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

MYMAIL, LTD.,	§	
	§	
Plaintiff,	§	
	§	**C.A. No. 2:16-cv-01280-JRG-RSP**
v.	§	
	§	**Jury Trial Demanded**
COMCAST CABLE	§	
COMMUNICATIONS, LLC,	§	
	§	
Defendant.		

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff MyMail, Ltd. files this First Amended Complaint against Comcast Cable Communications, LLC and alleges as follows.

PARTIES

1.   Plaintiff MyMail, Ltd. ("MyMail") is a Texas Limited Partnership with an office and place business at 5344 County Road 3901, Athens, TX 75752. MyMail was founded in 2003 as an intellectual property development and licensing company to provide secure, internet-related services and efficient web page interaction to internet service providers, mobile device manufacturers, network carriers, and internet related toolbar developers. MyMail developed technology providing for the dynamic updating, changing, or modification of toolbar data from remote servers (the "MyMail Toolbar Technology"). Using the MyMail Toolbar Technology, toolbar providers can, for example, dynamically change elements, functions, and buttons on their toolbar(s) for specific, targeted users based on use and individual searches. MyMail has obtained patents covering the MyMail Toolbar Technology and has successfully licensed the patented technology to toolbar providers.

2.   Upon information and belief, Defendant Comcast Cable Communications, LLC ("Comcast") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1701 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. Upon information and belief, Defendant Comcast Cable Communications, LLC is a wholly owned subsidiary of Comcast Corporation. Comcast may be served with process through its registered agent, Comcast Capital Corporation, 1201 N. Market Street, Suite 1000, Wilmington, Delaware 18201.

JURISDICTION AND VENUE

3.   This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4.   Comcast is engaged in the business of publishing and distributing a browser plug-in that seamlessly integrates with Microsoft Internet Explorer and Mozilla Firefox and appears in a user's browser to provide alerts about selected videos, channel updates, and "Free Games" and functions as a resource for content featured on xfinity.com from any web page location (the "xfinity Toolbar"). The xfinity Toolbar docks itself to a device's browser when installed and sits atop the browser at all times. Comcast publishes, promotes and distributes the xfinity Toolbar to users in the United States, including users within this District.

5.   Upon information and belief, Comcast is subject to this Court's specific personal jurisdiction because Comcast does business in the State of Texas and has committed acts of infringement in the State of Texas as alleged below. In particular, upon information and belief, Comcast is subject to the specific personal jurisdiction of this Court because MyMail's claims for patent infringement against Comcast arise from its acts of infringement in the State of Texas.

These acts of infringement include providing the infringing xfinity Toolbar to users of the xfinity Toolbar in the State of Texas and causing the browser on a user device to display the toolbar and perform the other functions of one or more claims of the Asserted Patents (defined below). Therefore, this Court has personal jurisdiction over the Comcast under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Comcast has engaged in acts of infringement in the State of Texas described here sufficient to subject it to personal jurisdiction in this District if the District were a separate State.

THE PATENTS-IN-SUIT

7. On September 25, 2012 the United States Patent and Trademark Office issued United States Patent No. 8,275,863 (the "'863 Patent") entitled "Method of Modifying a Toolbar," a true copy of which is attached as Exhibit 1.

8. On April 28, 2015, the United States Patent and Trademark Office issued United States Patent No. 9,021,070 (the "'070 Patent") entitled "Dynamically Modifying a Toolbar," a true copy of which is attached as Exhibit 2. The '070 Patent is a continuation of the '863 Patent. The '863 and '070 Patents are collectively referred to as the "Asserted Patents."

9. MyMail is the assignee of the '863 and '070 Patents, and has the exclusive right to sue for and recover all past, present and future damages for infringement of the Asserted Patents.

ALLEGATIONS COMMON TO ALL CLAIMS

10. The xfinity Toolbar software causes the toolbar to be displayed on a user Internet device (*i.e.,* a device that can communicate with other devices via the Internet) that includes
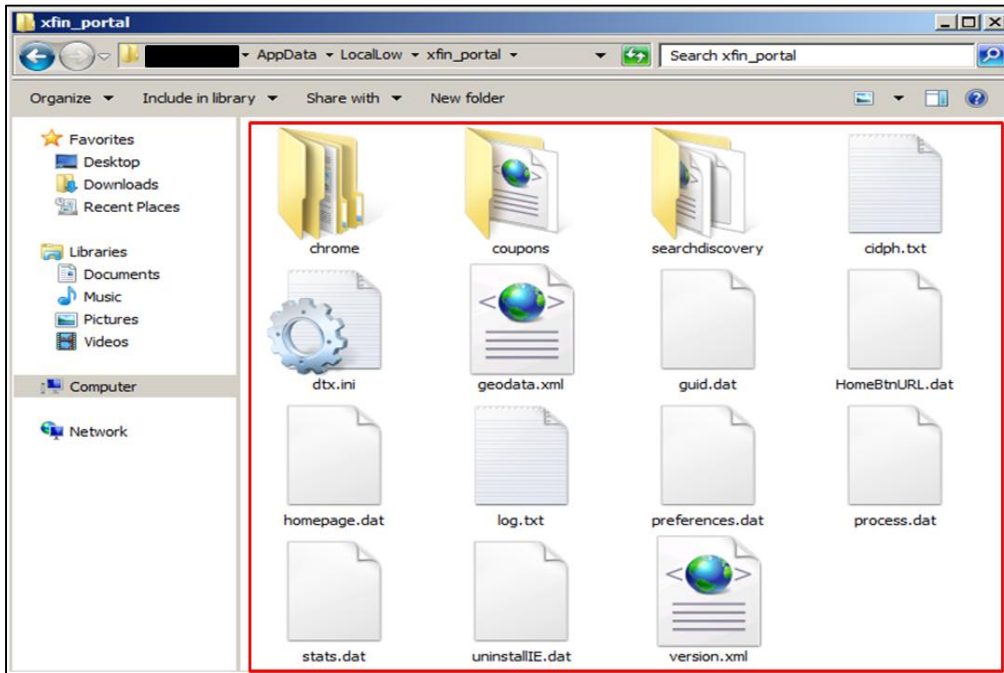
toolbar buttons. For example, the xfinity Toolbar displayed on a user's Internet device includes

the "Mail", "xfinity.com," "Coupons," and "Weather" buttons indicated in FIGURE 1.
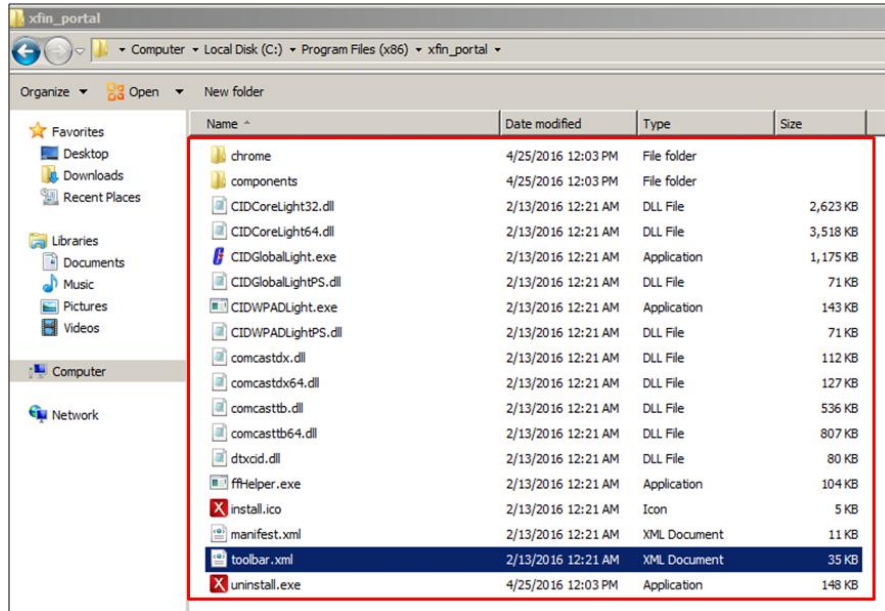
FIGURE 1
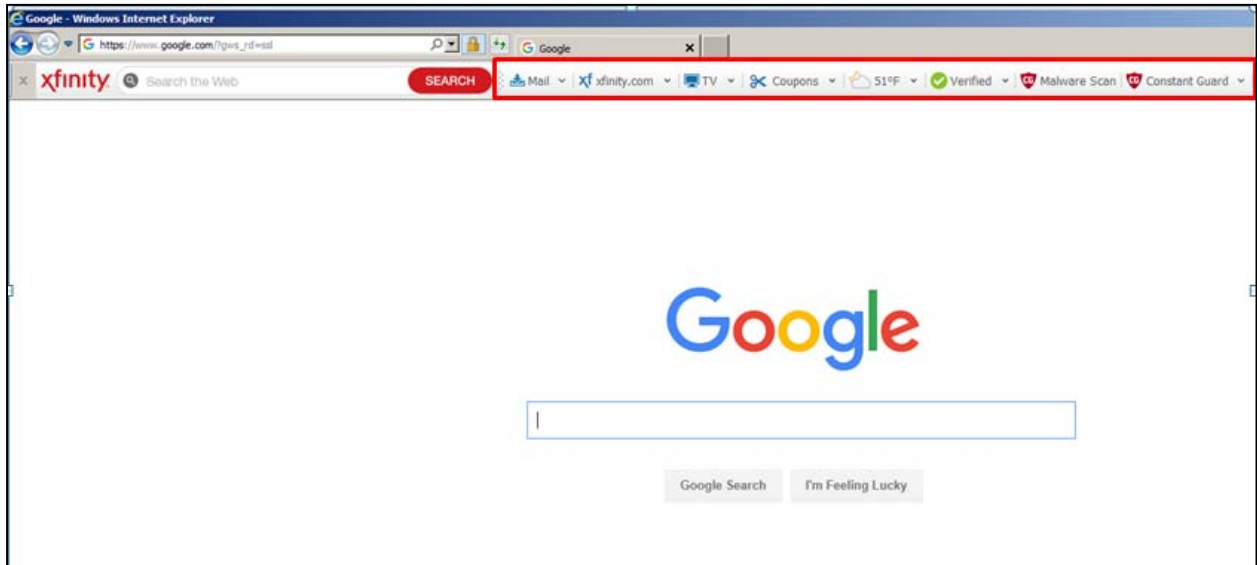
11.   The toolbar buttons on the xfinity Toolbar are defined by toolbar data stored in

toolbar-defining databases. In particular, the toolbar buttons on the xfinity Toolbar are defined

by toolbar data as indicated in FIGURE 2 below stored in the "AppData/LocalLow/Xfin_Portal"

folder on the user Internet device:

FIGURE 2

12.   The toolbar buttons on the xfinity Toolbar are also defined by toolbar data stored in toolbar-defining databases.   In particular, the toolbar buttons on the xfinity Toolbar are defined by toolbar data as indicated in FIGURE 3 below stored in the "%Program Files (x86)/XFIN_Portal" folder on the user Internet device:

FIGURE 3

13.   The toolbar buttons are also defined by toolbar data as indicated below in FIGURE 4 stored in the Windows System Registry on the user Internet device:

FIGURE 4
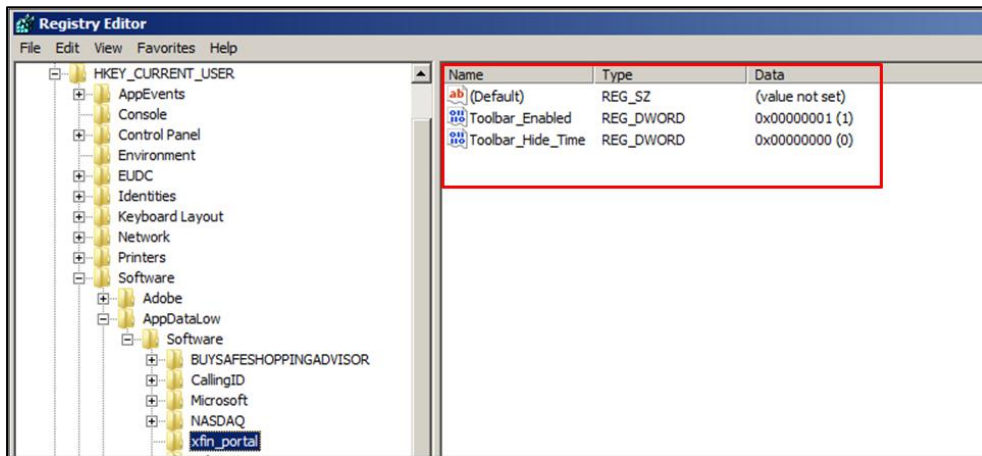
14.   The   "%AppData/LocalLow/Xfin_Portal"   and   "%Program   Files (x86)/XFIN_Portal" folders, and the Windows System Registry constitute one or more toolbar defining databases of the user Internet device.

15.   The toolbar data of the xfinity Toolbar comprises a plurality of toolbar button attributes associated with one or more toolbar buttons of the toolbar. For example, as shown below in FIGURE 5, the toolbar data in the "Toolbar.xml" file in the "%Program Files (x86)/XFIN_Portal" folder on the user Internet device includes a plurality of toolbar button attributes associated with the toolbar buttons of the toolbar:

FIGURE 5

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- <toolbarbutton title="Mail" ie="true" id="xfin_portal-mail" class="xfin_portal-toolbarbutton" index="83" tooltiptext="Xfinity mail" track="true"
  oncommand="xfin_portal.toolbar.getElementById('xfin_portal-mailvoice-popup').showPopup(this.target,0,0);"
  image="chrome://xfin_portal/skin/nomail.png" optional="false" separator="true" nomailover="chrome://xfin_portal/skin/nomail-over.png"
  nomail="chrome://xfin_portal/skin/nomail.png" label="Mail" havemailimageover="chrome://xfin_portal/skin/mail-over.png"
  havemailimage="chrome://xfin_portal/skin/mail.png" downarrow="true">
  - <menupopup ie="true" id="xfin_portal-mailvoice-popup" track="true">
      <menuitem ie="true" id="xfin_portal-email" class="xfin_portal-menuitem" index="0" tooltiptext="Email" track="true"
        oncommand="loadURI('https://login.comcast.net/login?s=wnamp&ts=' + xfin_portal.getEncodedTimestamp());" label="Email"
        itemindex="0"/>
      <menuitem ie="true" id="xfin_portal-voicemail" class="xfin_portal-menuitem" index="1" tooltiptext="Voicemail" track="true"
        oncommand="loadURI('http://vmail.connect.comcast.net/voice/');" label="Voicemail" itemindex="1"/>
  </menupopup>
</toolbarbutton>
- <toolbarbutton title="Channels" persist="hidden index" ie="true" id="xfin_portal-channels" hidden="false" class="xfin_portal-toolbarbutton"
  index="101" tooltiptext="Xfinity Channels" type="menu-button" track="true" onmouseover="this.target.setAttribute('image',
  'chrome://xfin_portal/skin/XF_16x16_Favicon-over.png')" onmouseout="this.target.setAttribute('image',
  'chrome://xfin_portal/skin/XF_16x16_Favicon.png')" image="chrome://xfin_portal/skin/XF_16x16_Favicon.png" optional="false"
  separator="true" label="xfinity.com" href="http://www.comcast.net/?cid=toolbar_button&attr=xfinity.com">
  - <menupopup ie="true" id="xfin_portal-menupopup1968" track="true">
      <menuitem ie="true" id="xfin_portal-channels-autos" class="xfin_portal-menuitem" index="0" track="true" image="" label="Autos"
        itemindex="0" href="http://www.bankrate.com/partners/cmcta/auto-loan-center.aspx?ec_id=cmcta-auto-
        channel&cid=toolbar_button&attr=autos"/>
    - <menu ie="true" id="xfin_portal-submenu-constant-guard" class="xfin_portal-menuitem" index="1" type="menu" track="true"
      image="chrome://xfin_portal/skin/cg.png" label="Constant Guard" itemindex="1">
      - <menupopup ie="true" id="xfin_portal-menupopup1930" class="xfin_portal-menu" track="true">
          <menuitem ie="true" id="xfin_portal-channels-Constant-Guard" class="xfin_portal-menuitem" track="true"
            image="chrome://xfin_portal/skin/cg.png" label="Constant Guard" href="https://constantguard.comcast.net/"/>
          <menuitem ie="true" id="xfin_portal-channels-report-online-abuse" class="xfin_portal-menuitem" index="1" track="true"
            image="" label="Report Online Abuse" itemindex="1" href="https://constantguard.comcast.net/dedicated-
            support/submitting-reports"/>
      </menupopup>
    </menu>
      <menuitem ie="true" id="xfin_portal-channels-dating" class="xfin_portal-menuitem" index="2" track="true" image="" label="Dating"
        itemindex="2" href="http://xfinity.match.com/?trackingid=528009&bannerid=1452373" imagewidth="16" imageheight="16"/>
      <menuitem ie="true" id="xfin_portal-channels-entertainment" class="xfin_portal-menuitem" index="3" track="true" image=""
        label="Entertainment" itemindex="3" href="http://www.comcast.net/entertainment/?
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16.   At least one of the toolbar button attributes (for example, in the "Toolbar.xml" toolbar data) identifies a function to be performed by a specific toolbar button upon actuation of the toolbar button. For example, as shown in FIGURE 6 below, the "xfinity.com" toolbar button attribute includes a function to be performed when the button is actuated:

FIGURE 6

17.   The xfinity Toolbar performs "A method of modifying a toolbar …" For example, as shown below in FIGURE 7 the xfinity Toolbar communicates with server at IP Address 72.55.140.126, to modify the xfinity Toolbar with, for example, updated weather information for ZIP code 19102 (Philadelphia):

FIGURE 7

18.   The xfinity Toolbar further performs the step of "invoking, from the user Internet device without user intervention, communication of information associated with the one or more toolbar-defining databases to a server associated with a network address."   For example, as shown below in FIGURES 8 and 9 a GET request sent from a user Internet device to server associated with the IP address 72.55.140.126. The GET request contains information associated with the toolbar-defining database such as, for example, the ZIP code 19102 that is associated with the toolbar data stored in the "preferences.dat" file in the "AppData/LocalLow/xfin_portal" folder on the user Internet device.

FIGURE 8

FIGURE 9

19.   The GET request is sent from the user Internet device without user intervention. For example, as shown below in FIGURE 10, the xfinity Toolbar automatically sends a GET request every few seconds, without user intervention, to obtain weather information such as temperature.

FIGURE 10

20.   The xfinity Toolbar further performs the step of "receiving, at the server, the information associated with the one or more toolbar-defining databases." For example, as shown above in FIGURES 8 and 9, the server at IP address 72.55.140.126 receives a GET request from the user Internet device that contains information associated with the toolbar-defining database

such as, for example, the ZIP code 19102 that is associated with the toolbar data stored in the "preferences.dat" file in the "AppData/LocalLow/xfin_portal" folder on the user Internet device.

21.   On information and belief, the server at IP address 72.55.140.126 receives the information associated with the one or more toolbar-defining databases because, as shown below in FIGURES 11, 12, and 13, the server responds to the GET request by sending updated toolbar data to the user Internet device such as, for example, updated weather information for ZIP code 19102.

FIGURE 11

FIGURE 12

FIGURE 13

22.   The xfinity Toolbar further performs the step of "determining, based on the information associated with the one or more toolbar-defining databases, that the user Internet device should receive updated toolbar data." On information and belief, the server at IP address

72.55.140.126 determines, based on the information associated with the toolbar-defining database such as, for example, the ZIP code 19102, that the user Internet device should receive updated toolbar data such as, for example, updated weather information for ZIP code 19102 because, as shown above in FIGURES 11, 12, and 13, the server responds to the GET request by sending updated toolbar data to the user Internet device.

23.   The xfinity Toolbar further performs the step of "receiving, at the user Internet device, the updated toolbar data in response to determining that the user Internet device should receive the updated toolbar data." For example, as shown above in FIGURES 11, 12, and 13, the user Internet device receives the updated toolbar data such as, for example, the updated weather information for ZIP code 19102, in the form of TEXT/XML messages from the server at IP address 72.55.140.126. On information and belief, the server sends the updated toolbar data in response to determining that the user Internet device should receive updated toolbar data.

24.   The xfinity Toolbar further performs the step of "initiating, at the user Internet device and without user interaction, an operation to update the toolbar data in accordance with the received updated toolbar data." For example, as shown above in FIGURES 11, 12, and 13, the user Internet device receives the updated toolbar data such as, for example, updated weather data for the ZIP code 19102, in the form of TEXT/XML messages from the server at IP address 72.55.140.126. As shown below in FIGURE 14, for example, the user Internet device, without user interaction, updates the toolbar data by, for example, displaying the latest ZIP code 19102 weather information on the "Weather" button in accordance with the received updated toolbar data.
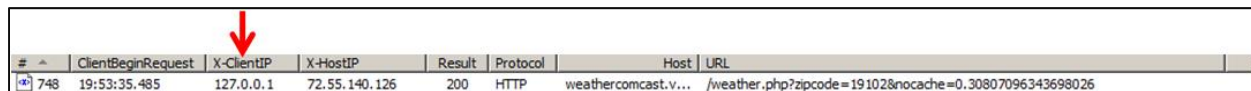
FIGURE 14

25.   The xfinity Toolbar further performs the step of "updating the toolbar data at the user Internet device based on the operation and in accordance with the updated toolbar data, thereby updating the toolbar data, the updating comprising … updating the toolbar data to modify an attribute of at least one of the one or more toolbar buttons of the toolbar." For example, as shown above in FIGURE 14, the xfinity Toolbar modifies an attribute of at least one of the toolbar buttons such as, for example, by displaying the updated ZIP code 19102 weather information on the "Weather" button of the toolbar in accordance with the updated toolbar data.

26.   The xfinity Toolbar further performs the step of "displaying at the user Internet device the toolbar as defined by the updated toolbar data, wherein the information associated with the toolbar data includes at least … [an] IP address…" For example, as shown below in FIGURE 15, the information associated with the toolbar data includes an IP address.

FIGURE 15

27.   The xfinity Toolbar performs each of the functions described in one or more claims of the Asserted Patents, including the functions described above. In particular, the xfinity Toolbar software embedded in the browser of the user Internet device and remotely located, such as on a server remote from the user Internet device, instructs these devices to perform these functions. The xfinity Toolbar, therefore, directs and controls the functions of the user Internet device and the remote device(s) that perform the functions described above.

28.   To the extent any third party performs any of the functions described above, the performance of such functions is attributable to the xfinity Toolbar because it directs and controls the performance of those functions.

CLAIM 1 – INFRINGEMENT OF U.S. PATENT NO. 8,275,863

29.   Plaintiff incorporates paragraphs 1 through 28 as though fully set forth herein.

30.   Upon information and belief, Comcast has been and is now directly infringing one or more claims of the '863 Patent by using the xfinity Toolbar (including use for testing purposes) in the United States in violation of 35 U.S.C. § 271(a). The xfinity Toolbar performs the method of modifying a toolbar as described in one or more of the claims of the '863 Patent.

31.   Plaintiff has been damaged by Comcast's infringing activities.

CLAIM 2 – INFRINGEMENT OF U.S. PATENT NO. 9,021,070

32.   Plaintiff incorporates paragraphs 1 through 28 as though fully set forth herein.

33.   Upon information and belief, Comcast has been and is now directly infringing one or more claims of the '070 Patent by using (including for testing purposes) the xfinity Toolbar in violation of 35 U.S.C. § 271(a). The xfinity Toolbar performs the method for dynamically modifying a toolbar described and claimed in the '070 Patent.

34.   Plaintiff has been damaged by Comcast's infringing activities.

DEMAND FOR JURY TRIAL

35.   Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1.   A judgment in favor of Plaintiff that Comcast has directly infringed one or more claims of the Asserted Patents;

2.   A judgment and order requiring Comcast to pay Plaintiff damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages in no event shall be less

than a reasonable royalty for the use made of the inventions of the Asserted Patents, including

pre- and post-judgment interest and costs, including expenses and disbursements; and

     3.   Any and all such further necessary relief as the Court may deem just and proper

under the circumstances.

Dated: February 1, 2017

Respectfully submitted,

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