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15 Attorneys for Plaintiff Tekvoke, LLC

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 **TEKVOKE, LLC,**

19 Plaintiff,

20 v.

21 **GENESYS TELECOMMUNICATIONS**
22 **LABORATORIES, INC.,**

23 Defendant.

Civil Action No.: 5:20-CV-07645-LHK

TRIAL BY JURY DEMANDED

24 **FIRST AMENDED COMPLAINT FOR INFRINGEMENT OF PATENT**

25 Now comes Plaintiff, Tekvoke, LLC (“Plaintiff”), by and through undersigned counsel,
26 and respectfully alleges, states, and prays as follows:

27 **NATURE OF THE ACTION**

28 1. This is an action for patent infringement under the Patent Laws of the United States,
Title 35 United States Code (“U.S.C.”) to prevent and enjoin Defendant Genesys
Telecommunications Laboratories, Inc. (hereinafter “Defendant”), from infringing and profiting,

1 in an illegal and unauthorized manner, and without authorization and/or consent from Plaintiff
2 from U.S. Patent No. 6,687,343 (“the ‘343 Patent” or the “Patent-in-Suit”), which is attached
3 hereto as Exhibit A and incorporated herein by reference, and pursuant to 35 U.S.C. §271, and to
4 recover damages, attorney’s fees, and costs.
5

6 **THE PARTIES**

7 2. Plaintiff is a Texas limited liability company with its principal place of business at
8 15922 Eldorado Parkway – Suite 500-1703, Frisco, Texas 75035.

9 3. Upon information and belief, Defendant is a corporation organized under the laws
10 of California, having a principal place of business at 2001 Junipero Serra Boulevard, Daly City,
11 California 94014. Upon information and belief, and according to the California Secretary of
12 State’s website, Defendant may be served with process c/o the Corporation Service Company,
13 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.
14

15 4. Plaintiff is further informed and believes, and on that basis alleges, that Defendant
16 operates the website www.genesys.com/genesys-engage.com, which is in the business of
17 providing internet-based communication devices. Defendant derives a portion of its revenue from
18 sales and distribution via electronic transactions conducted on and using at least, but not limited
19 to, its Internet website, and its incorporated and/or related systems (collectively, “Defendant’s
20 Website”). Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant
21 hereto, Defendant has done and continues to do business in this judicial district, including, but
22 not limited to, providing products/services to customers located in this judicial district by way of
23 Defendant’s Website.
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JURISDICTION AND VENUE

1
2 5. This is an action for patent infringement in violation of the Patent Act of the United
3 States, 35 U.S.C. §§1 *et seq.*

4
5 6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
6 §§1331 and 1338(a).

7
8 7. This Court has personal jurisdiction over Defendant by virtue of its systematic and
9 continuous contacts with this jurisdiction and its residence in this District, as well as because of
10 the injury to Plaintiff, and the cause of action Plaintiff has risen in this District, as alleged herein.

11
12 8. Defendant is subject to this Court’s specific and general personal jurisdiction
13 pursuant to its substantial business in this forum, including: (i) at least a portion of the
14 infringements alleged herein; (ii) regularly doing or soliciting business, engaging in other
15 persistent courses of conduct, and/or deriving substantial revenue from goods and services
16 provided to individuals in this judicial District; and (iii) being incorporated in this District.

17
18 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because
19 Defendant resides in this District under the Supreme Court’s opinion in *TC Heartland v. Kraft*
20 *Foods Group Brands LLC*, 137 S. Ct. 1514 (2017) through its incorporation, and regular and
21 established place of business in this District.

FACTUAL ALLEGATIONS

22
23 10. On February 3, 2004, the United States Patent and Trademark Office (“USPTO”)
24 duly and legally issued the ‘343 Patent, entitled “INTERNET COMMUNICATION CONTROL
25 APPARATUS AND COMMUNICATION TERMINAL CALLING METHOD” after a full and
26 fair examination. The ‘343 Patent is attached hereto as Exhibit A and incorporated herein as if
27 fully rewritten.

1 11. Plaintiff is presently the owner of the '343 Patent, having received all right, title
2 and interest in and to the '343 Patent from the previous assignee of record. Plaintiff possesses all
3 rights of recovery under the '343 Patent, including the exclusive right to recover for past
4 infringement.
5

6 12. To the extent required, Plaintiff has complied with all marking requirements under
7 35 U.S.C. § 287.
8

9 13. An exemplary advantage of the '343 Patent over the prior art is to “provide an
10 Internet communication control apparatus and communication terminal calling method that can
11 easily perform individual calling process, without complicating or upsizing the apparatus, when
12 connected telephones and facsimile apparatuses having incoming calls from multiple parties
13 about the same time with an overlapping of time.” Ex. A at 2:13-18.
14

15 14. The '343 Patent contains five claims, namely two independent claims and three
16 dependent claims.
17

18 15. Claim 1 of the '343 Patent states:

19 1. An Internet communication control apparatus selectively connected to a
20 plurality of communication terminals and to a computer network, said Internet
21 communication control apparatus comprising:

22 a controller configured to transmit calling signals to said plurality of
23 communication terminals, wherein a single calling signal having a first
24 predetermined time period is transmitted to one communication terminal
25 of said plurality of communication terminals when a single calling request
26 is detected from the computer network, and wherein plural calling signals
27 having a second predetermined time period are sequentially transmitted to
28 plural communication terminals of said plurality of communication
terminals when plural calling requests are detected from the computer
network, said plural calling signals being transmitted one after another to
the plural communication terminals.

See Ex. A.

1 16. As identified in the ‘343 Patent, prior art systems had technological faults. *See*
2 Ex. A at 1:58-67 and 2:1-8.

3 17. The ‘343 Patent is directed to an “Internet communication control apparatus, to
4 which multiple communication terminals, such as facsimile apparatuses and/or telephones, are
5 connected.” *Id.* at 2:21-23.

6 18. In the ‘343 Patent, the Applicant explained that with widespread Internet use,
7 “various forms of devices that use the Internet, such as Internet phones and Internet facsimiles,
8 [were] available [in the prior art].” *Id.* at 1:15-18.

9 19. The Applicant specifically pointed to its own previous Japanese Patent No.
10 3,133,297 for a “communication control apparatus ... which can perform Internet phone and
11 facsimile communication connecting to analog communication terminals such as ordinal
12 telephones and facsimiles.” *Id.* at 1:20-23.

13 20. The Applicant indicated that its previous work “mentions steps to establish
14 communication without any overlap of time; however, it does not mention steps to establish
15 simultaneous communication” to multiple phones or facsimile devices (i.e., when the
16 communication control apparatus receives incoming calls from multiple parties at about the same
17 time). *Id.* at 1:37-42.

18 21. One change that the Applicant recognized was “to change data into packets and to
19 transmit/receive the same via the Internet, so that after the communication is established,
20 simultaneous phone conversations or facsimile communication can be established within the
21 range that the conversations and facsimile data are not interrupted.” *Id.* at 1:44-49.

22 22. The Applicant recognized that this was not ideal and involved a network-specific
23 technological problem, namely that: “to process data when the telephone and facsimile apparatus
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1 that are connected to the communication control apparatus have incoming calls from multiple
2 callers at about the same time, with an overlap of time, the apparatus needs to repeatedly output
3 calling signals to the communication terminals at predetermined intervals. Since the process is
4 different, the above-described process after establishing the communication cannot be applied to
5 the situation. Thus, a separate calling signal output apparatus needs to be established.” *Id.* at 1:58-
6 67.
7

8 23. The Applicant further identified the network-specific technological problem,
9 indicating that “[a]s a calling signal output apparatus, data may be processed in a parallel
10 configuration, by enabling the communication terminals to output calling signals. However, the
11 apparatus becomes very complicated and the cost rises. Each communication terminal may be
12 provided with a calling signal output apparatus. However, the wiring becomes complicated in that
13 case as well, and the device becomes upsized, while raising the cost similarly to the above.” *Id.*
14 at 2:1-8.
15

16 24. To solve the technological problems associated with increased system complexity,
17 cost, and physical size of the devices (*see id.* 1:58-2:8), the Applicant invented a solution that
18 would “provide an Internet communication control apparatus and communication terminal calling
19 method that can easily perform individual calling process, without complicating or upsizing the
20 apparatus, when connected telephones and facsimile apparatuses have incoming calls from
21 multiple parties about the same time with an overlapping of time.” *Id.* at 1:13-18.
22
23

24 25. To address this specific network-centric and internet-centric technical problems,
25 Claim 1 in the ‘343 Patent comprises a non-abstract device in the form of a controller configured
26 to transmit calling signals to said plurality of communication terminals, wherein a single calling
27 signal having a first predetermined time period is transmitted to one communication terminal of
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1 said plurality of communication terminals when a single calling request is detected from the
2 computer network, and wherein plural calling signals having a second predetermined time period
3 are sequentially transmitted to plural communication terminals of said plurality of communication
4 terminals when plural calling requests are detected from the computer network, said plural calling
5 signals being transmitted one after another to the plural communication terminals. *Id.* at 1:19-31.
6

7 26. Claim 1 of the '343 Patent provides a robust solution to the previous network-
8 centric or internet-centric problems technological problems inasmuch as it “perform[s] individual
9 calling process, without complicating or upsizing the apparatus, when connected telephones and
10 facsimile apparatuses have incoming calls from multiple parties about the same time with an
11 overlapping of time.” *Id.* at 2:14-18.
12

13 27. Claim 1 of the '343 Patent provides an unconventional arrangement of its device,
14 because the prior art methodologies would repeatedly output calling signals to the communication
15 terminals at predetermined intervals, in parallel, or alternatively. By providing a controller
16 wherein plural calling signals having a second predetermined time period are sequentially
17 transmitted to plural communication terminals of said plurality of communication terminals when
18 plural calling requests are detected from the computer network, said plural calling signals being
19 transmitted one after another to the plural communication terminals, Claim 1 of the '343 Patent
20 was able to unconventionally to provide device that controlled internet communications.
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22

23 28. These specific elements (i.e., a single calling signal having a first predetermined
24 time period is transmitted to one communication terminal of said plurality of communication
25 terminals when a single calling request is detected from the computer network, and wherein plural
26 calling signals having a second predetermined time period are sequentially transmitted to plural
27 communication terminals of said plurality of communication terminals when plural calling
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1 requests are detected from the computer network, said plural calling signals being transmitted one
2 after another to the plural communication terminals), as combined, accomplish the desired result
3 of decreasing cost and reducing complexity of a particular computer network.
4

5 29. Further, these specific elements also accomplish these desired results to overcome
6 the then-existing problems in the relevant field of network communication systems. *See Ancora*
7 *Technologies, Inc. v. HTC America, Inc.*, 908 F.3d 1343, 1348 (Fed. Cir. 2018) (holding that
8 improving computer security can be a non-abstract computer-functionality improvement if done
9 by a specific technique that departs from earlier approaches to solve a specific computer problem).
10 *See also Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999 (Fed. Cir. 2018); *Core Wireless*
11 *Licensing v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018); *Finjan, Inc. v. Blue Coat Sys., Inc.*,
12 879 F.3d 1299 (Fed. Cir. 2018); *Uniloc USA, Inc. v. LG Electronics USA, Inc.*, 957 F.3d 1303
13 (Fed. Cir. 2020). Claims need not articulate the advantages of the claimed combinations to be
14 eligible. *Uniloc USA, Inc.*, 957 F.3d at 1309.
15

16 30. These specific elements of Claim 1 of the '343 Patent (i.e., a single calling signal
17 having a first predetermined time period is transmitted to one communication terminal of said
18 plurality of communication terminals when a single calling request is detected from the computer
19 network, and wherein plural calling signals having a second predetermined time period are
20 sequentially transmitted to plural communication terminals of said plurality of communication
21 terminals when plural calling requests are detected from the computer network, said plural calling
22 signals being transmitted one after another to the plural communication terminals) were an
23 unconventional arrangement of elements, because the prior art methodologies would simply use
24 predetermined intervals or parallel processing.
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1 31. By adding the specific elements (i.e., a single calling signal having a first
2 predetermined time period is transmitted to one communication terminal of said plurality of
3 communication terminals when a single calling request is detected from the computer network,
4 and wherein plural calling signals having a second predetermined time period are sequentially
5 transmitted to plural communication terminals of said plurality of communication terminals when
6 plural calling requests are detected from the computer network, said plural calling signals being
7 transmitted one after another to the plural communication terminals), Claim 1 of the '343 Patent
8 explicitly details how its system is implemented to solve the network-centric problems that the
9 Applicant identified and how it provides a way that leads to an improvement in the technology of
10 networked communications via the sequential transmissions.
11
12

13 32. The plain focus of Claim 1 is on an Internet communication control apparatus
14 selectively connected to a plurality of communication terminals and to a computer network itself,
15 not on other tasks for which a computer is used in its ordinary capacity. *See Enfish, LLC v.*
16 *Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016) (“In this case, however, the plain focus of
17 the claims is on an improvement to computer functionality itself, not on economic or other tasks
18 for which a computer is used in its ordinary capacity.”).
19

20 33. Further, regarding the specific non-conventional and non-generic arrangements of
21 known, conventional pieces to overcome an existing problem, Claim 1 in the '343 Patent provides
22 a device that would not preempt all ways of controlling internet communications, because the
23 plural calling signals are transmitted sequentially being transmitted one after another to the plural
24 communication terminals. This limitation could be removed or performed differently (such as in
25 parallel) to permit a method of controlling internet communications in a different way. *See*
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28

1 *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016); *DDR*
2 *Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

3 34. Based on the allegations, it must be accepted as true at this stage that Claim 1 of
4 the '343 Patent recites a specific, plausibly inventive way of controlling internet communications
5 and using specific protocols rather than the general idea of providing a simple controller. *Cellspin*
6 *Soft, Inc.*, 927 F.3d at 1319.

7
8 35. Alternatively, there is at least a question of fact that must survive the pleading
9 stage as to whether the specific elements of Claim 1 of the '343 Patent (i.e., a single calling signal
10 having a first predetermined time period is transmitted to one communication terminal of said
11 plurality of communication terminals when a single calling request is detected from the computer
12 network, and wherein plural calling signals having a second predetermined time period are
13 sequentially transmitted to plural communication terminals of said plurality of communication
14 terminals when plural calling requests are detected from the computer network, said plural calling
15 signals being transmitted one after another to the plural communication terminals) were an
16 unconventional arrangement of elements. *See Aatrix Software, Inc. v. Green Shades Software,*
17 *Inc.*, 882 F.3d 1121 (Fed. Cir. 2018); *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), cert.
18 denied, 140 S. Ct. 911, 205 L. Ed. 2d 454 (2020). Thus, there is a factual issue as to whether the
19 asserted claims are directed to something significantly more than an abstract idea itself.
20
21

22 36. Defendant commercializes, inter alia, an apparatus having all the elements and
23 components recited in at least one claim of the '343 Patent. More particularly, Defendant makes,
24 uses, sells, offers for sale, or imports a system and/or device that encompasses that which is
25 covered by Claim 1 of the '343 Patent.
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DEFENDANT’S PRODUCT(S)

1
2 36. Defendant offers the “Genesys SIP Server” (the “Accused Instrumentality”), an
3 Internet communication control apparatus selectively connected to a plurality of communication
4 terminals and to a computer network. A non-limiting and exemplary claim chart comparing the
5 Accused Instrumentality to Claim 1 of the ‘343 Patent is attached hereto as Exhibit B and is
6 incorporated herein as if fully rewritten.
7

8 37. As recited in Claim 1, the Accused Instrumentality is an Internet communication
9 control apparatus (e.g., hosted PBX) selectively connected to a plurality of communication
10 terminals (e.g., desk phones and mobile app installed smart devices) and to a computer network.
11 *See Ex. B.*
12

13 38. As recited in Claim 1, the Accused Instrumentality utilizes a controller (e.g., a
14 controller inherent in the hosted PBX system) configured to transmit calling signals to said
15 plurality of communication terminals (e.g., desk phones and mobile app installed smart devices),
16 wherein a single calling signal having a first predetermined time period (e.g., User Defined
17 Connect Timeout) is transmitted to one communication terminal (e.g., user defined single hunt
18 group member) of said plurality of communication terminals (e.g., desk phones and smart devices
19 installed with a mobile app) when a single calling request (e.g., User Call initiation) is detected
20 from the computer network (e.g., Genesys cloud VoIP network). *See Ex. B.*
21
22

23 39. As recited in Claim 1, the Accused Instrumentality includes plural calling signals
24 having a second predetermined time period (e.g., User Defined Connect Timeout) that are
25 sequentially transmitted (e.g., sequential call forwarding) to plural communication terminals (e.g.,
26 multiple hunt group members in queue) of said plurality of communication terminals (e.g., desk
27 phones and smart devices with the mobile application installed) when plural calling requests are
28

1 detected from the computer network, said plural calling signals being transmitted one after
2 another (e.g., sequential call forwarding) to the plural communication terminals (e.g., multiple
3 hunt group members in the queue, which can be desk phones and mobile app installed smart
4 devices). *See Ex. B.*

5
6 40. As recited in Claim 1 and shown in Exhibit B, the Accused Instrumentality utilizes
7 a powerful routing feature (e.g., hunt group-based call distribution), wherein Genesys hosted
8 VoIP allows users to customize the number of hunt group members (i.e., singular or plural calling
9 terminals) as well as a predetermined time period for calling signals (e.g., user-controlled Connect
10 timeout, which indicates how long a hunt group member's phone will ring before choosing a new
11 hunt group member to receive the call). In the case where multiple hunt group members receive
12 a call in the queue (i.e. plural calling signals to plurality of communication terminals), there exists
13 a provision for sequential transmission of call to plurality of communication terminals (i.e.
14 sequential call forwarding). *See Ex. B.*

15 16 **INFRINGEMENT OF THE PATENT-IN-SUIT**

17
18 41. Plaintiff realleges and incorporates by reference all of the allegations set forth in
19 the preceding paragraphs.

20 42. In violation of 35 U.S.C. §271, Defendant is now, and has been directly infringing
21 the '343 Patent.

22 43. Defendant has had knowledge of infringement of the '343 Patent at least as of the
23 service of the present Complaint.

24
25 44. **Direct Infringement.** Defendant has directly infringed and continues to directly
26 infringe at least one claim of the '343 Patent by using, at least through internal testing or
27 otherwise, the Accused Instrumentality without authority in the United States, and will continue

1 to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct
2 infringement of the '343 Patent, Plaintiff has been and continues to be damaged.

3 **45. Induced Infringement.** At least since being served by this Complaint and
4 corresponding claim charts, Defendant has actively, knowingly, and intentionally continued to
5 induce infringement of the '343 Patent, literally or by the doctrine of equivalents, by selling the
6 Accused Instrumentality to their customers for use in end-user products in a manner that infringes
7 one or more claims of the '343 Patent.

8
9 **46.** By engaging in the conduct described herein, Defendant has injured Plaintiff and
10 is thus liable for infringement of the '343 Patent, pursuant to 35 U.S.C. §271.

11
12 **47.** Defendant has committed these acts of infringement without license or
13 authorization.

14 **48.** As a result of Defendant's infringement of the '343 Patent, Plaintiff has suffered
15 monetary damages and is entitled to a monetary judgment in an amount adequate to compensate
16 for Defendant's past infringement, together with interests and costs.

17
18 **49.** Plaintiff will continue to suffer damages in the future unless Defendant's
19 infringing activities are enjoined by this Court. As such, Plaintiff is entitled to compensation for
20 any continuing and/or future infringement up until the date that Defendant is finally and
21 permanently enjoined from further infringement.

22 **50.** Plaintiff reserves the right to modify its infringement theories as discovery
23 progresses in this case; it shall not be estopped for infringement contention or claim construction
24 purposes by the claim charts that it provides with this Complaint. The claim chart depicted in
25 Exhibit B is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rule of
26

1 Civil Procedure and does not represent Plaintiff's preliminary or final infringement contentions
2 or preliminary or final claim construction positions.

3 **DEMAND FOR JURY TRIAL**

4
5 51. Plaintiff demands a trial by jury of any and all causes of action.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for the following relief:

8 a. That Defendant be adjudged to have directly infringed the '343 Patent either literally
9 or under the doctrine of equivalents;

10 b. An accounting of all infringing sales and damages including, but not limited to, those
11 sales and damages not presented at trial;

12 c. That Defendant, its officers, directors, agents, servants, employees, attorneys,
13 affiliates, divisions, branches, parents, and those persons in active concert or participation with
14 any of them, be permanently restrained and enjoined from directly infringing the '343 Patent;

15 d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Plaintiff
16 for the Defendant's past infringement and any continuing or future infringement up until the date
17 that Defendant is finally and permanently enjoined from further infringement, including
18 compensatory damages;

19 e. An assessment of pre-judgment and post-judgment interest and costs against
20 Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

21 f. That Defendant be directed to pay enhanced damages, including Plaintiff's attorneys'
22 fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

23 g. That Plaintiff be granted such other and further relief as this Court may deem just and
24 proper.
25
26
27

1 Dated: April 16th, 2021

Respectfully submitted,

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17 ATTORNEYS FOR PLAINTIFF
18 TEKVOKE LLC

19 **CERTIFICATE OF SERVICE**

20 The undersigned hereby certifies that a true and correct copy of the above and foregoing
21 document has been served on April 16, 2021, to all counsel of record who is deemed to have
22 consented to electronic service via the Court’s CM/ECF system.
23

24 /s/ Howard L. Wernow
25 Howard L. Wernow
26
27
28