

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A  
BRAZOS LICENSING AND DEVELOPMENT,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE COMPANY AND  
NEW H3C TECHNOLOGIES CO. LTD.,

Defendant.

Civil Action No. 6:20-cv-00729-ADA

**JURY TRIAL DEMANDED**

**BRAZOS’S SECOND AMENDED COMPLAINT AGAINST HPE AND H3C FOR  
INFRINGEMENT OF U.S. PATENT NO. 7,646,729**

Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development (“Brazos”), by and through its attorneys, files this First Amended Complaint for Patent Infringement against defendant Hewlett Packard Enterprise Company (“HPE”) and New H3C Technologies Co., Ltd. (“H3C”) (collectively, “Defendants”), and alleges:

**NATURE OF THE ACTION**

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*, including §§ 271, 281, 284, and 285.
2. Brazos alleges that Defendants infringe U.S. Patent No. 7,646,729 (“the ’729 Patent”). Brazos seeks damages and other relief for their infringement of the ’729 Patent.

**THE PARTIES**

3. Brazos is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 605 Austin Avenue, Suite 6, Waco, Texas 76701.

4. Upon information and belief, HPE is a corporation organized and existing under the laws of Delaware, with a regular and established place of business located at 14231 Tandem Boulevard, Austin, Texas 78728. HPE may be served through its designated agent for service of process, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas, 75201.

5. Upon information and belief, H3C is a corporation formed under the laws of China with a principal place of business at Tower 1, LSH Center, 8 Guangshun South Street, Chaoyang District, Beijing 100102 China. H3C is a provider of digital solutions ranging from digital infrastructure products to digital platforms and end-to-end technical services.

6. HPE has a “unique partnership” with H3C in which it owns a 49 percent stake in H3C.<sup>1</sup>

7. HPE has commercial arrangements with H3C to buy and sell HPE branded servers, storage, and networking products. During FY 2020, 2019 and 2018, HPE recorded approximately \$737 million, \$897 million and \$1.3 billion of sales to H3C and \$215 million, \$202 million and \$273 million of purchases from H3C, respectively. Payables due to H3C as of October 31, 2020 and 2019 were approximately \$29 million and \$39 million, respectively. Receivables due from H3C as of October 31, 2020 and 2019 were approximately \$19 million and \$32 million, respectively.<sup>2</sup>

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<sup>1</sup> <https://www.hpe.com/us/en/newsroom/press-release/2019/09/hewlett-packard-enterprise-new-h3c-delivers-double-digit-market-share-and-attains-number-one-position-in-second-quarter-of-2019-worldwide-server-revenue-tracker.html>; *see also* <https://www.sec.gov/ix?doc=/Archives/edgar/data/1645590/000164559020000056/hpe-20201031.htm> at 49.

<sup>2</sup> *See* <https://www.sec.gov/ix?doc=/Archives/edgar/data/1645590/000164559020000056/hpe-20201031.htm> at 138.

**JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over both Defendants. Upon information and belief, Defendants, directly and/or through intermediaries, regularly conduct business and have committed acts of patent infringement and/or have induced acts of patent infringement by others in this Judicial District and/or have contributed to patent infringement by others in this Judicial District, the State of Texas and elsewhere in the United States. The Court's exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice because Defendants have established minimum contacts with the forum with respect to both general and specific personal jurisdiction and have purposefully availed themselves of the privilege of doing business within this District such that they should reasonably and fairly anticipate being brought into court here.

10. This Court has general and specific jurisdiction over HPE. Upon information and belief, HPE has continuous and systematic business contacts with the State of Texas. HPE is registered to do business in the State of Texas, has offices and facilities in the State of Texas, and actively directs its activities to customers located in the State of Texas. HPE, directly and/or through affiliates and/or intermediaries, conducts its business extensively throughout Texas, by shipping, importing, manufacturing, distributing, offering for sale, selling, and/or advertising its products and services in the State of Texas and this Judicial District. Upon information and belief, HPE is subject to the Court's specific jurisdiction by, among other things, directly or indirectly, making, using, offering to sell, and/or selling in the State of Texas and this Judicial District and/or importing into the State of Texas and this Judicial District infringing products.

11. Upon information and belief, Defendants, directly or through intermediaries, participate in the stream of commerce that, with their knowledge, results in infringing products being made, used, offered for sale, and/or sold in the State of Texas and/or imported into the United States to the State of Texas, including through retailers, distributors, and/or authorized dealers and sales agents in Texas and this Judicial District. Upon information and belief, Defendants, directly or through intermediaries, derive revenues from their infringing acts and the infringing acts of others occurring within the State of Texas and in this Judicial District. Additionally, Defendants, directly or through intermediaries, provide service and support to their customers in the State of Texas and this Judicial District.

12. In addition, or in the alternative, this Court has personal jurisdiction over H3C under Federal Rule of Civil Procedure 4(k)(2) because H3C is not subject to jurisdiction with respect to claims in this complaint in any other state's courts of general jurisdiction and exercising jurisdiction over H3C is consistent with the United States Constitution and laws because H3C has established minimum contacts with the United States as a whole.

13. Venue is proper over defendant H3C in this Court pursuant to 28 U.S.C. § 1391 because, among other things, defendant H3C is a foreign defendant and not a resident in the United States, and thus may be sued in any judicial district pursuant to 28 U.S.C. § 1391(c)(3).

14. Venue is proper over HPE in this Court pursuant to 28 U.S.C. § 1400(b) because defendant HPE is registered to do business in Texas and, upon information and belief, HPE has offices in this Judicial District, has transacted business in this Judicial District, and has committed acts of direct and indirect infringement in this Judicial District by, among other things, making, using, distributing, installing, configuring, importing, offering to sell, and selling

products that infringe the Asserted Patent. HPE has regular and established places of business in this Judicial District, as set forth below.

15. HPE maintains a regular and established place of business in this Judicial District, at least at 14231 Tandem Boulevard, Austin, Texas 78728:<sup>3,4</sup>



16. Upon information and belief, HPE conducts business and serves customers from its regular and established place of business in Austin, Texas, in this District. Upon information and belief, HPE's Austin office is located on a 52-acre campus.<sup>5</sup>

17. In October 2019, it was reported that HPE signed a lease for a 27,326-square-foot-space in a 164,714-square-foot office building in North Austin at Paloma Ridge, located at 13620 FM 620 Austin, Texas, 78717.<sup>6</sup>

<sup>3</sup> See <https://www.hpe.com/us/en/contact-hpe.html>.

<sup>4</sup> See <https://goo.gl/maps/mojArn1WxaHcHU8v8>; see also <https://goo.gl/maps/cBjm1De4gVPFMeam9>.

<sup>5</sup> See <https://www2.colliers.com/en/properties/austin-continuum/USA-14231-tandem-boulevard-austin-tx-78728/usa1046778>.

<sup>6</sup> See <https://communityimpact.com/local-news/austin/leander-cedar-park/coming-soon/2019/10/23/hewlett-packard-signs-lease-at-paloma-ridge-on-fm-620/>.

18. Upon information and belief, HPE owns at least two properties in Austin, Texas, in this Judicial District.<sup>7</sup>

19. HPE maintains regular and established places of business in the State of Texas, nearby to this District, including at 11445 Compaq Center West Drive Houston, Texas, 77070; and 6080 Tennyson Parkway, Suite 400, Plano, Texas 75024.<sup>8</sup>

20. HPE website states that HPE is as “a global edge-to-cloud Platform-as-a-Service company . . . that helps customers connect, protect, analyze, and act on all [of the customer’s] data and applications wherever they live . . . .”<sup>9</sup> Upon information and belief, HPE designs, manufactures, uses, imports into the United States, sells, and/or offers for sale in the United States products that infringe the Asserted Patent, directly and or through intermediaries, as alleged herein. HPE markets, sells, and/or offers to sell its products and/or services, including those accused herein of infringement, to actual and potential customers and end-users located in Texas and in this Judicial District, as alleged herein.

21. HPE organizes its business into “four segments,” as described in its Form 10-K for the fiscal year ended October 31, 2019. One of these “segments” is the “Intelligent Edge” segment, which “provides a portfolio of secure Edge-to-Cloud solutions . . . that include wireless local area network (‘LAN’), campus and data center switching, software-defined wide area networking, security, and associated services to enable secure connectivity for business of any size.” HPE’s “Intelligent Edge” “segment” “operat[es] under the Aruba brand.” HPE reports

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<sup>7</sup> See <http://propaccess.traviscad.org/clientdb/SearchResults.aspx> (printout attached as Exhibit B).

<sup>8</sup> See *supra* note 3.

<sup>9</sup> See <https://www.hpe.com/us/en/about.html>.

revenues from the “HPE Aruba Product” and “HPE Aruba Service” business units within the Intelligent Edge segment of its business on its Form 10-K.<sup>10</sup>

22. HPE advertises and sells HPE Aruba Products and HPE Aruba Services to customers, *inter alia*, as part of its Networking portfolio, which is comprised of “AI-powered networking solutions for the Intelligent Edge.”<sup>11</sup> HPE also promotes and sells HPE Aruba Products and HPE Aruba Services to customers as part of its “HPE OEM integrated solution” or “HPE OEM Solutions” portfolio.<sup>12</sup>

23. HPE’s website permits users to configure and customize HPE products, including HPE Aruba Products and HPE Aruba Services, and request prices quote from HPE on the configured products.<sup>13</sup> HPE’s website also permits users to purchase HPE products, including HPE Aruba Products, directly from HPE’s website.<sup>14</sup>

24. Upon information and belief, HPE offers trainings and/or certifications to its employees including, *inter alia*, trainings and certifications regarding the sales and/or service of HPE products, including products designed and developed, in whole or in part by H3C, as well as HPE Aruba Products and HPE Aruba Services. For example, HPE offers an HPE Sales Certification to HPE employees, including HPE sales team members, that teaches how to

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<sup>10</sup> See <https://investors.hpe.com/~media/Files/H/HP-Enterprise-IR/documents/hpe-10k2019.pdf>.

<sup>11</sup> See <https://www.hpe.com/us/en/networking.html>.

<sup>12</sup> See <https://www.hpe.com/us/en/oem.html>.

<sup>13</sup> See, e.g., <https://h22174.www2.hpe.com/SimplifiedConfig/Welcome> (printout attached as Exhibit C).

<sup>14</sup> See, e.g., <https://buy.hpe.com/us/en/networking/switches/modular-ethernet-switches/aruba-8400-switch-products/aruba-8400-switch-series/p/1010129959>.

“describe, position and recommend” HPE Aruba Products and HPE Aruba Services to customers.”<sup>15</sup>

25. As of August 2020, HPE advertised at least fifteen public job postings for positions at HPE’s Austin, Texas office.<sup>16</sup> At least one such posting advertised an opening in HPE’s Austin office for a Driver Software Engineer, whose responsibilities include, *inter alia*, the ability to “[d]esign, develop, and integrate driver software features and capabilities for HPE’s networking product line,”<sup>17</sup> which includes HPE Aruba Products and HPE Aruba Services.<sup>18</sup>

**COUNT I**  
**(Infringement of U.S. Patent No. 7,646,729)**

26. Brazos re-alleges and incorporates by reference the preceding paragraphs 1–25 of this Complaint.

27. On January 12, 2010, the U.S. Patent & Trademark Office duly and legally issued the ’729 Patent, entitled “Method and Apparatus for Determination of Network Topology.” A true and correct copy of the ’729 Patent is attached as Exhibit A to this Complaint.

28. The ’729 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

29. Brazos is the owner of all rights, title, and interest in and to the ’729 Patent, including the right to assert all causes of action arising under the ’729 Patent and the right to any

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<sup>15</sup> See <https://certification-learning.hpe.com/tr/datacard/Certification/Aruba-SCE-APAS>.

<sup>16</sup> See <https://www.linkedin.com/jobs/search?keywords=Hewlett%20Packard%20Enterprise&location=Austin%2C%20Texas%2C%20United%20States> (printout attached as Exhibit D).

<sup>17</sup> See <https://www.linkedin.com/jobs/view/driver-software-engineer-at-hewlett-packard-enterprise-1901505190/>.

<sup>18</sup> See *supra* note 11.



remedies for the infringement of the '729 Patent, including the exclusive right to recover for past infringement.

30. The Accused Products that infringe at least one claim of the '729 Patent include but are not limited to HPE's switches with support for Ethernet Ring Protection Switching ("ERPS"), including, but not limited to, FlexNetwork 7500 Series switches,<sup>19</sup> HPE FlexFabric 5710 Series switches,<sup>20</sup> Aruba CX 8400 Series switches,<sup>21</sup> HPE FlexFabric 5940 and 5930 Series switches,<sup>22</sup> HPE FlexFabric 12900E Series switches,<sup>23</sup> HPE FlexNetwork 5130 HI Series

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<sup>19</sup> See <https://buy.hpe.com/us/en/networking/networking-switches/hpe-flexnetwork-7500-switch-series/p/4177519>; see also [https://support.hpe.com/hpesc/public/docDisplay?docId=emr\\_na-c05366186](https://support.hpe.com/hpesc/public/docDisplay?docId=emr_na-c05366186).

<sup>20</sup> See <https://buy.hpe.com/us/en/networking/networking-switches/hpe-flexfabric-5710-switch-series/p/1010868971>; see also [https://support.hpe.com/hpesc/public/docDisplay?docId=a00050572en\\_us](https://support.hpe.com/hpesc/public/docDisplay?docId=a00050572en_us); [https://techhub.hpe.com/eginfolib/networking/docs/switches/5710/5200-4983\\_hi-avail\\_cg/content/bk01-toc.htm](https://techhub.hpe.com/eginfolib/networking/docs/switches/5710/5200-4983_hi-avail_cg/content/bk01-toc.htm).

<sup>21</sup> See <https://buy.hpe.com/us/en/networking/switches/modular-ethernet-switches/aruba-8400-switch-products/aruba-8400-switch-series/p/1010129959>; <https://www.arubanetworks.com/products/networking/switches/8400-series/>; see also [https://techhub.hpe.com/eginfolib/Aruba/OS-CX\\_10.03/5200-5958/index.html#GUID-A100D19F-3FC6-49DD-B63B-90A18C0FA1EF.html](https://techhub.hpe.com/eginfolib/Aruba/OS-CX_10.03/5200-5958/index.html#GUID-A100D19F-3FC6-49DD-B63B-90A18C0FA1EF.html).

<sup>22</sup> See <https://buy.hpe.com/us/en/networking/networking-switches/hpe-flexfabric-5940-switch-series/p/1009148840>; see also [https://techhub.hpe.com/eginfolib/networking/docs/switches/5940-5930/5200-4864\\_hi-avail\\_cg/content/bk01-toc.htm](https://techhub.hpe.com/eginfolib/networking/docs/switches/5940-5930/5200-4864_hi-avail_cg/content/bk01-toc.htm).

<sup>23</sup> See <https://buy.hpe.com/us/en/networking/networking-switches/hpe-flexfabric-12900e-switch-series/p/5443167>; see also [https://techhub.hpe.com/eginfolib/networking/docs/switches/12900E/5200-4934\\_hi-avail\\_cg/content/bk01-toc.htm](https://techhub.hpe.com/eginfolib/networking/docs/switches/12900E/5200-4934_hi-avail_cg/content/bk01-toc.htm).

switches,<sup>24</sup> and HPE FlexNetwork 5510 HI Series switches<sup>25</sup> (collectively, the “Accused Products”).<sup>26</sup>

31. Upon information and belief, HPE and/or H3C make, use, sell, offer for sale, import, and/or distribute the Accused Products in the United States, including within this Judicial District.

32. The Accused Products include “HPE Aruba Products” and/or “HPE Aruba Services” as described in HPE’s Form 10-K for the fiscal year ended October 31, 2019.<sup>27</sup> Upon information and belief, the Accused Products also include products designed and developed by H3C, alone or together with HPE. Such products include but are not limited to the HPE FlexNetwork 7500 Series switches, HPE FlexFabric 5710 Series switches, HPE FlexFabric 5940 Series switches, HPE FlexFabric 5930 Series switches, HPE FlexFabric 12900E Series switches, HPE FlexNetwork 5130 HI Series switches, HPE FlexNetwork 5510 HI Series switches.

33. The Accused Products are configured to perform each element of and infringe at least the exemplary claim 1 of the ’729 Patent, which recites:

A method for managing a communications network, the method comprising:

adapting a sniffer to collect information from nodes of a first outer nodal area of the communications network,

wherein the communications network comprises:

an inner nodal area; and

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<sup>24</sup> See <https://buy.hpe.com/us/en/networking/networking-switches/hpe-flexnetwork-5130-hi-switch-series/p/1008605458>; see also [https://techhub.hpe.com/eginfolib/networking/docs/switches/5130hi/cg/5200-3603\\_hi-avail\\_cg/content/index.htm](https://techhub.hpe.com/eginfolib/networking/docs/switches/5130hi/cg/5200-3603_hi-avail_cg/content/index.htm).

<sup>25</sup> See <https://buy.hpe.com/us/en/networking/networking-switches/hpe-flexnetwork-5510-hi-switch-series/p/1008652960>; see also [https://techhub.hpe.com/eginfolib/networking/docs/switches/5510hi/cr/5200-3843\\_hi-avail\\_cr/content/index.htm](https://techhub.hpe.com/eginfolib/networking/docs/switches/5510hi/cr/5200-3843_hi-avail_cr/content/index.htm).

<sup>26</sup> See also *supra* note 11.

<sup>27</sup> See *supra* note 10.

a plurality of outer nodal areas connected to the inner nodal area via respective nodes of the inner nodal area,

each outer nodal area comprising a plurality of nodes, each of the plurality of nodes configured to send link status messages only to other nodes of the outer nodal area,

wherein the adapting comprises:

configuring the sniffer as a partition designated inner-nodal-area node of the first outer nodal area;

adapting the sniffer to collect information from nodes of a second outer nodal area of the communications network by configuring the sniffer as a partition designated inner nodal-area node of the second outer nodal area; and

determining a topology of at least a portion of the communications network using the collected information, the portion of the communications network comprising the first and second outer nodal areas.

34. The Accused Products are configured to practice a method for managing a communications network.

35. The Accused Products “comprise[] modular, multilayer chassis switches that meet the evolving needs of integrated services networks. The switches can be deployed in multiple networking environments, including the enterprise LAN core, aggregation layer, and wiring closet edge. Moreover, these switches deliver wire-speed Layer 2 and Layer 3 routing services for the most demanding applications with hardware-based IPv4 and IPv6 support.”<sup>28</sup>

36. “Ethernet Ring Protection Switching (ERPS) is a robust link layer protocol that ensures a loop-free topology and implements quick link recovery.”<sup>29</sup>

37. The Accused Products are configured to practice a method comprising the step of adapting a sniffer to collect information from nodes of a first outer nodal area of the

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<sup>28</sup> See [https://support.hpe.com/hpesc/public/docDisplay?docId=emr\\_na-c02699625](https://support.hpe.com/hpesc/public/docDisplay?docId=emr_na-c02699625).

<sup>29</sup> See <https://support.hpe.com/hpesc/public/docDisplay?docId=c05366186> at 96.

communications network. The Accused Products perform the adapting step by configuring the sniffer as a partition designated inner-nodal area node of the first outer nodal area.

38. The Accused Products provide a feature of flushing packets to update MAC addresses in the nodes of the major ring for the update in topology change in a subring. The Accused Products use “ERPS protocol packets” that “are Ring Automatic Protection Switching (R-APS) packets,” including the “Flush” packet type, which function as follows: “If the topology of the subring changes, the interconnection ports on the subring broadcasts flush packets. All nodes that receive the flush packets update MAC address entities.”<sup>30</sup>

39. In an ERPS, each major ring (*i.e.*, inner nodal area) connects with subrings (*i.e.*, outer nodal areas) via interconnection nodes. For example, an ERPS can be implemented with a network that “has three or more rings” in which “[e]ach subring is connected to the major ring by two interconnection nodes.” The figure (hereinafter, Figure A) below is a diagram of such a network:<sup>31</sup>

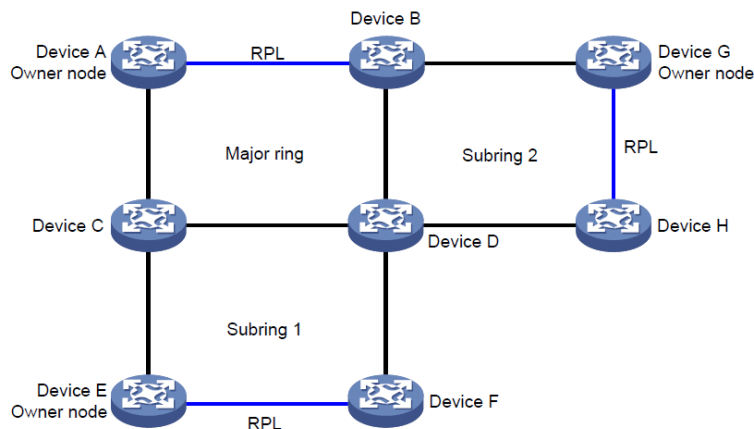


Figure A

<sup>30</sup> See *supra* note 19 at 97.

<sup>31</sup> See *supra* note 19 at 101–02 (Fig. 30).

Figure A shows a major ring (*i.e.*, inner nodal area) connected to two subrings, Subring 1 (*i.e.*, second outer nodal area) and Subring 2 (*i.e.*, first outer nodal area).

40. The topology changes and flushing of the forwarding database information can occur only through interconnection nodes into the major ring. The interconnection nodes can be a part of both the major ring and subring at the same time. The interconnection nodes can forward information to the major ring as well as can communicate with subrings. According to the ERPS standard (ITU-T G.8032/Y.1344 (02/2012)):<sup>32</sup>

The topology change propagation process is described in clause 10.1.12; it generates a signal to inform the entities of other network domains attached to a sub-ring of topology changes on the sub-ring. This process exists only of the ERP control processes of sub-ring interconnection nodes.

The interconnection flush logic is described in clause 10.1.11. It receives topology change notification information from other connected entities, such as a sub-ring's ERP control process and ETH\_C\_MI\_RAPS\_Propagate\_TC management information. Based on this information, it may initiate flushing of the FDB for the local ring ports and may trigger transmission of R-APS event requests to both ring ports. This logic is included on the ERP control processes of the interconnection nodes of Ethernet rings that sub-rings are connected to. This logic is not present on Ethernet ring nodes that are not interconnection nodes.

41. As shown, for example, in Figure A, the Device D (*i.e.*, interconnection node) is a part of the major ring and the subring 2. Device D can communicate with Device H of subring 2, and also communicates with Device A of the major ring.

42. A ring ID uniquely identifies an ERPS ring. All nodes on an ERPS ring must have a configuration of the same ring ID. The nodes of one ring (*e.g.*, configured with ring ID '1') cannot communicate with nodes of a different ring (*e.g.*, configured with ring ID '2'). For

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<sup>32</sup> See [https://www.itu.int/rec/dologin\\_pub.asp?lang=e&id=T-REC-G.8032-201202-S!!PDF-E&type=items](https://www.itu.int/rec/dologin_pub.asp?lang=e&id=T-REC-G.8032-201202-S!!PDF-E&type=items) at 23–24.

example, in Figure A, the Device H of subring 2 cannot directly communicate with Device A of the major ring due to different ring IDs. Device D being a part of both the rings (*i.e.*, major ring and subring2) configured with the respective ring IDs provides a communication path from Device H to Device A. “A ring ID uniquely identifies an ERPS ring” and “[a]ll nodes on an ERPS ring must be configured with the same ring ID.”<sup>33</sup>

43. As shown, for example, in Figure A, in case of a link failure between Device G and Device H, the major ring is unaware of topology change as Device H cannot communicate directly with the nodes of the major ring (*e.g.*, Device A) as both the devices are configured with different ring IDs. The interconnection node (*e.g.*, Device D) acts as a sniffer (*i.e.*, adapting a sniffer to sniff the topology change packets) to forward the information to the major ring. The Accused Products enable the interconnection nodes to forward flush packets (*i.e.*, adapting a sniffer to sniff the topology change packets) for topology changes in subring to the major ring. “Enabling flush packet transparent transmission” “enables the interconnection nodes to forward flush packets for topology changes in the subring to the major ring.”<sup>34</sup> In order to enable ERPS, a required task includes “[e]nabling flush packet transparent transmission.”<sup>35</sup>

44. The communications network in which the Accused Products are configured to operate comprises an inner nodal area and a plurality of outer nodal areas connected to the inner nodal area via respective nodes of the inner nodal area, each outer nodal area comprising a plurality of nodes, each of the plurality of nodes configured to send link status messages only to other nodes of the outer nodal area.

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<sup>33</sup> See *supra* note 19 at 105.

<sup>34</sup> See *supra* note 19 at 105.

<sup>35</sup> See *supra* note 29 at 103–04.

45. The Accused Products implement ERPS topology for managing a communication network. An ERPS communication network is partitioned into major rings (*i.e.*, an inner nodal area) and subrings (*i.e.*, the plurality of outer nodal areas). “ERPS rings can be divided into major rings and subrings. An ERPS network consists of one major ring or multiple major rings, and multiple subrings. By default, a ring is a major ring. You can configure a ring as a subring manually.”<sup>36</sup>

46. As shown, for example, in Figure A, Devices A, B, C, D form a major ring (*i.e.*, inner ring), the Devices B, G, D, H, and the Devices C, D, E, F forms subring 1 and subring 2 respectively. The Subrings connect with the major ring via the interconnection nodes, which are Device B, C, D (*i.e.*, a plurality of outer nodal areas connected to the inner nodal area via respective nodes of the inner nodal area). The Device D being a part of subring 2, collects (*i.e.*, sniffs) information (*e.g.*, Link Status information/topology change information) flown internally and flushes the information (*e.g.*, topology change information) in the major ring since it is also part of the major ring.

47. The Accused Products are configured to practice a method comprising the step of adapting the sniffer to collect information from nodes of a second outer nodal area of the communications network by configuring the sniffer as a partition designated inner-nodal-area node of the second outer nodal area.

48. As shown, for example, in Figure A, if there is a fault in the link between Device E and Device F, the major ring is unaware of topology change as Device F cannot communicate directly with the nodes of the major ring (*e.g.*, Device A) as both the devices are configured with different ring IDs. The Device D (*i.e.*, interconnection node/sniffer) being a part of subring 1

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<sup>36</sup> See *supra* note 19 at 96.

(*i.e.*, configured as partition designated inner-nodal-area node of the second outer nodal area), collects (*i.e.*, sniffs) information (*e.g.*, topology change information) flown internally of subring 1 and flushes the information in the major ring.

49. The Accused Products are configured to practice a method comprising the step of determining a topology of at least a portion of the communications network using the collected information, the portion of the communications network comprising the first and second outer nodal areas.

50. As shown, for example, in Figure A, in case of a link failure between Device D and Device H, the major ring is unaware of topology change as Device H cannot communicate directly with the nodes of the major ring (*e.g.*, Device A) as both the devices are configured with different ring IDs. The interconnection nodes (*e.g.*, Device D) acts as a sniffer (*i.e.*, sniffs the topology change packets) to forward the information to the major ring (*i.e.*, adapting a sniffer). The nodes of the major ring (*e.g.*, Device A) update the MAC address entries based on the received flush packets. The information will allow the nodes of the major ring (*e.g.*, Device A) to communicate with Device H via a new determined topology based on the updated address (*i.e.*, via Device B and Device G).

51. In view of preceding paragraphs 33–50, the Accused Products are configured to practice each and every element of at least claim 1 of the '729 Patent.

52. Defendants have infringed, and continue to directly infringe, at least one claim of the '729 Patent, literally or under the doctrine of equivalents, by making, using, selling, offering for sale, importing, and/or distributing the Accused Products in the United States, including within this Judicial District, without the authority of Brazos. HPE's infringing use of the



Accused Products includes its internal use, testing, demonstration and/or configuration of the Accused Products.

53. Upon information and belief, each and every element of at least claim 1 of the '729 Patent is practiced or performed by HPE at least through HPE's internal use and configuration of its own Accused Products, and/or through HPE's testing of the Accused Products, and/or through HPE providing services for the Accused Products, including but not limited to providing installation, deployment, support, demonstrations, and configuration of the Accused Products.

54. For example, upon information and belief, as part of HPE's business, HPE offers, for a fee, training and certification programs to its employees, customers, and partners that teach how to use and/or implement the Accused Products. Upon information and belief, HPE, while teaching others how to use and/or implement the Accused Products, performs demonstrations, and in so doing, practices each and every element of at least claim 1 of the '729 Patent.

55. As of the date of service of the initial complaint, August 18, 2020, HPE has had actual or constructive knowledge of the '729 Patent and has been on notice of its infringement of the '729 Patent and how the Accused Products infringe the '729 Patent. Notwithstanding this knowledge and notice, since that time, HPE has continued to infringe the '729 Patent, by making, using, selling, offering for sale, importing, and/or distributing the Accused Products in the United States.

56. Upon information and belief, H3C has had actual or constructive knowledge of the '729 Patent and has been on notice of its infringement of the '729 Patent and how the Accused Products infringe the '729 Patent since sometime between the date of service of the initial complaint on HPE and June 4, 2021 when Brazos requested review of the source code for

the Accused Products. Notwithstanding this knowledge and notice, since that time, H3C has continued to infringe the '729 Patent, by making, using, selling, offering for sale, importing, and/or distributing the Accused Products in the United States.

57. Since at least the date of service of the initial complaint for HPE, and at least June 2021 for H3C, through their actions, Defendants, with knowledge of the '729 Patent, have actively and knowingly induced customers, product makers, distributors, retailers, and/or end users of the Accused Products to directly infringe one or more claims of the '729 Patent throughout the United States, including within this Judicial District. The Accused Products, as provided to Defendants' customers and end-users and used as intended and instructed, infringe the '729 Patent. Defendants were and are aware that the normal and customary use by end users of the Accused Products infringes the '729 Patent. Upon information and belief, Defendants' customers and end-users have used and continue to use the Accused Products in the United States in this manner and directly infringe the '729 Patent. Despite Defendants' knowledge of the '729 Patent and knowledge and/or willful blindness that their actions induce infringement by customers and/or end-users, Defendants have made, sold, and/or offered for sale the Accused Products, and are continuing to do so, with the specific intent to actively encourage customers and/or end-users to make, use, sell, offer for sale and/or import one or more Accused Products in a manner that Defendants know to be infringing.

58. Moreover, Defendants have taken and continue to take active steps to induce infringement of at least claim 1 of the '729 Patent, knowing that those steps will induce, encourage, and facilitate direct infringement by customers, product makers, distributors, retailers, and/or end users. Upon information and belief, such active steps include making or selling the Accused Products outside of the United States for importation into or sale in the

United States, and directing, facilitating, or influencing its or their intermediaries, or third-party manufacturers, shippers, distributors, retailers, or other persons acting on its or their behalf, to import, sell, or offer to sell the accused products in an infringing manner. Defendants also direct, control, and/or encourage customers' and/or end-users' performance of the claimed steps by taking active steps that include, but are not limited to: making, using, configuring, and selling the Accused Products; instructing end-users to use the Accused Products; creating and disseminating advertising and promotional materials that encourage the use of the Accused Products, including product descriptions, operating manuals, configuration guides, support materials, technical materials, and other instructions on how to implement and configure the Accused Products; and providing training and certification programs that teach and demonstrate how to use and/or implement the Accused Products. Defendants have known that such activities induce customers and/or end-users to infringe at least claim 1 of the '729 Patent since the date of service of the initial complaint for HPE and at least June 2021 for H3C.

59. Examples of Defendants' manuals, instructional and support materials, and/or configuration guides for the Accused Products, provided by Defendants on their websites, that teach and instruct end-users to use and/or configure the Accused Products in ways that practice the claimed invention, include but are not limited to:

- <https://support.hpe.com/hpesc/public/km/search#q=erps>;
- [https://support.hpe.com/hpesc/public/docDisplay?docId=emr\\_na-c02699625](https://support.hpe.com/hpesc/public/docDisplay?docId=emr_na-c02699625);
- <https://support.hpe.com/hpesc/public/docDisplay?docId=c05366186>;
- [https://www.h3c.com/en/Support/Resource\\_Center/Technical\\_Documents/Routers/](https://www.h3c.com/en/Support/Resource_Center/Technical_Documents/Routers/);  
and
- [https://www.h3c.com/en/Support/Resource\\_Center/Technical\\_Documents/Switches/](https://www.h3c.com/en/Support/Resource_Center/Technical_Documents/Switches/).

60. Defendants' inducement is ongoing. Defendants have continued to induce direct infringement by others, including by instructing end-users regarding the operation and use of the Accused Products in ways that practice the claimed invention, even after being put on actual notice of the infringement of the '729 Patent.

61. Since the date of service of the initial complaint for HPE, and at least June 2021 for H3C, through their actions, Defendants have contributed to, and are contributing to, the infringement of the '729 Patent by having others, including HPE with respect to H3C, sell, offer for sale, or use the Accused Products throughout the United States, including within this Judicial District, with knowledge that the Accused Products infringe the '729 Patent. Defendants have made and/or sold the Accused Products with knowledge that they have special features that are especially made or adapted for infringing the '729 Patent and are not staple articles of commerce suitable for substantial non-infringing use. For example, in view of the preceding paragraphs, the Accused Products contain functionality which is material to at least claim 1 of the '729 Patent.

62. The special features include implementing Ethernet Ring Protection Switching (ERPS) with a feature of flushing packets to update MAC address entries in connection with topology changes, which is used in a manner that infringes the '729 Patent.

63. The special features constitute a material part of the invention of one or more claims of the '729 Patent and are not staples articles of commerce suitable for substantial non-infringing use. The Accused Products have no substantial non-infringing uses.

64. Defendants' direct and indirect infringement have caused, and are continuing to cause, injury to Brazos.

65. Brazos has suffered damages as a result of Defendants' direct and indirect infringement of the '729 Patent in an amount adequate to compensate for Defendants'

infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

**JURY DEMAND**

Brazos hereby demands a jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Brazos respectfully requests that the Court:

- (a) enter judgment that Defendants infringe one or more claims of the '729 Patent literally and/or under the doctrine of equivalents;
- (b) enter judgment that Defendants have induced infringement and continue to induce infringement of one or more claims of the '729 Patent;
- (c) enter judgment that Defendants have contributed to and continue to contribute to the infringement of one or more claims of the '729 Patent;
- (d) award Brazos damages, to be paid by Defendants in an amount adequate to compensate Brazos for such damages, together with pre-judgment and post-judgment interest for the infringement by Defendants of the '729 Patent through the date such judgment is entered in accordance with 35 U.S.C. § 284, and increase such award by up to three times the amount found or assessed in accordance with 35 U.S.C. § 284;
- (e) declare this case exceptional pursuant to 35 U.S.C. § 285; and
- (f) award Brazos its costs, disbursements, attorneys' fees, and such further and additional relief as is deemed appropriate by this Court.

Respectfully submitted,

Dated: August 25, 2021

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