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14 **UNITED STATES DISTRICT COURT**

15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 COMMSTECH LLC,

17 Plaintiff,

18 v.

19 ZYXEL COMMUNICATIONS,
20 INC.,

21 Defendant.
22

Case No. 8:20-cv-00939

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

23
24
25 Plaintiff Commstech LLC (“Commstech” or “Plaintiff”) hereby asserts the
26 following claims for patent infringement against Defendant Zyxel
27 Communications, Inc., (“Defendant”), and alleges as follows.
28

1 **SUMMARY**

2 1. Commstech owns United States Patent Nos. 6,349,340 (the “’340
3 Patent”).

4 2. Defendant infringes the ’340 Patent by implementing, without
5 authorization, Commstech’s proprietary technologies in a number of its
6 commercial networking products and related software including, *inter alia*,
7 Defendant’s managed aggregation switch products (e.g. the Zyxel XGS3600
8 Switch Series) that support the RFC 4607 specification related to “Source-Specific
9 Multicast for IP” (including but not limited to products such as the Zyxel
10 XGS3600 Switch Series),

11 3. By this action, Commstech seeks to obtain compensation for the harm
12 Commstech has suffered as a result of Defendant’s infringement of the ‘340 Patent.

13 **NATURE OF THE ACTION**

14 4. This is a civil action for patent infringement arising under the patent
15 laws of the United States, 35 U.S.C. § 1 *et seq.*

16 5. Defendant has infringed and continues to infringe, and at least as early
17 as the filing and/or service of this Complaint, has induced and continues to induce
18 infringement of, and has contributed to and continues to contribute to infringement
19 of, at least one or more claims of Commstech’s ‘340 Patent at least by making,
20 using, selling, and/or offering to sell its products and services in the United States,
21 including in this District.

22 6. Commstech is the legal owner by assignment of the ‘340 Patent,
23 which were duly and legally issued by the United States Patent and Trademark
24 Office (“USPTO”). Commstech seeks monetary damages for Defendant’s
25 infringement of the ‘340 Patent.
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27
28

1 **THE PARTIES**

2 7. Plaintiff Commstech LLC is a Texas limited liability company with its
3 principal place of business at 1708 Harrington Dr., Plano, Texas 75075.

4 Commstech is the owner of intellectual property rights at issue in this action.

5 8. On information and belief, Defendant Zyxel Communications, Inc., is
6 a California corporation with a principal place of business at 1130 N Miller St,
7 Anaheim, CA 92806. Defendant may be served via its registered agent for service
8 of process at 1130 N Miller St, Anaheim, CA 92806.

9 9. On information and belief, Defendant directly and/or indirectly
10 develops, designs, manufactures, distributes, markets, offers to sell and/or sells
11 infringing products and services in the United States, including in the Southern
12 District of California, and otherwise directs infringing activities to this District in
13 connection with its products and services.
14

15 **JURISDICTION AND VENUE**

16 10. As this is a civil action for patent infringement arising under the
17 patent laws of the United States, 35 U.S.C. § 1 *et seq.*, this Court has subject matter
18 jurisdiction over the matters asserted herein under 28 U.S.C. §§ 1331 and 1338(a).

19 11. Defendant is subject to this Court’s specific and general personal
20 jurisdiction pursuant to due process and/or the California Long Arm Statute, due at
21 least to Defendant’s substantial business in this forum, including: (i) at least a
22 portion of the infringements alleged herein; (ii) regularly doing or soliciting
23 business, engaging in other persistent courses of conduct, and/or deriving
24 substantial revenue from goods and services provided to individuals in California
25 and in this district; and (iii) having a regular place of business in this District.

26 12. In particular, Defendant has committed and continues to commit acts
27 of infringement in violation of 35 U.S.C. § 271, and has made, used, marketed,
28 distributed, offered for sale, sold, and/or imported infringing products in the State

1 of California, including in this District, and engaged in infringing conduct within
2 and directed at or from this District. For example, Defendant has purposefully and
3 voluntarily placed the Accused Products into the stream of commerce with the
4 expectation that the Accused Products will be used in this District. The Accused
5 Products have been and continue to be distributed to and used in this District.
6 Defendant's acts cause and have caused injury to Commstech, including within
7 this District.

8 13. Venue is proper in this District under the provisions of 28 U.S.C. §§
9 1391 and 1400(b) at least because a substantial part of the events or omissions
10 giving rise to the claims occurred in this District, and because Defendant has
11 committed acts of infringement in this District. Furthermore, Defendant has a
12 regular and established place of business in the District located at 1130 N Miller
13 St, Anaheim, CA 92806.

14 **THE '340 PATENT**

15 14. U.S. Patent No. 6,349,340 ("the '340 Patent") is entitled "Data
16 multicast channelization," and was issued on February 19, 2002. A true and
17 correct copy of the '340 Patent is attached as Exhibit A.

18 15. The '340 Patent was filed on January 13, 2000 as U.S. Patent
19 Application No. 09/482,496.

20 16. Commstech is the owner of all rights, title, and interest in and to the
21 '340 Patent, with the full and exclusive right to bring suit to enforce the '340
22 Patent, including the right to recover for past infringement.

23 17. The '340 Patent is valid and enforceable under United States Patent
24 Laws.

25 18. The '340 Patent recognized several problems with existing high-speed
26 network data distribution technology, such as multicast technology. Notably, the
27 '340 Patent recognized that "[m]anagement of high-speed data across distributed
28

1 data networks can involve two basic approaches,” both of which have several
2 drawbacks. Exhibit A at 1:32-33.

3 19. For instance, the ‘340 Patent recognized problems with a “more
4 common approach” referred to as the “client-based” approach, where “client nodes
5 notify server nodes of their interest in certain desired data,” and the “servers can
6 individually distribute data packets to each interested, subscribing client.” Exhibit
7 A at 1:33-39. In this respect, the ‘340 Patent recognized that this “client-based”
8 approach “tends to overburden the server as network demands grow.” *Id.* at 1:30-
9 41. In particular, the ‘340 Patent discloses that “as additional client nodes are
10 added to the network, the server not only must individually distribute the data
11 packets to each interested client node, but also the server must individually
12 distribute the data packets to each additional subscribing client node,” and thus, “as
13 the client node list grows, so does the server’s workload.” *Id.* at 1:41-47.

14 20. The ‘340 Patent also recognized problems with another approach
15 referred to as the “server-based” approach that uses multicast technology, in which
16 “the server transmits the data packet to a multicast destination address identifying a
17 particular multicast session,” and “[i]nterested client nodes merely subscribe to the
18 multicast address, rather than the server, in order to receive the broadcast data.”
19 Exhibit A at 1:48-58. However, the ‘340 Patent recognized that “because all client
20 nodes receive each broadcast data packet, regardless of the content of the data
21 packet, each client node must filter unwanted data upon receipt of each data
22 packet,” but “[c]lient nodes generally are uninterested in most of the broadcast data
23 and, as a result, client nodes expend substantial processor resources identifying and
24 discarding unwanted data packets.” *Id.* at 1:54-2:4. Further, the ‘340 Patent
25 recognized that, although these existing approaches “allow[] a server to provide
26 data at high data transmission rates to more client[] nodes,” these approaches can
27 “limit the client node’s ability to filter unwanted data packets” given the client
28

1 node's "processor overhead." *Id.* at 2:7-11.

2 21. To address one or more shortcomings of existing high-speed network
3 data distribution technology, such as existing multicast technology that
4 "challeng[ed] the client node's ability to filter the unwanted data packets," the '340
5 Patent discloses, *inter alia*, a "method for efficient filtering of unwanted data in a
6 multicast network environment" that "satisfies the long-felt need of the prior art by
7 applying a combination hardware and software solution which selectively filters
8 multicast data by selectively disabling channels containing unwanted data."
9 Exhibit A at 2:14-25. The '340 Patent's "inventive arrangements" have
10 "advantages over all other data distribution methods" and provide "a novel and
11 nonobvious method for receiving the benefits of multicasting while avoiding the
12 drawbacks associated with such systems." *Id.* at 2:26-30.

13 22. Indeed, the inventions of the '340 Patent improved the functionality of
14 "client" computers operating in a multicast network environment by reducing the
15 "substantial processor resources" expended by "client" computers using existing
16 data filtering mechanisms, such as by reducing the resources expended by a
17 "client" computer's "network applications software." Exhibit A at 6:9-47. In this
18 respect, the inventions of the '340 Patent allow a "client" computer to "avoid
19 excessive software filtering" that leads to "performance gain" that can be
20 "significant." *Id.* at 10:21-31.

21
22 **The Inventions Claimed in the '340 Patent Improved Technology &**
23 **Were Not Well-Understood, Routine, or Conventional**

24 23. Given the state of the art at the time of the inventions of the '340
25 Patent, including the deficiencies in network data distribution systems of the time,
26 the inventive concepts of the '340 Patent cannot be considered to be conventional,
27 well-understood, or routine. *See, e.g.*, Exhibit A at 1:32-2:17. Indeed, there was a
28 long-felt need in the art at the time of the inventions of the '340 Patent that the

1 claimed inventions of the ‘340 Patent addressed. *See, e.g., id* at 2:20-26. In this
2 respect, the ‘340 Patent discloses, among other things, an unconventional solution
3 to problems arising in the context of network data distribution systems, namely,
4 that “client” computers in such systems “expend[ed] substantial processor
5 resources” filtering multicast data and this “processor overhead” inhibited the
6 “client” computers’ ability to handle the increasing user demands for network data
7 distribution systems to broadcast more data. *See, e.g., id* at 2:1-17.

8
9 24. The inventions of the ‘340 Patent offered an unconventional,
10 technological solution to such problems resulting in a “novel and nonobvious
11 method for receiving the benefits of multicasting while avoiding the drawbacks
12 associated with such [existing] systems.” Exhibit A at 2:25-30; *see also, e.g., id.* at
13 10:21-26 (“The inventive multicast channelization strategy can increase the
14 bandwidth available to the expanding client node base by distributing the broadcast
15 data across multiple channels,” such that “client nodes can selectively filter
16 unwanted broadcast data within the network interface circuitry of each client
17 node.”). In this respect, the inventions of the ‘340 Patent improved the
18 functionality of “client” computers operating in a multicast network environment.
19 *See, e.g., id.* at 6:9-47, 10:21-31.

20 25. Indeed, it was not well-understood, routine, or conventional at the
21 time of the inventions of the ‘340 Patent to perform the following functions, alone
22 and/or in combination with one another: (i) selecting from among a plurality of
23 multicast communications channels a source communications channel for
24 receiving requested multicast data, (ii) enabling the selected source
25 communications channel, (iii) receiving the requested multicast data through the
26 enabled source communications channel, (iv) forwarding the requested multicast
27 data to requesting processes, and (v) disabling the selected source communications
28 channel when the requesting processes indicate that no further data is requested to

1 be received over the selected source communications channel. *See, e.g.*, Exhibit A
2 at Claims 1, 8, 14. Moreover, it was not well-understood, routine, or conventional
3 at the time of the inventions of the '340 Patent to perform one or more of the
4 following functions alone and/or in combination with one or more of the preceding
5 functions: (i) receiving from one or more processes in a client node a request for
6 multicast data, (ii) identifying a multicast data source for each requested data, and
7 (iii) disabling an enabled selected source communications channel when the
8 requesting client node process indicates that no further data is requested to be
9 received from the identified multicast data source over the selected source
10 communications channel and no other requesting client node processes have
11 indicated a continuing need for further data to be received from the identified
12 multicast data source over the selected source communications channel. *See, e.g.*,
13 *id.* at Claims 1, 8, 14.

15 26. Further, it was not well-understood, routine, or conventional at the
16 time of the inventions of the '340 Patent to perform one or more of the following
17 functions alone and/or in combination with one or more of the unconventional
18 functions set forth in paragraph number 25: (i) filtering, from multicast data
19 received through an enabled source communications channel,
20 unwanted/unrequested multicast data, (ii) discarding the unwanted/unrequested
21 multicast data, and (ii) forwarding the filtered multicast data to one or more
22 requesting processes. *See, e.g.*, Exhibit A at Claims 3, 9, 15.

23 27. These are just exemplary reasons why the inventions claimed in the
24 '340 Patent were not well-understood, routine, or conventional at the time of the
25 invention of the '340 Patent.

26 28. Consistent with the problems addressed by the '340 Patent being
27 rooted in network data distribution systems, the '340 Patent's inventions naturally
28 are also rooted in that same technology that cannot be performed solely with pen

1 and paper or in the human mind. Indeed, using pen and paper or a human mind
2 would not only ignore, but would run counter to, the stated technical solution of
3 the '340 Patent noted above and the technical problems that the '340 Patent was
4 specifically designed to address. Likewise, at least because the '340 Patent's
5 claimed inventions address problems rooted in network data distribution systems,
6 these inventions are not merely drawn to longstanding human activities.

7 **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,349,340**

8 29. Commstech incorporates by reference and re-alleges paragraphs 14-28
9 of this Complaint as if fully set forth herein.

10 30. Defendant has infringed and is infringing, either literally or under the
11 doctrine of equivalents, the '340 Patent in violation of 35 U.S.C. § 271 *et seq.*,
12 directly and/or indirectly, by making, using, offering for sale, or selling in the
13 United States, and/or importing into the United States without authority or license,
14 products that support the RFC 4607 specification related to "Source-Specific
15 Multicast for IP" (e.g., Zyxel XGS3600 Switch Series) (referred to herein as the
16 "Accused '340 Products"). *See, e.g.*,
17 https://www.zyxel.com/us/en/products_services/xgs3600_series.shtml?t=p.

18 31. As just one non-limiting example, set forth below (with claim
19 language in bold and italics) is exemplary evidence of infringement of Claim 1 of
20 the '340 Patent in connection with the Accused '340 Products. This description is
21 based on publicly available information. Commstech reserves the right to modify
22 this description, including, for example, on the basis of information about the
23 Accused '340 Products that it obtains during discovery.

24 ***1(a): A method for receiving requested multicast data over a plurality of***
25 ***multicast communications channels comprising:***—Defendant makes, uses, sells,
26 and/or offers to sell a device or system that practices the method of receiving
27 requested multicast data over a plurality of multicast communications channels in
28

1 accordance with Claim 1.

2 For instance, the Zyxel XGS3600 Series switches are high performance
3 switches that support network management to enhance operational efficiency.
4 These switches performs layer 2+ switching functions and support Source-specific
5 multicast (SSM) for sending multicast data packets from a source address (S) to a
6 destination address (G) in a network. Hence, these switches act as PIM routers.
7 Further, on information and belief, Zyxel's SSM functionality works in a similar
8 fashion as disclosed in RFC 4607. In particular, RFC 4607 defines a "source-
9 specific multicast service" ("SSM") as "[a] datagram sent with source IP address S
10 and destination IP address G in the SSM range [that] is delivered to each host
11 socket that has specifically requested delivery of datagrams sent by S to G, and
12 only to those sockets." Holbrook, Source-specific multicast for IP, RFC 4607
13 (2006), p.5, available at <https://tools.ietf.org/pdf/rfc4607.pdf>.
14

15 ***1(b): selecting from among the plurality of multicast communications***
16 ***channels a source communications channel for receiving said requested***
17 ***multicast data;***—Defendant makes, uses, sells, and/or offers to sell a device or
18 system that selects from among the plurality of multicast communications channels
19 a source communications channel for receiving said requested multicast data.

20 For instance, following the Zyxel SSM service model, the receiver or host
21 selects a channel among plurality of available channels ("selecting from among the
22 plurality of multicast communications channels"), for receiving the multicast data.
23 The receiver subscribes to a SSM channel for receiving traffic from a specific
24 source. On information and belief, the Zyxel SSM service model works in a similar
25 fashion as disclosed in RFC 4607. The RFC 4607 discloses a plurality of multicast
26 communication channels, where each "channel is identified (addressed) by the
27 combination of a unicast source address and a multicast destination address in the
28 SSM range" (e.g., "S, G = (192.0.2.1, 232.7.8.9)," "S, G = (192.0.2.2, 232.7.8.9)").

1 *Id.* at p. 6; *see also, e.g., id.* at pp. 3-4 (“The network service identified by (S,G),
2 for SSM address G and source host address S, is referred to as a ‘channel’”); *id.* at
3 p. 6 (“We use the term ‘channel’ to refer to the service associated with an SSM
4 address,” and “[a] channel is identified by the combination of an SSM destination
5 address and a specific source, e.g., an (S,G) pair.”). In particular RFC 4607
6 discloses that “[t]he IP module interface to upper-layer protocols is extended to
7 allow a socket to ‘Subscribe’ to . . . a particular channel identified by an SSM
8 destination address and a source IP address.” *Id.* at p. 5; *see also, e.g., id.* at p. 6
9 (“The receiver operations allowed on a channel are called ‘Subscribe (S,G)’ and
10 ‘Unsubscribe (S,G)’”); *id.* at p. 7 (“If reception of the same channel is desired on
11 multiple interfaces, Subscribe is invoked once for each”); *id.* at p. 8 (“An incoming
12 datagram destined to an SSM address MUST be delivered by the IP module to all
13 sockets that have indicated (via Subscribe) a desire to receive data that matches the
14 datagram’s source address, destination address, and arriving interface.”).

15
16 ***1(c): enabling said selected source communications channel;***—Defendant
17 makes, uses, sells, and/or offers to sell a device or system that enables the selected
18 source communications channel.

19 For instance, in the Zyxel XGS3600 Series, when a receiver or host
20 subscribes (“enabling”) to a particular channel, the interface enables that particular
21 source channel for receiving traffic from the source address. On information and
22 belief, the Zyxel SSM service model works in a similar fashion as disclosed in RFC
23 4607. The RFC 4607 discloses that “[t]he IP module interface to upper-layer
24 protocols is extended to allow a socket to ‘Subscribe’ to . . . a particular channel
25 identified by an SSM destination address and a source IP address,” and subscribing
26 to a particular channel comprises selecting a source communications channel and
27 also enabling the selected source communications channel. *Id.* at p. 5; *see also,*
28 *e.g., id.* at p. 6 (“The receiver operations allowed on a channel are called

1 ‘Subscribe (S,G)’ and ‘Unsubscribe (S,G)’”); *id.* at p. 7 (“If reception of the same
2 channel is desired on multiple interfaces, Subscribe is invoked once for each”); *id.*
3 at p. 8 (“An incoming datagram destined to an SSM address MUST be delivered
4 by the IP module to all sockets that have indicated (via Subscribe) a desire to
5 receive data that matches the datagram’s source address, destination address, and
6 arriving interface.”). Indeed, RFC 4607 discloses that “‘interface’ is a local
7 identifier of the network interface on which reception of the channel identified by
8 the (source-address, group-address) pair is to be **enabled** [e.g., subscribed] or
9 disabled [e.g., unsubscribed].” *Id.* at p. 7 (emphasis added).

10 ***1(d): receiving said requested multicast data through said enabled source***
11 ***communications channel;***—Defendant makes, uses, sells, and/or offers to sell a
12 device or system that receives the requested multicast data through the enabled
13 source communications channel.
14

15 For instance, as noted above, following the Zyxel SSM service model, the
16 datagrams are delivered (“receiving”) from the subscribed channels to the receiver
17 or host. On information and belief, the Zyxel SSM service model works in a
18 similar fashion as disclosed in RFC 4607. The RFC 4607 discloses that “[a]n
19 incoming datagram destined to an SSM address MUST be delivered by the IP
20 module to all sockets that have indicated (via Subscribe) a desire to receive data
21 that matches the datagram’s source address, destination address, and arriving
22 interface.” *Id.* at p. 8; *see also, e.g., id.* (“When the first socket on host H
23 subscribes to a channel (S,G) on interface I, the host IP module on H sends a
24 request on interface I to indicate to neighboring routers that the host wishes to
25 receive traffic sent by source S to source-specific multicast destination G.”).

26 ***1(e): forwarding said requested multicast data to requesting processes;***
27 ***and,***—Defendant makes, uses, sells, and/or offers to sell a device or system that
28 forwards the requested multicast data to requesting processes.

1 For instance, as noted above, following the Zyxel SSM service model, the
2 incoming data from the subscribed channels is delivered to (“forwarding”) the
3 receiver or host. On information and belief, the Zyxel SSM service model works
4 in a similar fashion as disclosed in RFC 4607. The RFC 4607 discloses that “[a]n
5 incoming datagram destined to an SSM address MUST be delivered by the IP
6 module to all *sockets* that have indicated (via Subscribe) a desire to receive data
7 that matches the datagram’s source address, destination address, and arriving
8 interface.” *Id.* at p. 8 (emphasis); *see also, e.g., id.* (“When the first socket on host
9 H subscribes to a channel (S,G) on interface I, the host IP module on H sends a
10 request on interface I to indicate to neighboring routers that the host wishes to
11 receive traffic sent by source S to source-specific multicast destination G.”). In
12 particular, RFC 4607 defines a “socket” as “an implementation-specific parameter
13 used to distinguish among different requesting entities (e.g., programs or *processes*
14 or communication end-points within a program or process) within the requesting
15 host.” *Id.* at p. 5.

16
17 ***1(f): disabling said selected source communications channel when said***
18 ***requesting processes indicate that no further data is requested to be received over***
19 ***said selected source communications channel.***—Defendant makes, uses, sells,
20 and/or offers to sell a device or system that disables the selected source
21 communications channel when the requesting processes indicate that no further
22 data is requested to be received over the selected source communications channel.

23 For instance, in the Zyxel SSM service model, when a receiver or host
24 (requesting process) does not require data from any particular channel, it sends an
25 unsubscribe request to the network. The channel is then unsubscribed or disabled
26 (“disabling”) for that receiver or host. On information and belief, the Zyxel SSM
27 service model works in a similar fashion as disclosed in RFC 4607. The RFC 4607
28 discloses that “[t]he IP module interface to upper-layer protocols is extended to

1 allow a socket to . . . ‘Unsubscribe’ from a particular channel identified by an SSM
2 destination address and a source IP address,” and unsubscribing from a particular
3 channel disables the particular channel to indicate that no further data is requested
4 to be received over the particular channel. *Id.* at p. 5; *see also, e.g., id.* at p. 8
5 (disclosing that “[a]n incoming datagram destined to an SSM address MUST be
6 delivered by the IP module to all sockets that have indicated (via Subscribe) a
7 desire to receive data that matches the datagram’s source address, destination
8 address, and arriving interface,” but “MUST NOT be delivered to other sockets”
9 (e.g., sockets that have Unsubscribed)). Indeed, as noted above, RFC 4607
10 discloses that “‘interface’ is a local identifier of the network interface on which
11 reception of the channel identified by the (source-address, group-address) pair is to
12 be enabled [e.g., subscribed] or **disabled** [e.g., unsubscribed].” *Id.* at p. 7
13 (emphasis added).
14

15 32. Additionally, Defendant has been and/or currently is an active inducer
16 of infringement of the ‘340 Patent under 35 U.S.C. § 271(b) and contributory
17 infringer of the ‘340 Patent under 35 U.S.C. § 271(c).

18 33. Defendant knew of the ‘340 Patent, or at least should have known of
19 the ‘340 Patent, but was willfully blind to its existence. On information and belief,
20 Defendant has had actual knowledge of the ‘340 Patent since at least as early as the
21 filing and/or service of this Complaint.

22 34. Defendant has provided the Accused ‘340 Products to its customers
23 and, on information and belief, instructions to use the Accused ‘340 Products in an
24 infringing manner while being on notice of (or willfully blind to) the ‘340 Patent
25 and Defendant’s infringement. Therefore, on information and belief, Defendant
26 knew or should have known of the ‘340 Patent and of its own infringing acts, or
27 deliberately took steps to avoid learning of those facts.
28

1 35. Defendant knowingly and intentionally encourages and aids at least its
2 end-user customers to directly infringe the ‘340 Patent.

3 36. Defendant’s end-user customers directly infringe at least one or more
4 claims of the ‘340 Patent by using the Accused ‘340 Products in their intended
5 manner to infringe. Defendant induces such infringement by providing the
6 Accused ‘340 Products and instructions to enable and facilitate infringement,
7 knowing of, or being willfully blind to the existence of, the ‘340 Patent. On
8 information and belief, Defendant specifically intends that its actions will result in
9 infringement of one or more claims of the ‘340 Patent, or subjectively believe that
10 their actions will result in infringement of the ‘340 Patent, but took deliberate
11 actions to avoid learning of those facts, as set forth above.

12 37. Additionally, Defendant contributorily infringes at least one or more
13 claims of the ‘340 Patent by providing the Accused ‘340 Products and/or software
14 components thereof, that embody a material part of the claimed inventions of the
15 ‘340 Patent, that are known by Defendant to be specially made or adapted for use
16 in an infringing manner, and are not staple articles with substantial non-infringing
17 uses. The Accused ‘340 Products are specially designed to infringe at least one or
18 more claims of the ‘340 Patent, and their accused components have no substantial
19 non-infringing uses. In particular, on information and belief, the software modules
20 and code that implement and perform the infringing functionalities identified
21 above are specially made and adapted to carry out said functionality and do not
22 have any substantial non-infringing uses.

23 38. At least as early as the filing and/or service of this Complaint,
24 Defendant’s infringement of the ‘340 Patent was and continues to be willful and
25 deliberate, entitling Commstech to enhanced damages.

26 39. Additional allegations regarding Defendant’s knowledge of the ‘340
27 Patent and willful infringement will likely have evidentiary support after a
28

1 reasonable opportunity for discovery.

2 40. Defendant's infringement of the '340 Patent is exceptional and
3 entitles Commstech to attorneys' fees and costs incurred in prosecuting this action
4 under 35 U.S.C. § 285.

5 41. Commstech is in compliance with any applicable marking and/or
6 notice provisions of 35 U.S.C. § 287 with respect to the '340 Patent.

7 42. Commstech is entitled to recover from Defendant all damages that
8 Commstech has sustained as a result of Defendant's infringement of the '340
9 Patent, including, without limitation, a reasonable royalty.

10 **COUNT II: INDUCED AND CONTRIBUTORY INFRINGEMENT**

11 43. Defendant has been and/or currently is an active inducer of
12 infringement of the '340 Patent under 35 U.S.C. § 271(b) and contributory
13 infringer of the '340 Patent under 35 U.S.C. § 271(c).

14 44. Defendant has had knowledge of the '340 Patent and that the Accused
15 Instrumentalities infringe at least claim one since Plaintiff sent a notice letter on
16 May 1, 2019 via courier.

17 45. Defendant has provided the Accused Instrumentalities to its customers
18 and, on information and belief, instructions to use the Accused Instrumentalities in
19 an infringing manner while being on notice of the '340 Patent and Defendant's
20 infringement. Therefore, Defendant knew of the '340 Patent and of its own
21 infringing acts.

22 46. Defendant knowingly and intentionally encourages and aids at least its
23 end-user customers to directly infringe the '340 Patent.

24 47. Defendant's end-user customers directly infringe at least one or more
25 claims of the '340 Patent by using the Accused Instrumentalities in their intended
26 manner to infringe. Defendant induces such infringement by providing the
27 Accused Instrumentalities and instructions to enable and facilitate infringement,
28

1 knowing of, or being willfully blind to the existence of, the ‘340 Patent. On
2 information and belief, Defendant specifically intends that its actions will result in
3 infringement of one or more claims of the ‘340 Patent, or subjectively believe that
4 their actions will result in infringement of the ‘340 Patent.

5 48. Additionally, Defendant contributorily infringes at least one or more
6 claims of the ‘340 Patent by providing the Accused Instrumentalities and/or
7 software components thereof, that embody a material part of the claimed
8 inventions of the ‘340 Patent, that are known by Defendant to be specially made or
9 adapted for use in an infringing manner, and are not staple articles with substantial
10 non-infringing uses. The Accused Instrumentalities are specially designed to
11 infringe at least one or more claims of the ‘340 Patent, and their accused
12 components have no substantial non-infringing uses. In particular, on information
13 and belief, the software modules and code that implement and perform the
14 infringing functionalities identified above are specially made and adapted to carry
15 out said functionality and do not have any substantial non-infringing uses.
16

17 49. May 1, 2019, Defendant’s infringement of the ‘340 Patent was and
18 continues to be willful and deliberate, entitling Commstech to enhanced damages.

19 50. Additional allegations regarding Defendant’s knowledge of the ‘340
20 Patent and willful infringement will likely have evidentiary support after a
21 reasonable opportunity for discovery.

22 51. Defendant’s infringement of the ‘340 Patent is exceptional and
23 entitles Commstech to attorneys’ fees and costs incurred in prosecuting this action
24 under 35 U.S.C. § 285.

25 52. Commstech is in compliance with any applicable marking and/or
26 notice provisions of 35 U.S.C. § 287 with respect to the ‘340 Patent.

27 53. Commstech is entitled to recover from Defendant all damages that
28 Commstech has sustained as a result of Defendant’s infringement of the ‘340

1 Patent, including, without limitation, a reasonable royalty.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Commstech respectfully requests:

4 A. That Judgment be entered that Defendant has infringed at least one or
5 more claims of the '340 Patent, directly and/or indirectly, literally and/or under the
6 doctrine of equivalents;

7 B. An award of damages sufficient to compensate Commstech for
8 Defendant's infringement under 35 U.S.C. § 284, including an enhancement of
9 damages on account of Defendant's willful infringement;

10 C. That the case be found exceptional under 35 U.S.C. § 285 and that
11 Commstech be awarded its reasonable attorneys' fees;

12 D. Costs and expenses in this action;

13 E. An award of prejudgment and post-judgment interest; and

14 F. Such other and further relief as the Court may deem just and proper.
15

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Commstech
18 respectfully demands a trial by jury on all issues triable by jury.

19
20 Respectfully submitted,

21 Dated: May 21, 2020

22 By: /s/ Stephen M. Lobbin
23 Attorneys for Plaintiff
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