

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

Cedar Lane Technologies Inc., Plaintiff, v. Frontier Communications Corporation, Defendant.	Case No. _____ Patent Case Jury Trial Demanded
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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cedar Lane Technologies Inc. (“Cedar Lane”), through its attorneys, complains of Frontier Communications Corporation (“Frontier”), and alleges the following:

PARTIES

1. Plaintiff Cedar Lane Technologies Inc. is a corporation organized and existing under the laws of Canada that maintains its principal place of business at 560 Baker Street, Suite 1, Nelson, BC V1L 4H9.

2. Defendant Frontier Communications Corporation is a corporation organized and existing under the laws of Delaware that maintains its principal place of business at 401 Merritt 7, Norwalk CT 06851; and an established place of business at 805 South Central Expressway, Allen, Texas 75013.

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 Frontier because it has engaged in systematic and continuous business activities in this District. As described below, Frontier 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 Frontier has committed acts of patent infringement in this District and has an established place of business in this District. In addition, Cedar Lane has suffered harm in this district.

PATENTS-IN-SUIT

7. Cedar Lane is the assignee of all right, title and interest in United States Patent Nos. 6,502,194 (the “’194 Patent”); 6,526,411 (the “’411 Patent”); and 6,721,489 (the “’489 Patent”) (collectively hereinafter “Patents-in-Suit”), including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patents-in-Suit. Accordingly, Cedar Lane possesses the exclusive right and standing to prosecute the present action for infringement of the Patents-in-Suit by Frontier.

The ’194 Patent

8. The ’194 Patent is entitled “System for Playback of Network Audio Material on Demand,” and issued December 31, 2002. The application leading to the ’194 Patent was filed on April 16, 1999. A true and correct copy of the ’194 Patent is attached hereto as Exhibit A and incorporated herein by reference.

9. The ’194 Patent is valid and expired on April 16, 2019.

The '411 Patent

10. The '411 Patent is entitled "System and Method for Creating Dynamic Playlists," and issued February 25, 2003. The application leading to the '411 Patent was filed on November 15, 2000, which claims priority from provisional application number 60/166,039, filed on November 17, 1999; which claims priority from provisional application number 60/165,726, filed on November 15, 1999; which claims priority from provisional application number 60/165,727, filed on November 15, 1999. A true and correct copy of the '411 Patent is attached hereto as Exhibit B and incorporated herein by reference.

11. The '411 Patent is valid and enforceable.

The '489 Patent

12. The '489 Patent is entitled "Play list manager," and issued April 13, 2004. The application leading to the '489 Patent was filed on March 8, 2000. A true and correct copy of the '489 Patent is attached hereto as Exhibit C and incorporated herein by reference.

13. The '489 Patent is valid and enforceable.

FRONTIER, AMONG OTHER THINGS, MARKETS AND SELLS FRONTIER MULTICHANNEL VIDEO SYSTEMS

14. Frontier, among other things, markets and sells multichannel video systems (marketed as FiOS Video and Vantage Video).

15. In particular, Frontier offers video services under the FiOS and Vantage brand names:

We offer video services to certain of our customers under the FiOS® brand in portions of California, Texas, Florida, Indiana, Oregon, and Washington, and under the Vantage brand in portions of Connecticut, North Carolina, South Carolina, Minnesota, Illinois, New York, and Ohio. We also offer satellite TV video service to our customers under an agency relationship with DISH® in all of our markets. For the year ended December 31, 2017, we lost approximately 223,000 net video subscribers across all markets. At December 31, 2017, we had 961,000 linear video subscribers that are served with FiOS or Vantage video service. In addition to our linear video subscribers, we have approximately 235,000 DISH satellite video customers.

Frontier, Fiscal Year 2018 Form 10-K, p. 39.

16. The revenues generated by the video services include revenues from services provided directly to consumer customers through the FiOS video and Vantage video brand names:

Video services

Video services include revenues generated from services provided directly to consumer customers through the FiOS video and Vantage video brands, and through DISH satellite TV services.

The increase of \$60 million in video services revenue was primarily due to additional revenue provided by a full year of CTF Operations in 2017 compared to only nine months in 2016. The increase was partially offset by reduced revenue resulting from a decrease in the total number of video subscribers.

Id., p. 41.

17. Frontier, among other things, markets and sells its multichannel video systems as FiOS video and Vantage video:

We must negotiate with the content owners of the programming that we carry on our multichannel video systems (marketed as FiOS video and Vantage video). These content owners are the exclusive provider of the channels they offer. If we are unable to reach a mutually-agreed contract with a content owner, including pricing and carriage provisions, our existing agreements to carry this content may not be renewed, resulting in the blackout of these channels. The loss of content could result in our loss of customers who place a high value on the particular content that is lost. In addition, many content providers own multiple channels. As a result, we typically have to negotiate the pricing for multiple channels rather than one, and carry and pay for content that customers do not value, in order to have access to other content that customers do value. Some of our competitors have materially larger scale than we do, and may, as a result, be better positioned than we are in such negotiations. As a result of these factors, the expense of content acquisition may continue to increase, and this could result in higher expenses and lower profitability.

Id., p. 15.

COUNT I: INFRINGEMENT OF THE '194 PATENT

18. Cedar Lane incorporates the above paragraphs herein by reference.

19. **Direct Infringement.** Frontier has been and continues to directly infringe one or more claims of the '194 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least Frontier multichannel video systems (marketed as FiOS Video and Vantage Video) ("Exemplary Frontier Product") that infringe at least exemplary claims 1, 2, 4, and 19 of the '194 Patent (the "Exemplary '194 Patent Claims") literally or by the doctrine of equivalence. On information and belief, numerous other devices that infringe the

claims of the Patents-in-Suit have been made, used, sold, imported, and offered for sale by Frontier and/or its customers.

20. **Induced Infringement.** Frontier actively, knowingly, and intentionally has been and continues to induce infringement of the '194 Patent, literally or by the doctrine of equivalence, by selling Exemplary Frontier Products to their customers for use in end-user products in a manner that infringes one or more claims of the '194 Patent.

21. **Contributory Infringement.** Frontier actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '194 Patent, literally or by the doctrine of equivalence, by selling Exemplary Frontier Products to their customers for use in end-user products in a manner that infringes one or more claims of the '194 Patent. Moreover, the Exemplary Charter Products are not a staple article of commerce suitable for substantial noninfringing use.

22. **Willful Infringement.** Prior to the filing of this complaint, Frontier had actual knowledge of the '194 Patent and that its Exemplary Frontier Products and the products incorporating them are imported into, sold, offered for sale, and used in the United States. *See* Exhibit D, Letter to Frontier dated March 6, 2019; *see also* Exhibit E, Proof of Letter Delivery.

23. In addition to actual knowledge of the '194 Patent, prior to the filing of this complaint, Frontier also had knowledge that the Exemplary Frontier Products, and the use by consumers of those products, in the customary and intended manner, is likely to infringe the '194 Patent. *See* Exhibit D, Letter to Frontier dated March 6, 2019; *see also* Exhibit E, Proof of Letter Delivery. Additionally, the filing of this Complaint also constitutes notice and actual knowledge of infringement as alleged here.

24. Despite such notice, Frontier continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '194 Patent. On information and belief, Frontier has also continued to sell the Exemplary Frontier 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 '194 Patent. Thus, on information and belief, Frontier is contributing to and/or inducing the infringement of the '194 Patent.

25. Exhibit F includes charts comparing the Exemplary '194 Patent Claims to the Exemplary Frontier Products. As set forth in these charts, the Exemplary Frontier Products practice the technology claimed by the '194 Patent. Accordingly, the Exemplary Frontier Products incorporated in these charts satisfy all elements of the Exemplary '194 Patent Claims.

26. Cedar Lane therefore incorporates by reference in its allegations herein the claim charts of Exhibit F.

27. Cedar Lane is entitled to recover damages adequate to compensate for Frontier's infringement.

COUNT II: INFRINGEMENT OF THE '411 PATENT

28. Cedar Lane incorporates the above paragraphs herein by reference.

29. **Direct Infringement.** Frontier has been and continues to directly infringe one or more claims of the '411 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least the Exemplary Frontier Products that infringe at least exemplary claims 1, 3, 5-9, and 11 of the '411 Patent (the "Exemplary '411 Patent Claims") literally or by the doctrine of equivalence. On information and belief, numerous other devices

that infringe the claims of the Patents-in-Suit have been made, used, sold, imported, and offered for sale by Frontier and/or its customers.

30. **Induced Infringement.** Frontier actively, knowingly, and intentionally has been and continues to induce infringement of the '411 Patent, literally or by the doctrine of equivalence, by selling Exemplary Frontier Products to their customers for use in end-user products in a manner that infringes one or more claims of the '411 Patent.

31. **Contributory Infringement.** Frontier actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '411 Patent, literally or by the doctrine of equivalence, by selling Exemplary Frontier Products to their customers for use in end-user products in a manner that infringes one or more claims of the '411 Patent. Moreover, the Exemplary Charter Products are not a staple article of commerce suitable for substantial noninfringing use.

32. **Willful Infringement.** Prior to the filing of this complaint, Frontier had actual knowledge of the '411 Patent and that its Exemplary Frontier Products and the products incorporating them are imported into, sold, offered for sale, and used in the United States. *See* Exhibit D, Letter to Frontier dated March 6, 2019; *see also* Exhibit E, Proof of Letter Delivery.

33. In addition to actual knowledge of the '411 Patent, prior to the filing of this complaint, Frontier also had knowledge that the Exemplary Frontier Products, and the use by consumers of those products, in the customary and intended manner, is likely to infringe the '411 Patent. *See* Exhibit D, Letter to Frontier dated March 6, 2019; *see also* Exhibit E, Proof of Letter Delivery. Additionally, the filing of this Complaint also constitutes notice and actual knowledge of infringement as alleged here.

34. Despite such notice, Frontier continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '411 Patent. On information and belief, Frontier has also continued to sell the Exemplary Frontier 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 '411 Patent. Thus, on information and belief, Frontier is contributing to and/or inducing the infringement of the '411 Patent.

35. Exhibit G includes charts comparing the Exemplary '411 Patent Claims to the Exemplary Frontier Products. As set forth in these charts, the Exemplary Frontier Products practice the technology claimed by the '411 Patent. Accordingly, the Exemplary Frontier Products incorporated in these charts satisfy all elements of the Exemplary '411 Patent Claims.

36. Cedar Lane therefore incorporates by reference in its allegations herein the claim charts of Exhibit G.

37. Cedar Lane is entitled to recover damages adequate to compensate for Frontier's infringement.

COUNT III: INFRINGEMENT OF THE '489 PATENT

38. Cedar Lane incorporates the above paragraphs herein by reference.

39. **Direct Infringement.** Frontier has been and continues to directly infringe one or more claims of the '489 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least the Exemplary Frontier Products that infringe at least exemplary claims 1-6, 9-12 of the '489 Patent (the "Exemplary '489 Patent Claims") literally or by the doctrine of equivalence. On information and belief, numerous other devices

that infringe the claims of the Patents-in-Suit have been made, used, sold, imported, and offered for sale by Frontier and/or its customers.

40. **Induced Infringement.** Frontier actively, knowingly, and intentionally has been and continues to induce infringement of the '489 Patent, literally or by the doctrine of equivalence, by selling Exemplary Frontier Products to their customers for use in end-user products in a manner that infringes one or more claims of the '489 Patent.

41. **Contributory Infringement.** Frontier actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '489 Patent, literally or by the doctrine of equivalence, by selling Exemplary Frontier Products to their customers for use in end-user products in a manner that infringes one or more claims of the '489 Patent. Moreover, the Exemplary Charter Products are not a staple article of commerce suitable for substantial noninfringing use.

42. **Willful Infringement.** Prior to the filing of this complaint, Frontier had actual knowledge of the '489 Patent and that its Exemplary Frontier Products and the products incorporating them are imported into, sold, offered for sale, and used in the United States. *See* Exhibit D, Letter to Frontier dated March 6, 2019; *see also* Exhibit E, Proof of Letter Delivery.

43. In addition to actual knowledge of the '489 Patent, prior to the filing of this complaint, Frontier also had knowledge that the Exemplary Frontier Products, and the use by consumers of those products, in the customary and intended manner, is likely to infringe the '489 Patent. *See* Exhibit D, Letter to Frontier dated March 6, 2019; *see also* Exhibit E, Proof of Letter Delivery. Additionally, the filing of this Complaint also constitutes notice and actual knowledge of infringement as alleged here.

44. Despite such notice, Frontier continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '489 Patent. On information and belief, Frontier has also continued to sell the Exemplary Frontier 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 '489 Patent. Thus, on information and belief, Frontier is contributing to and/or inducing the infringement of the '489 Patent.

45. Exhibit H includes charts comparing the Exemplary '489 Patent Claims to the Exemplary Frontier Products. As set forth in these charts, the Exemplary Frontier Products practice the technology claimed by the '489 Patent. Accordingly, the Exemplary Frontier Products incorporated in these charts satisfy all elements of the Exemplary '489 Patent Claims.

46. Cedar Lane therefore incorporates by reference in its allegations herein the claim charts of Exhibit H.

47. Cedar Lane is entitled to recover damages adequate to compensate for Frontier's infringement.

JURY DEMAND

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

PRAYER FOR RELIEF

WHEREFORE, Cedar Lane respectfully requests the following relief:

- A. A judgment that the '194 Patent, the '411 Patent, and the '489 Patent are valid and enforceable.

- B. A judgment that Frontier has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '194 Patent;
- C. A judgment that Frontier has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '411 Patent;
- D. A judgment that Frontier has infringed, contributorily infringed, and/or induced infringement of one or more claims of the '489 Patent;
- E. A judgement that Charter infringed the Patents-in-Suit willfully, and Cedar Lane is entitled to treble damages;
- F. An accounting of all damages not presented at trial;
- G. A judgment that awards Cedar Lane all appropriate damages under 35 U.S.C. § 284 for Frontier's past infringement, and any continuing or future infringement of the Patents-in-Suit (except in the instance of the '194 Patent, damages until its expiration on April 16, 2019), 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 Cedar Lane for Frontier's infringement, an accounting:
 - i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Cedar Lane be awarded its reasonable attorneys' fees against Frontier that it incurs in prosecuting this action;
 - ii. that Cedar Lane be awarded costs, and expenses that it incurs in prosecuting this action; and
 - iii. that Cedar Lane be awarded such further relief at law or in equity as the Court deems just and proper.

Dated: November 9, 2019

Respectfully submitted,

/s/ Isaac Rabicoff

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Counsel for Plaintiff

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