

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

802 Systems Inc.,

Plaintiff,

v.

Cisco Systems, Inc.,

Defendant.

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Civil Action No. _____

Jury Trial Demanded

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff 802 Systems Inc. files this Original Complaint for patent infringement against Cisco Systems, Inc., alleging as follows:

NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. Plaintiff **802 Systems Inc.** (“**Plaintiff**” or “**802 Systems**”) is a Texas corporation with its principal place of business located in this District at 511 North Washington Avenue, Marshall, Texas 75670.

3. Defendant **Cisco Systems Inc.** (“**Cisco**”) is a California corporation with its principal place of business at 170 West Tasman Drive, San Jose, California 95134. Cisco may be served via its registered agent for service in Texas, Prentice Hall Corporation System, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.* This Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. § 271, *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and § 1338 (jurisdiction over patent actions).

5. Cisco is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Cisco because Cisco has engaged in continuous, systematic, and substantial activities within this State, including substantial design, marketing, and sales of products within this State and this District. Furthermore, upon information and belief, this Court has personal jurisdiction over Cisco because Cisco has committed acts giving rise to 802 Systems's claims for patent infringement within and directed to this District.

6. Upon information and belief, Cisco has committed acts of infringement in this District and has one or more regular and established places of business within this District under the language of 28 U.S.C. § 1400(b). Thus, venue is proper in this District under 28 U.S.C. § 1400(b).

7. Cisco maintains a permanent physical presence within the Eastern District of Texas, conducting business from at least its locations at 2250, 2300, and 2400 East President George Bush Turnpike, Richardson, Texas 75082, and 2260 Chelsea Blvd., Allen, Texas 75013.

8. Upon information and belief, Cisco's Richardson facility is a multiple building campus with more than 2,000 Cisco employees.

9. Upon information and belief, Cisco's Allen facility is a 162,000 square foot data center.

10. Upon information and belief, Cisco's Richardson and Allen facilities have been appraised by the Collin County Appraisal District at values in excess of \$300,000,000.

11. Cisco is registered to do business in Texas.

12. Upon information and belief, Cisco has conducted and does conduct substantial business in this forum, directly and/or through subsidiaries, agents, representatives, or intermediaries, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district.

13. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §1391 and 28 U.S.C. § 1400(b).

14. Plaintiff 802 Systems is located in Marshall, Texas, within this division of the Eastern District of Texas. 802 Systems maintains relevant documents at its headquarters in Marshall.

15. The Patents-in-Suit were prosecuted by Alan Loudermilk, who resides and owns businesses in Marshall, Texas, within this division of the Eastern District of Texas. Mr. Loudermilk maintains relevant documents in Marshall, Texas.

BACKGROUND

16. 802 Systems began as a small product-based startup business in 1999. 802 Systems was focused on development of a consumer-grade low-cost appliance for network security. More particularly, in late 1999 and 2000, 802 Systems was working on a product called XEntry, a small packet filtering device optimized for a home network. 802 Systems developed a product roadmap

and obtained funding sufficient to develop a prototype of its product. As part of its strategy, 802 Systems sought to protect its inventions by pursuing a comprehensive patent strategy. Unfortunately, 802 Systems was forced to withdraw from the market due to a shortage of funding opportunities caused by the dot com crash of the late 1990s and early 2000s.

17. While 802 Systems's business plan did not survive in the new funding environment of the early 2000s, many of the patented technical features developed by 802 Systems subsequently began to appear in very high speed packet filtering devices used today.

18. 802 Systems's patents have been cited a number of times in patent applications or during prosecution of patent applications by industry leaders, including but not limited to Cisco, Amazon, Broadcom, Dell, Fujitsu, Hewlett-Packard, Intel, IBM, Toshiba, Marvell, Microsoft, Nokia, Oracle, Qualcomm, Samsung, and others.

PATENTS-IN-SUIT

19. This cause of action asserts infringement of United States Patent No. 7,013,482 ("the '482 Patent"), United States Patent No. 8,458,784 ("the '784 Patent"), and United States Patent No. 7,031,267 ("the '267 Patent") (collectively, the "Patents-in-Suit"). The Patents-in-Suit name Andrew K. Krumel as the sole inventor. Mr. Krumel is a graduate of the United States Naval Academy who has years of experience in hardware and software development, including related to network architecture, servers, technology stacks, and distributed systems.

U.S. Patent No. 7,013,482

20. The '482 Patent, entitled "Methods for Packet Filtering Including Packet Invalidation if Packet Validity Determination Not Timely Made," duly and legally issued on March 14, 2006, from U.S. Patent Application No. 09/611,775, filed on July 7, 2000, naming

Andrew K. Krumel as the sole inventor. A true and correct copy of the '482 Patent is attached hereto as **Exhibit 1** and is incorporated by reference.

21. The USPTO extended the term of the '482 Patent by 614 days under 35 U.S.C. § 154(b).

22. The '482 Patent claims patent-eligible subject matter under 35 U.S.C. § 101.

23. Plaintiff 802 Systems is the owner and assignee of all rights, title, and interest in and under the '482 Patent.

24. 802 Systems has standing to sue for infringement of the '482 Patent.

U.S. Patent No. 8,458,784

25. The '784 Patent, entitled "Data Protection System Selectively Altering an End Portion of Packets Based on Incomplete Determination of Whether a Packet Is Valid or Invalid," duly and legally issued on June 4, 2013, from U.S. Patent Application No. 12/807,641, filed on September 10, 2010, naming Andrew K. Krumel as the sole inventor. A true and correct copy of the '784 Patent is attached hereto as **Exhibit 2** and is incorporated by reference.

26. The '784 Patent is a continuation of U.S. Patent Application No. 11/374,465, filed on March 13, 2006, now abandoned, which is a continuation of U.S. Patent Application No. 09/611,775, filed on July 7, 2000, which issued as the '482 Patent.

27. The '784 Patent claims patent-eligible subject matter under 35 U.S.C. § 101.

28. Plaintiff 802 Systems is the owner and assignee of all rights, title, and interest in and under the '784 Patent.

29. 802 Systems has standing to sue for infringement of the '784 Patent.

U.S. Patent No. 7,031,267

30. The '267 Patent, entitled "PLD-Based Packet Filtering Methods with PLD Configuration Data Update of Filtering Rules," duly and legally issued on April 18, 2006, from U.S. Patent Application No. 09/746,519, filed on December 21, 2000, naming Andrew K. Krumel as the sole inventor. A true and correct copy of the '267 Patent is attached hereto as **Exhibit 3** and is incorporated by reference.

31. The USPTO extended the term of the '482 Patent by 762 days under 35 U.S.C. § 154(b).

32. The '267 Patent claims patent-eligible subject matter under 35 U.S.C. § 101.

33. Plaintiff 802 Systems is the owner and assignee of all rights, title, and interest in and under the '267 Patent.

34. 802 Systems has standing to sue for infringement of the '267 Patent.

35. Cisco has not obtained a license to any of the Patents-in-Suit.

36. Cisco does not have 802 Systems's permission to make, use, sell, offer to sell, or import products that are covered by one or more claims of any of the Patents-in-Suit.

37. Cisco needs to obtain a license to the Patents-in-Suit and cease its ongoing infringement of 802 Systems's patent rights.

GENERAL ALLEGATIONS

38. Upon information and belief, Cisco makes, uses, sells, offers to sell, and/or imports into the United States packet switches and cut-through filtering devices that infringe one or more claims of the Patents-in-Suit, including at least the Cisco Nexus series of Switches ("**Accused Products**").

39. Upon information and belief, the Accused Products are switching devices that perform a plurality of checks on a packet while communicating data between an external computing system and an internal computing system over a network. The Accused Products receive a packet over a network and transmit the packet to an internal computing system. During this process, a number of filter checks are performed in parallel, resulting in a decision about whether the packet should be invalidated by the time the last portion of the packet is transmitted. One such example of an Accused Product is the Cisco Nexus 9300-EX Platform Switch.

40. Additionally, upon information and belief, the Accused Products are configured for “In-Service Software Upgrade” (“ISSU”), which is a process that upgrades an image to another image on a device while the network continues to forward packets. The Accused Products’ use of ISSU includes selectively updating the configuration of a packet filtering system that is using filtering rules to determine whether a packet is to be junked.

41. Upon information and belief, Cisco Nexus switches have been configured for the ISSU process since at least the Cisco Nexus 5000.

42. Upon information and belief, certain of the Accused Products are also configured to permit updating of Access Control Lists (“ACLs”) while the network continues to forward packets.

43. Cisco has infringed and continues to infringe (literally and/or under the doctrine of equivalents), directly, indirectly, and/or through subsidiaries, agents, representatives, or intermediaries, one or more claims of each of the Patents-in-Suit by making, using, importing, testing, supplying, causing to be supplied, selling, and/or offering for sale in the United States the Accused Products.

44. Upon information and belief, Cisco uses or has used one or more of the Accused Products at least in its offices and/or data centers, including at least those located in this District. *See, e.g., Exhibits 16 & 17.*

45. Cisco's customers have infringed and continue to infringe the Patents-in-Suit by using the Accused Products purchased from Cisco. Through its product manuals and/or sales and marketing activities, Cisco solicits, instructs, encourages, and aids and abets its customers to purchase and use the Accused Products in an infringing way.

46. Cisco has knowledge of the Patents-in-Suit at least as of the filing of this lawsuit.

47. Upon information and belief, Cisco has been aware of 802 Systems and/or one or more of the Patents-in-Suit since before the filing of this lawsuit.

48. The asserted '482 Patent was cited by the Examiner during prosecution of U.S. Patent No. 7,266,754 (to Cisco Technology, Inc.) in connection with a Notice of Allowance dated February 22, 2007. Thereafter, Cisco Technology, Inc. cited the '482 Patent in Information Disclosure Statements dated June 13, 2007, submitted in connection with the prosecution of U.S. Patent Nos. 7,257,840, 7,472,416, and 7,565,694.

49. U.S. Patent Application Publication No. 2002/0080771 (which is the application that led to the asserted '267 Patent) was cited by the Examiner and used in an obviousness rejection in an office action during prosecution of U.S. Patent No. 7,313,635 (to Cisco Technology, Inc.) dated September 30, 2005. Thereafter, Cisco Technology, Inc. cited the same application (U.S. Patent Application Publication No. 2002/0080771) in an Information Disclosure Statement dated November 3, 2005, submitted in connection with the prosecution of U.S. Patent No. 7,313,686. The asserted '267 Patent was cited by the Examiner and used to reject all pending claims as

anticipated under 35 U.S.C. § 102(e) in an office action dated October 10, 2006, in connection with the prosecution of U.S. Patent No. 8,296,452.

50. Upon information and belief, Cisco and/or its representatives were aware of one or more of the Patents-in-Suit at least through the prosecution activities described above.

51. Cisco's ongoing actions are with specific intent to cause infringement of one or more claims of each of the Patents-in-Suit.

52. Further discovery may reveal earlier knowledge of one or more of the Patents-in-Suit, which would provide additional evidence of Cisco's specific intent and/or willful blindness with respect to infringement.

53. 802 Systems has been and continues to be damaged as a result of Cisco's infringing conduct. Cisco is therefore liable to 802 Systems in an amount that adequately compensates 802 Systems for Cisco's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

54. Cisco markets and sells other products that are not covered by the claims of the Patents-in-Suit but that are sold with or in conjunction with the Accused Devices. Accordingly, 802 Systems is entitled to collect damages from Cisco for convoyed sales of certain non-patented items.

55. Cisco failed to obtain permission from 802 Systems to make, use, sell, offer to sell, or import products incorporating the inventions claimed in the Patents-in-Suit.

56. Attached to this Complaint are **Exhibits 7–15**, which are exhibits supporting the sample claim charts at **Exhibits 4–6** and are incorporated by reference herein and in the claim charts.

57. For each count of infringement listed below, 802 Systems incorporates and re-states the allegations contained in the preceding paragraphs above including these General Allegations as if fully set forth in each count of infringement.

COUNT I – INFRINGEMENT OF THE '482 PATENT

58. 802 Systems incorporates herein the allegations made in paragraphs 1–57.

59. Cisco has been and is now directly infringing the '482 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States products that are covered by at least Claim 31 of the '482 Patent.

60. Additionally, Cisco is indirectly infringing the '482 Patent in violation of 35 U.S.C. § 271(b) at least by inducing customers to purchase the Accused Devices and/or by instructing customers how to use the Accused Devices in a way that directly infringes at least Claim 31 of the '482 Patent.

61. Cisco has had actual knowledge of the '482 Patent at least since the filing of this lawsuit.

62. Cisco's ongoing actions represent a specific intent to induce infringement of at least Claim 31 of the '482 Patent.

63. An exemplary claim chart comparing a sample Cisco Accused Product to Claim 31 of the '482 Patent is attached as **Exhibit 4** and incorporated herein by reference.

64. As a result of Cisco's infringement of the '482 Patent, 802 Systems has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

COUNT II – INFRINGEMENT OF THE '784 PATENT

65. 802 Systems incorporates herein the allegations made in paragraphs 1–57.

66. Cisco has been and is now directly infringing the '784 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States products that are covered by at least Claim 1 of the '784 Patent.

67. Additionally, Cisco is indirectly infringing the '784 Patent in violation of 35 U.S.C. § 271(b) at least by inducing customers to purchase the Accused Devices and/or by instructing customers how to use the Accused Devices in a way that directly infringes at least Claim 1 of the '482 Patent.

68. Cisco has had actual knowledge of the '784 Patent at least since the filing of this lawsuit.

69. Cisco's ongoing actions represent a specific intent to induce infringement of at least Claim 1 of the '784 Patent.

70. An exemplary claim chart comparing a sample Cisco Accused Product to Claim 1 of the '784 Patent is attached as **Exhibit 5** and incorporated herein by reference.

71. As a result of Cisco's infringement of the '784 Patent, 802 Systems has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

COUNT III – INFRINGEMENT OF THE '267 PATENT

72. 802 Systems incorporates herein the allegations made in paragraphs 1–57.

73. Cisco has been and is now directly infringing the '267 Patent in violation of 35 U.S.C. § 271(a) by using the Accused Products at least in its data centers, including its data centers located in this District, in a way that infringes at least Claim 1 of the '267 Patent.

74. Cisco has been and is now indirectly infringing the '267 Patent in violation of 35 U.S.C. § 271(b) by making, using, selling, offering for sale, and/or importing into the United States the Accused Products and by instructing its customers how to use the Accused Products to practice the methods described in at least Claim 1 of the '267 Patent.

75. Cisco has had actual knowledge of the '267 Patent at least since the filing of this lawsuit.

76. Cisco's ongoing actions represent a specific intent to induce infringement of at least Claim 1 of the '267 Patent.

77. An exemplary claim chart comparing a sample Cisco Accused Product to Claim 1 of the '267 Patent is attached as **Exhibit 6** and incorporated herein by reference.

78. As a result of Cisco's infringement of the '267 Patent, 802 Systems has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

DEMAND FOR A JURY TRIAL

79. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, 802 Systems demands a trial by jury on all issues triable of right by a jury.

PRAYER FOR RELIEF

80. WHEREFORE, 802 Systems respectfully requests that this Court enter judgment in its favor and grant the following relief:

81. A judgment that Cisco has directly and/or indirectly infringed one or more claims of each of the Patents-in-Suit;

82. A judgment and order requiring Cisco to pay 802 Systems past and future damages under 35 U.S.C. § 284, including for supplemental damages arising from any continuing post-verdict infringement for the time between trial and entry of the final judgment with an accounting, as needed, as provided by 35 U.S.C. § 284;

83. A judgment and order requiring Cisco to pay 802 Systems reasonable ongoing royalties on a going-forward basis after final judgment;

84. A judgment and order requiring Cisco to pay 802 Systems pre-judgment and post-judgment interest on the damages award;

85. A judgment and order requiring Cisco to pay 802 Systems's costs; and

86. Such other and further relief as the Court may deem just and proper.

Dated: September 28, 2020

Respectfully submitted,



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