IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTERNATIONAL LICENSE EXCHANGE OF AMERICA, LLC	**Civil Action No. 1:16-cv-00720-RGA**
Plaintiff,	
v.	**JURY TRIAL DEMANDED**
VIASAT, INC.	
Defendant.	

FIRST[1] AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff International License Exchange of America, LLC ("ILEA" or "Plaintiff"), for its

First Amended Complaint against Defendant ViaSat, Inc. ("ViaSat" or "Defendant"), alleges the

following:

NATURE OF THE ACTION

1.   This is an action for patent infringement arising under the Patent Laws of the

United States, 35 U.S.C. § 1 *et seq*.

THE PARTIES

2.   Plaintiff is a corporation organized under the laws of the State of Delaware with a

place of business at 10 Balligomingo Rd., West Conshohocken, PA 19428.

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[1] On March 21, 2017, Plaintiff attached a First Amended Complaint for Patent Infringement as Exhibit A (Dkt. 10-1) to its Response in Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint (Dk.t 10). However, the First Amended Complaint was never entered into the record. Accordingly, Plaintiff now files this First Amended Complaint for Patent Infringement in response to Judge Andrews' Oral Order dated May 19, 2017 (Dkt. 15) granting Plaintiff leave to file an amended complaint.

3.   Upon information and belief, ViaSat is a corporation organized and existing under the laws of Delaware, with a place of business at 6155 El Camino Real, Carlsbad, CA 92009, and can be served through its Delaware registered agent The Prentice-Hall Corporation System, Inc. at 2711 Centerville Rd. Suite 400 Wilmington, DE 19808. Upon information and belief, ViaSat sells and offers to sell products and services throughout the United States, and introduces products and services into the stream of commerce and that incorporate infringing technology knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

4.   This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5.   This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Further, the patent asserted has already been the subject of a case transferred to this Court under Case No.: 1:15−cv−00869−SLR.

6.   Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), (d) and/or 1400(b). ViaSat is incorporated in Delaware.

7.   On information and belief, Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has sufficient minimum contacts within the State of Delaware and this District, pursuant to due process and/or the Delaware Long Arm Statute because Defendant purposefully availed itself of the privileges of conducting business in the State of Delaware and in this District. Importantly, this Court has personal jurisdiction over Defendant because it is incorporated in Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. RE40,999

8.   The allegations set forth in the foregoing paragraphs 1 through 7 are incorporated into this First Claim for Relief.

9.   On November 24, 2009, U.S. Patent No. RE40,999 ("the '999 patent"), entitled "VLAN Frame Format," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '999 patent is attached as Exhibit 1. The '999 patent is part of a family of eleven U.S. patents stemming from U.S. Pat. No. 5,959,990.

10.   The inventive embodiments of the '999 patent resolve technical problems related to virtual local area network ("VLAN") and methods to format a data frame in VLAN network devices.

11.   The claims of the '999 patent do not merely recite the performance of some business practice known from the pre-Internet world along with a requirement to perform it on the Internet. Instead, the claims of the '999 patent recite one or more inventive concepts that are rooted in computerized electronic data communications networks, and an improved method operate such networks and to maintain the interoperability of different physical configurations of such networks.

12.   The claims of the '999 patent recite an invention that is not merely the routine or conventional use of electronic devices for communications. Instead, among other things, the invention adds new features to integrate Ethernet and other protocols together on a shared network. The '999 patent claims thus include improvements for, for example, formatting data frames to yield a desired result.

13.   The technology claimed in the '999 patent does not preempt all ways of using computerized devices or transmitting information over networks, nor preempt any other well-known or prior art technology.

14.   Accordingly, each claim of the '999 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

15.   Plaintiff is the assignee and owner of the right, title and interest in and to the '999 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

16.   Upon information and belief, Defendant had and continued to directly infringe at least claims 1, 7, 11 and 12 of the '999 patent by having made, used, sold, and/or imported without authority within the United States, a method to format a data frame in VLAN or WLAN network devices; for example, depending on the physical configuration of a VLAN or WLAN, the embodiments include a method to adjust the format of a data frame to reflect the characteristics of the particular physical configuration of the VLAN or WLAN (the "'999 Accused Instrumentalities"). The '999 Accused Instrumentalities include at least ViaSat's Managed Broadband Services, LinkStar System, Exede (Business) Internet Service, and enterprise network terminals (*e.g.* Exede Pro) and modems (*e.g.* MEOLink), Exede/Wildblue Ethernet network service, Exede Voice, O3b Network, Wireless IFE (W-IFE), and transmission controllers (*e.g.* Compact xPEP) that support and/or comply with IEEE 802.1Q or 802.1x, use of which reads on the following '999 patent claims.

17.   Exhibit 3 is a copy of an example claim chart for the '999 patent. Slides (14 – 52) show how the IEEE standards 802.1Q read on the claims 1, 7, 11, and 12. Slide 61 shows another standard, 802.1x, that includes analogies to the 802.1Q standard and would also read on the claims; 802.1x is used in wireless LANs (WLAN). The rest of the slides provide example ViaSat services and products that use 802.1Q or 802.1x tagging, services and products used by

ViaSat. Thus, on information and belief, ViaSat practiced at least '999 patent claims 1, 7, 11, and 12.

18.   Slides 3 – 13 of Exhibit 3 are directed to services and products that were presented in the original Complaint. Slides 53 – 64 show additional ViaSat services and products that are believed to also read on claims 1, 7, 11, and 12.

19.   In particular, claim 1 of the '999 patent generally recites a method of identifying a virtual network associated with a data frame when transmitting the data frame between a communications medium and a shared communications medium; where the method comprises: a) receiving the data frame from the communications medium, where the data frame includes a first type field and a data field; b) inserting a second type field at a location within the data frame preceding the first type field, a value of the second type field indicating the data frame include a virtual network identifier field, c) inserting the virtual network identifier field at a location between the second type field and the first type field; d) assigning a first value to the virtual network identifier field, the first value corresponding to the virtual network; and e) transmitting the data frame over the shared communications medium.

20.   On information and belief, ViaSat's use of the '999 Accused Instrumentalities read on at least claim 1 of the '999 patent. *See*, *e.g.*, Exhibit 3, slides 27 – 38 (standards read on claim 1), and the slides directed to ViaSat products and services.

21.   Claim 7 of the '999 patent generally recites a method of identifying a virtual network associated with a data frame when transmitting the data frame between a communications medium and a shared communications medium, where the method comprises: a) receiving the data frame from the communications medium, the data frame including a length field and a data field; b) inserting a type field at a location within the data frame preceding the

length field, a value of the type field indicating the data frame includes a virtual network

identifier field; c) inserting the virtual network identifier field at a location between the type field

and the length field, d) assigning a first value to the virtual network identifier field, the first value

corresponding to the virtual network; and e) transmitting the data frame over the shared

communications medium.

22.   On information and belief, ViaSat's use of the '999 Accused Instrumentalities

read on at least claim 7 of the '999 patent. *See*, *e.g*., Exhibit 3, slides 15 – 26 (standards read on

claim 7), and all the slides directed to ViaSat products and services.

23.   Claim 11 of the '999 patent generally recites, in a network device, a method of

transmitting a virtual network identifier in a data frame transmitted on a shared communications

medium coupled to the network device, comprising: a) transmitting a preamble field, b)

transmitting a destination and source media access control address field; c) transmitting a first

type field whose contents indicate the virtual network identifier is present in the data frame; d)

transmitting a virtual network identifier field containing the virtual network identifier; e)

transmitting a second type field whose contents indicate a protocol type associated with the data

frame; and, f) transmitting a data field.

24.   On information and belief, ViaSat's use of the '999 Accused Instrumentalities

read on at least claim 11 of the '999 patent. *See*, *e.g*., Exhibit 3, slides 39 – 51 (standards read on

claim 11).

25.   Claim 12 of the '999 patent generally recites the method of claim 11, wherein the

virtual network identifier field is 4 bytes.

26.   On information and belief, ViaSat's use of the '999 Accused Instrumentalities read on at least claim 12 of the '999 patent. *See*, *e.g*., Exhibit 3, slide 52 (standards read on claim 12).

27.   On information and belief, these '999 Accused Instrumentalities were made, used, marketed, and/or imported by Defendant for Defendant's partners, clients, customers and end users across the country and in this District.

28.   Plaintiff has been harmed by Defendant's infringing activities.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,959,990

29.   The allegations set forth in the foregoing paragraphs 1 through 28 are incorporated into this Second Claim for Relief.

30.   On September 28, 1999, U.S. Patent No. 5,959,990 ("the '990 patent"), entitled "VLAN Frame Format," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '990 patent is attached as Exhibit 2. The application leading to the'990 patent is the ultimate priority application for U.S. Pat. Nos. RE40999, RE44775, RE45065, RE45081, RE45095, RE45121, RE45521. RE45598, RE45708, each of which recited subject matter supported by the same written description.

31.   The inventive embodiments of the '990 patent resolve technical problems related to virtual local area network ("VLAN") and methods to format a data frame in VLAN network devices.

32.   The claims of the '990 patent do not merely recite the performance of some business practice known from the pre-Internet world along with a requirement to perform it on the Internet. Instead, the claims of the '990 patent recite one or more inventive concepts that are rooted in computerized electronic data communications networks, and an improved method

operate such networks and to maintain the interoperability of different physical configurations of such networks.

33.   The claims of the '990 patent recite an invention that is not merely the routine or conventional use of electronic devices for communications. Instead, for example, the invention adds new features to integrate Ethernet and other protocols together on a shared network. The '990 patent claims thus include improvements for, for example, formatting data frames to yield a desired result.

34.   The technology claimed in the '990 patent does not preempt all ways of using computerized devices or transmitting information over networks, nor preempt any other well-known or prior art technology.

35.   Accordingly, each claim of the '990 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

36.   Plaintiff is the assignee and owner of the right, title and interest in and to the '990 patent, including the right to assert all causes of action arising under the patents and the right to any remedies for infringement of them.

37.   Upon information and belief, Defendant had and continued to directly infringe at least claim 1 of the '990 patent by having made, used, sold, imported and/or provided for use without authority within the United States, a method to transmit a data frame in VLAN or WLAN network devices; for example, depending on the physical configuration of a VLAN or WLAN, the embodiments include a system to transmit a formatted data frame to reflect the characteristics of the particular physical configuration of the VLAN or WLAN (the "'990 Accused Instrumentalities"). The '990 Accused Instrumentalities include at least ViaSat's

Managed Broadband Services, LinkStar System, Exede (Business) Internet Service, and enterprise network terminals (*e.g*. Exede Pro) and modems (*e.g*. MEOLink), Exede Ethernet network service, Exede Voice, O3b Network, Wireless IFE (W-IFE), and transmission controllers (*e.g*. Compact xPEP) that support and/or comply with IEEE 802.1Q or 802.1x, use of which reads on the following '990 patent claim.

38.   Exhibit 4 is a copy of an example claim chart for the '990 patent. Slides (1 – 7) show how the IEEE standards 802.1Q read on claim 1. Slide 61 (Exhibit 3) shows another standard, 802.1x, that includes analogies to the 802.1Q standard and would also read on the '990 patent claim 1; 802.1x is used in wireless LANs (WLAN). ViaSat uses its own services and products that use 802.1Q or 802.1x tagging; the services and products are shown in Exhibit 3, slides 1 – 13, 53 - 64. Thus, on information and belief, ViaSat practiced at least '990 patent claim 1.

39.   In particular, claim 1 of the '990 patent generally recites a method in a network device. The method includes transmitting, on a shared communications medium coupled to the network device, a data frame associated with a virtual network, comprising the steps of: a) transmitting a data frame having a type field whose contents indicate the data frame comprises a virtual network identifier field; and, b) transmitting the virtual network identifier field whose contents indicate the virtual network associated with the data frame.

40.   On information and belief, ViaSat's use of the '990 Accused Instrumentalities read on and infringe at least claim 1 of the '990 patent. *See*, *e.g.* Exhibit 4, slides 1 – 7 (standards read on claim 1). Exhibit 3 slides 1 – 13, 53 – 64 are directed to ViaSat products and services that use the standards.

41.   On information and belief, these '990 Accused Instrumentalities were used, marketed, provided to, and/or used by or for Defendant's partners, clients, customers and end users across the country and in this District.

42.   Plaintiff has been harmed by Defendant's infringing activities.

43.   Because the '999 patent family claims are necessary to practice IEEE 802.1Q technology, ILEA had agreed to license users (*e.g.* ViaSat) of IEEE 802.1Q and 802.1x technologies under the '999 patent family on reasonable, and non-discriminatory (RAND) terms. In other words, to practice the IEEE 802.1Q and 802.1x technologies means that ViaSat also practices the '999 patent family claims. However, ViaSat denied the veracity of the patent claims being essential to the standards technologies in its Motion to Dismiss. D.I. 8. Accordingly, Plaintiff shall proceed against Defendant as an unwilling licensee and pursue the highest damages and/or other relief available under the law.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment for itself and against Defendant as follows:

A.   An adjudication that Defendant has infringed the '999 and '990 patents;

B.   An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement of the '999 and '990 patents, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C.   A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of

Plaintiff's reasonable attorneys' fees; and

D.   An award to Plaintiff of such further relief at law or in equity as the Court deems

just and proper.

Dated: May 30, 2017   DEVLIN LAW FIRM LLC

                                                 /s/ Timothy Devlin
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                                                 Attorneys for Plaintiff
                                                 International License Exchange of America, LLC

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2017, I caused the foregoing to be electronically filed

with the Clerk of the Court using CM/ECF, which will send notification of such filing to all

registered participants.

                                                 /s/ Timothy Devlin
                                                 Timothy Devlin