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Mentone Solutions LLC

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

<b>Mentone Solutions LLC,</b>  Plaintiff,  v.  <b>ASUS Computer International, Inc.,</b>  Defendant.	Case No. 4:18-cv-07749  Patent  Jury Trial Demanded
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**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Mentone Solutions LLC (“Mentone”), through its attorneys, complains of ASUS Computer International, Inc. (“ASUS”), and alleges the following:

**PARTIES**

1. Plaintiff Mentone Solutions LLC is a corporation organized and existing under the laws of Texas and maintains its principal place of business at 15922 Eldorado Pkwy, Suite 500-1534, Frisco, Texas 75035.

2. Defendant ASUS Computer International, Inc. is a corporation organized and existing under the laws of California that maintains its principal place of business at 800 Corporate Way, Fremont, CA 94539.

### **JURISDICTION**

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

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

5. This Court has personal jurisdiction over ASUS because it has engaged in systematic and continuous business activities in the Northern District of California and is incorporated in California. As described below, ASUS has committed acts of patent infringement giving rise to this action within this District.

### **VENUE**

6. Venue is proper in this District under 28 U.S.C. § 1400(b) because ASUS has committed acts of patent infringement in this District, is incorporated in the state of California, and has an established place of business in this District. In addition, Mentone has suffered harm in this district.

### **THE '413 PATENT**

7. Mentone is the assignee of all right, title and interest in United States Patent Nos. 6,952,413 (the "'413 Patent"), including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the '413 Patent. Accordingly, Mentone possesses the exclusive right and standing to prosecute the present action for infringement of the '413 Patent by ASUS.

### **The '413 Patent**

8. The '413 Patent is entitled "Extended dynamic resource allocation in packet data transfer," and issued October 4, 2005. The application leading to the '413 Patent was filed on

February 27, 2004. A true and correct copy of the '413 Patent is attached hereto as Exhibit A and incorporated herein by reference.

9. The '413 Patent is valid and enforceable.

**COUNT I: INFRINGEMENT OF THE '413 PATENT**

10. Mentone incorporates the above paragraphs herein by reference.

11. **Direct Infringement.** ASUS has been and continues to directly infringe one or more claims of the '413 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least ASUS' ZenFone 4 Pro (ZS551KL) ("Exemplary ASUS Products") that infringe at least exemplary claim 5 of the '413 Patent (the "Exemplary '413 Patent Claims") literally or by the doctrine of equivalence. On information and belief, numerous other devices that infringe the claims of the '413 Patent have been made, used, sold, imported, and offered for sale by ASUS and/or its customers.

12. The early filing of the original Complaint, on December 27, 2018, constituted notice and actual knowledge of infringement in accordance with 35 U.S.C. § 287. D.I. 1.

13. Despite such acknowledge knowledge of infringement, ASUS continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '413 Patent. On information and belief, ASUS has also continued to sell the Exemplary ASUS Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '413 Patent. Thus, on information and belief, ASUS is contributing to and/or inducing the infringement of the '413 Patent with actual knowledge that the '413 Patent is being infringed in this manner.

14. **Induced Infringement.** ASUS actively, knowingly, and intentionally has been and continues to induce infringement of the '413 Patent, literally or by the doctrine of

equivalence, by selling Exemplary ASUS Products to their customers for use in end-user products in a manner that infringes one or more claims of the '413 Patent.

15. **Contributory Infringement.** ASUS actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '413 Patent, literally or by the doctrine of equivalence, by selling Exemplary ASUS Products to their customers for use in end-user products in a manner that infringes one or more claims of the '413 Patent.

16. Exhibit B includes charts comparing the Exemplary '413 Patent Claims to the Exemplary ASUS Products. As set forth in these charts, this Exemplary ASUS Products practice the technology claimed by the '413 Patent. Accordingly, the Exemplary ASUS Products incorporated in these charts satisfy all elements of the Exemplary '413 Patent Claims.

17. Mentone therefore incorporates by reference in its allegations herein the claim charts of Exhibit F.

18. Mentone is entitled to recover damages adequate to compensate for ASUS's infringement.

#### **JURY DEMAND**

19. Under Rule 38(b) of the Federal Rules of Civil Procedure, Mentone respectfully requests a trial by jury on all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Mentone respectfully requests the following relief:

- A. A judgment that the '413 Patent is valid and enforceable.
- B. A judgment that ASUS has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '413 Patent;

- C. An accounting of all damages not presented at trial;
- D. A judgment that awards Mentone all appropriate damages under 35 U.S.C. § 284 for ASUS's past infringement, and any continuing or future infringement of the '413 Patent, up until the date such judgment is entered, including pre- or post-judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary, to adequately compensate Mentone for ASUS's infringement, an accounting:
  - i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Mentone be awarded its reasonable attorneys' fees against ASUS that it incurs in prosecuting this action;
  - ii. that Mentone be awarded costs, and expenses that it incurs in prosecuting this action; and
  - iii. that Mentone be awarded such further relief at law or in equity as the Court deems just and proper.

Dated: May 6, 2019

Respectfully submitted,

/s/Steven A. Nielsen

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