

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

NETCOM GLOBAL SOLUTIONS LLC,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Case No. _____

DEMAND FOR JURY TRIAL

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

1. Netcom Global Solutions LLC (“Netcom” or “Plaintiff”), by and through its counsel, hereby brings this action for patent infringement against Cisco Systems, Inc. (“Cisco” or “Defendant”) alleging infringement of the following validly issued patent (the “Patent-in-Suit”): U.S. Patent No. 8,316,128 titled “Methods and system for creating and managing identity oriented networked communication” (the ’128 Patent) attached hereto as Exhibit A.

NATURE OF THE ACTION

2. This is an action for patent infringement arising under the United States Patent Act 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.

PARTIES

3. Plaintiff, Netcom Global Solutions LLC is a company established in Delaware with its principal place of business at 261 West 35th Street, Suite 1003, New York, NY 10001.

4. Upon information and belief, Defendant Cisco Systems, Inc., organized under the laws of the State of California and may be served via its registered agent CSC – Lawyers Incorporating Services Company at 211 E. 7th Street, Suite 620, Austin, TX 78701.

JURISDICTION AND VENUE

5. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 et seq. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.

6. The Court has personal jurisdiction over Defendant for the following reasons: (1) Defendant is present within or has minimum contacts within the State of Texas and the Eastern District of Texas; (2) Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in this district; (3) Defendant has sought protection and benefit from the laws of the State of Texas; (4) Defendant regularly conducts business within the State of Texas and within this district, and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in this district; and (5) Defendant has purposely availed itself of the privileges and benefits of the laws of the State of Texas.

7. Defendant, directly and/or through intermediaries, ships, distributes, uses, offers for sale, sells, and/or advertises products and services in the United States, the State of Texas, and the Eastern District of Texas including but not limited to the products which contain the infringing '128 Patent systems and methods as detailed below. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in this district; Defendant solicits and has solicited customers in the State of Texas and in this district; and Defendant has paying customers who are residents of the State of Texas and this district and who each use and have used the Defendant's products and services in the State of Texas and in this district.

8. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1400(b). Defendant has transacted business in this district, and has directly and/or indirectly committed acts of patent infringement in this district.

PATENT-IN-SUIT

9. Plaintiff incorporates the above paragraphs herein by reference.

10. On November 20, 2012, United States Patent No. 8,316,128 titled “Methods and system for creating and managing identity oriented networked communication” was duly and legally issued by the United States Patent and Trademark Office. The '128 Patent is presumed valid and enforceable.

11. Plaintiff is the assignee of all right, title and interest in the '128 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the '128 Patent.

12. The '128 Patent relates to network-based communications, including digital transactions and file transfers, and pertains particularly to methods and apparatus for managing communications, including file transfers and file acquisitions based on user and contact identity information. (*See Ex. A at 1:7-12.*)

13. The inventions disclosed in the Patent-in-Suit were not well-understood, routine, or conventional. At the time the '128 Patent was filed, many software solutions provided aggregated services like casual and business communication, collaboration and file transfer capabilities, including Net-Meeting™ and ICQ™. (*See Ex. A at 1:59-67.*) Users generally belonged to specific communities or organizations and maintained an address book that had separate groups for personal contacts and work contacts. Users also joined groups pertaining to shared interests, such as sports and other social activities. The common link for a user to all such groups was a central web presence. (*See Ex. A at 2:1-10.*) The question then arose as to what level of personal information needed to be shared between the different groups. For example, users may not want to share with their work groups the kind of personal information that they may

otherwise disclose to family and friends. Thus, it made sense to respect group boundaries. (*See Ex. A at 1:14-26.*) However, the biggest drawback to software with such aggregated services was the need to provide identifying information, such as an email address, for every group. (*See Ex. A at 2:29-31*) Most of the collaborative software solutions at the time required users to manage the segregation manually, which proved to be a cumbersome task for most users. (*See Ex. A at 2:38-47.*) Further, many users became overwhelmed by the numerous messages they received, not to mention the ongoing need to maintain their contacts (*See Ex. A 3:56-60.*). Users had to manually configure each group or filter the contact list. This meant that the user spent more time manually configuring one or more applications to manage the content. (*See Ex. A 3:65-4:10.*)

14. The Patent-in-Suit addressed these technical challenges by, for example, teaching how software that supports messaging communication, collaboration and content collection via a message-management system that utilizes user and sender identities would ultimately be more efficient. (*See Ex. A 4:35-39.*) The patent also teaches a mechanism to manage contacts and incoming communications based on identities such that the incoming messages or the contact lists are organized and prioritized automatically through communication channels and an environment pre-approved by the user. (*See Ex. A 5:21-26.*)

15. The claims of the '128 Patent do not merely recite the performance of a familiar business practice with a requirement to perform it on the Internet. Instead, the claims recite one or more inventive concepts that are rooted in improving the communication management via an identity-oriented communication system according to user-defined environments and identities.

16. Moreover, the inventions taught in the '128 Patent, which are rooted in improving the exchange of communication via the Internet through different communication channels and

segregating the type of communication activity based on management policies through user identities, cannot be performed with pen and paper or in the human mind. Additionally, because the '128 Patent teaches a mechanism to improve the exchange of information via the Internet through the use of communication channels and segregating the type of communication activity based on management policies through user identities, preferably through a software application, the solutions it teaches are not merely drawn to longstanding human activities.

INVENTOR OF THE PATENT-IN-SUIT

17. Mr. Charles Dazler Knuff is the inventor of the Patent-in Suit. Mr. Knuff has over 40 years of experience in telecommunications. During that time, he founded multiple successful software development companies spanning multiple specialties, including digital communications, telecommunications networks, and machine learning. One of these companies was Forte Internet Software, Inc., where Mr. Knuff served as president for over 30 years. Under Mr. Knuff's leadership, Forte developed telecommunications network analytics and configuration software. Further, while at Forte, he co-authored multiple patents related to identity-oriented networked communications and personal trust networks.

ACCUSED PRODUCTS

18. Defendant makes, uses, offers for sale and sells in the U.S. products, systems, and/or services that infringe the Patent-in-Suit, including, but not limited to Cisco Identity Based Firewall Security, CISCO Zero Trust Security, Cisco Adaptive Security Appliance (ASA) Series Firewall, Cisco Identity Services Engine (ISE) and Cisco TrustSec (the "Accused Products"). The Accused Products offer privileged access to services by running identity check based on users rather than IP addresses.

COUNT I
(Infringement of U.S. Patent No. 8,316,128)

19. Plaintiff incorporates the above paragraphs herein by reference.

20. The '128 Patent is valid, enforceable, and was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on November 20, 2012. The '128 Patent is presumed valid and enforceable. *See* 35 U.S.C. § 282.

21. Plaintiff is the owner by assignment of the '128 patent and possesses all rights of recovery under the '128 patent, including the exclusive right enforce the '128 patent and pursue lawsuits against infringers.

22. Without a license or permission from Plaintiff, Defendant has infringed and continues to directly and indirectly infringe on one or more claims of the '128 Patent by importing, making, using, offering for sale, or selling products and devices that embody the patented inventions, including, without limitation, one or -more of the patented '128 systems and methods, in violation of 35 U.S.C. § 271.

Direct Infringement – 35 U.S.C. § 271(a)

23. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

24. Without a license or permission from Plaintiff, Defendant has infringed and continues to directly infringe on one or more claims of the '128 Patent by importing, making, using, offering for sale, or selling products and devices that embody the patented inventions, including, without limitation, one or more of the patented '128 systems and methods, in violation of 35 U.S.C. § 271.

25. Defendant has been and now is directly infringing by, among other things,

practicing all of the steps of the '128 Patent, for example, internal testing, quality assurance, research and development, and troubleshooting. *See* 35 U.S.C. § 271 (2006).

26. By way of example, Defendant has infringed and continues to infringe at least one or more claims of the '128 Patent, including at least Claim 1. Attached hereto as Exhibit B is an exemplary claim chart detailing representative infringement of Claim 1 of the '128 Patent.

Induced Infringement – 35 U.S.C. § 271(b)

27. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

28. Defendant has been and now is indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '128 Patent in the State of Texas, in this judicial District, and elsewhere in the United States, by, among other things, making, using, offering for sale, and/or selling, without license or authority, products incorporating the accused technology. End users include, for example, Defendant's customers and other third parties interacting with the accused technology.

29. Defendant had pre-suit knowledge of the Patents-in-Suit as early as September 28, 2020 when it received a letter from Plaintiff notifying Defendant of Defendant's infringement. Defendant had post-suit knowledge when this suit was filed.

30. Defendant knew the Accused Product infringes the '128 Patent and yet Defendant induced and continues to induce others-including partners, customers, and third parties-to directly infringe at least one claim of the '128 Patent under 35 U.S.C. § 271(b). Defendant took active steps to induce infringement, such as advertising an infringing use, which supports a finding of an intention. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932 (2005) ("[I]t may be presumed from distribution of an article in commerce that the distributor intended

the article to be used to infringe another's patent, and so may justly be held liable for that infringement").

31. For example, Cisco induces its users to use the infringing Accused Product on computers, actively prompting infringement by directing its users to manage its communication by enforcing policies based on user and group identities rather than IP addresses. *See e.g.*, Ex. C¹ (Cisco encouraging users through its product datasheet pertaining to benefits of identity based policy management); Ex. D² and Ex. E³ (providing an extensive feature guide and installation administration guide for users to enable the infringing feature); Ex. F⁴ (providing a manual on Cisco's Identity Service Engine that assists in creating user identity groups to enable the infringing feature).

32. The allegations herein support a finding that Defendant induced infringement of the '128 Patent. *See Power Integrations v. Fairchild Semiconductor*, 843 F.3d 1315, 1335 (Fed. Cir. 2016) (“[W]e have affirmed induced infringement verdicts based on circumstantial evidence of inducement [e.g., advertisements, user manuals] directed to a class of direct infringers [e.g., customers, end users] without requiring hard proof that any individual third-party direct infringer was actually persuaded to infringe by that material.”).

Contributory Infringement – 35 U.S.C. § 271(c)

33. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

¹ https://www.cisco.com/c/dam/en/us/products/collateral/security/asa-5500-series-next-generation-firewalls/at_a_glance_c45-675579.pdf

² <https://www.cisco.com/c/en/us/td/docs/security/asa/asa97/configuration/firewall/asa-97-firewall-config.pdf>

³ https://www.cisco.com/c/en/us/td/docs/security/ise/2-2/admin_guide/b_ise_admin_guide_22.pdf

⁴ https://www.cisco.com/c/en/us/products/collateral/security/identity-services-engine/data_sheet_c78-656174.pdf

34. Defendant had pre-suit knowledge of the Patents-in-Suit as early as September 28, 2020 when it received a letter from Plaintiff notifying Defendant of Defendant's infringement. Defendant had post-suit knowledge when this suit was filed.

35. On information and belief, Defendant's implementation of the accused functionality has no substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009) (holding that the "substantial non-infringing use" element of a contributory infringement claim applies to an infringing feature or component, and that an "infringing feature" of a product does not escape liability simply because the product as a whole has other non-infringing uses). The Accused Product does not allow one to disable the infringing technology when used.

Willful Infringement

36. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

37. Defendant had pre-suit knowledge of the Patents-in-Suit as early as September 28, 2021 when it received a letter from Plaintiff notifying Defendant of Defendant's infringement. Defendant had post-suit knowledge when this suit was filed.

38. Despite its knowledge of the '128 Patent, Defendant has sold and continues to sell the Accused Product in egregious disregard of Plaintiff's patent rights. Defendant has acted recklessly and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '128 Patent, justifying an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

Plaintiff Suffered Damages

39. Defendant's infringement of the '128 Patent has caused damage to Plaintiff, and

Plaintiff is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271. Defendant's infringement of Plaintiff's exclusive rights under the '128 Patent will continue to damage Plaintiff causing it irreparable harm for which there is no adequate remedy at law, warranting an injunction from the Court.

REQUEST FOR RELIEF

40. Plaintiff incorporates each of the allegations in the paragraphs above and respectfully asks the Court to:

- (a) enter a judgment that Defendant has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of each of the '128 Patent;
- (b) enter a judgment awarding Plaintiff all damages adequate to compensate it for Defendant's infringement of, direct or contributory, or inducement to infringe, the including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of the '128 Patent;
- (d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the '128 Patent;
- (e) enter a judgment requiring Defendant to pay the costs of this action, including all disbursements, and attorneys' fees as provided by 35 U.S.C. § 285, together with

prejudgment interest; and

(f) award Plaintiff all other relief that the Court may deem just and proper.

Dated: March 12, 2021

Respectfully submitted,

By: /s/ Kirk J. Anderson

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