. The Accused Products have no non-infringing uses, thus Defendant specifically intended for its customers to infringe the Patents-in-Suit through the sale of its Accused Products. Additionally, Defendant instructed its customers on the use of the Accused Products, and thus induced its customers to infringe and contributed to their infringement, at the very least through its instruction manuals, online technical support, customer support, and Frequently Asked Questions (FAQs). *See, e.g.,* Exhibit A.

49. Defendant's acts of infringement of the '307 Patent have caused damage to Blue Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as a

result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. §271. Defendant's infringement of Blue Spike's exclusive rights under the '307 Patent will continue to damage Blue Spike, causing it irreparable harm, for which there is no adequate remedy at law, warranting an injunction from the Court.

50. On information and belief, the infringement of the Patent-in-Suit by Defendant has been willful and continues to be willful. Defendant had knowledge of the Patent-in-Suit, including but not limited to at least one or more of the following:

- a. Through the Defendant's obligations to disclose information to the United Patent and Trademark Office, which the Defendant is very familiar with as the world's leader for filing international patent applications in 2014.
- b. Through the due diligence performed by Defendant when filing its own patent applications in this same field.
- c. Through its knowledge of U.S. Patent 7,530,102 that the United States Patent and Trademark Office later reissued as the '307 Patent.
- d. Through the filing of two prior complaints for patent infringement by Plaintiff against the Defendant.

Defendant was aware of the Patents-in-Suit and that the claims of the Patents-in-Suit are directed toward watermarking technology present in the Accused Products. Therefore Defendant was aware (or recklessly disregarded) that the Accused Products infringe the Patents-in-Suit.

51. On information and belief, Defendant has at least had constructive notice of the '307 Patent by operation of law.

REQUEST FOR RELIEF

Blue Spike incorporates each of the allegations above and respectfully asks the Court to:

- (a) enter a judgment that Defendant has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of each of the Patent-in-Suit;
- (b) enter a judgment awarding Blue Spike all damages adequate to compensate it for Defendant's infringement of, direct or contributory, or inducement to infringe, the Patent-in-Suit, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. §284 for Defendant's willful infringement of one or more of the Patent-in-Suit;
- (d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the Patent-in-Suit;
- (e) enter a judgment requiring Defendant to pay the costs of this action, including all disbursements, and attorneys' fees as provided by 35 U.S.C. §285, together with prejudgment interest; and
- (f) award Blue Spike all other relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Blue Spike demands a jury trial on all issues that may be determined by a jury.

Respectfully submitted,

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Counsel for Blue Spike, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this date stamped above.

/s/ Randall T. Garteiser
Randall T. Garteiser